ILLEGAL IMMIGRATION FROM ASIA

An examination of methods used to circumvent Australia's controlled visa entry system.

by
Malcolm Mackellar
BA, MA

This thesis is submitted in total fulfillment for the degree of Doctor of Philosophy

Faculty of Law, Business and Arts

Charles Darwin University
Darwin, NT
AUSTRALIA

November 2008
Thesis Declaration

I hereby declare that the work herein, now submitted as a thesis for the degree of Doctor of Philosophy of the Charles Darwin University, is the result of my own investigations, and all references to ideas and work of other researchers have been specifically acknowledged. I hereby certify that the work embodied in this thesis has not already been accepted in substance for any degree, and is not being currently submitted in candidature for any other degree.

Malcolm Mackellar
14 November 2008
CONTENTS

INTRODUCTION

Statement of thesis topic 1
Aims and significance 2
Definitions:
The Act 9
The Department 13
Indonesian 14
Illegal immigrant 14
Arrest and detention 19
Removal and deportation 19
Asylum seekers and refugees 24
The Missouri syndrome 26

LITERATURE REVIEW 29

METHODOLOGY 51

Introduction to Methodology 51
Ethics gender and privacy issues 52
The Department’s entry and search methodology 53
Research methodology 60
(1) Official documents 61
(2) Informants 63
Regular informants: Introduction 67
Abdul 67
Mariko 69
Ratih 73
Diwi 77
Rini 79

Use of anecdotes 84
Summary of regular informants 84
Accidental informants 87
Incidental informants 91
Immigration officers 94
(3) Observation 94
(4) Surveys 103
(5) Locating illegal immigrants 109

Summary of Methodology 112

<table>
<thead>
<tr>
<th>PART A</th>
<th>THE POLICY CONTEXT</th>
<th>114</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Introduction</td>
<td>114</td>
</tr>
<tr>
<td>Chapter One</td>
<td>People-smugglers</td>
<td>121</td>
</tr>
<tr>
<td></td>
<td>Introduction</td>
<td>121</td>
</tr>
<tr>
<td></td>
<td>The Tampa Precedent</td>
<td>123</td>
</tr>
<tr>
<td></td>
<td>The Chinese people-smuggling racket</td>
<td>130</td>
</tr>
<tr>
<td></td>
<td>Baby dumping</td>
<td>175</td>
</tr>
<tr>
<td></td>
<td>The marriage racket</td>
<td>192</td>
</tr>
<tr>
<td></td>
<td>The brother/sister exchange</td>
<td>212</td>
</tr>
<tr>
<td></td>
<td>The Indian rope trick</td>
<td>214</td>
</tr>
<tr>
<td></td>
<td>The double bangers</td>
<td>218</td>
</tr>
<tr>
<td></td>
<td>The mail-order bride</td>
<td>221</td>
</tr>
<tr>
<td></td>
<td>Unintended consequences</td>
<td>231</td>
</tr>
<tr>
<td></td>
<td>Conclusion to the marriage racket</td>
<td>234</td>
</tr>
</tbody>
</table>

Chapter Two | The Policy Problem | 236 |
Conclusion to Part A | 239 |

<table>
<thead>
<tr>
<th>PART B</th>
<th>THE INDONESIANS</th>
<th>243</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Introduction</td>
<td>243</td>
</tr>
<tr>
<td>Chapter Three</td>
<td>The Indonesian immigration scams</td>
<td>247</td>
</tr>
<tr>
<td>A. The Indonesian lapsed nationality scam</td>
<td>247</td>
<td></td>
</tr>
<tr>
<td>B. The onshore/offshore visa application scam</td>
<td>256</td>
<td></td>
</tr>
<tr>
<td>C. The Court process scam</td>
<td>263</td>
<td></td>
</tr>
<tr>
<td>D. The Ministerial scam</td>
<td>273</td>
<td></td>
</tr>
</tbody>
</table>
E. The mass produced application scams
   The real mass-produced
   The false mass-produced
   Pre-empting the contrived delay

Chapter Four
Analysis of failed refugee applications
Made by Indonesians in Australia

Methodology
   The operative concept
   The persecution scale
   Cross tabulation

FINDINGS
A. The Indonesian applicants
   Status of applicants at lodgment
   Ethnic origin
   Year of arrival

B. The Australian lawyers and migration agents
   Anonymous agents
   Identified agents
   Tactics used by migration agents
   Elements of the real mass-produced applications
   Elements of the false mass-produced applications
   The FOI diversion
   The advantages of using an agent

C. Processing delays

D. Departures

Conclusion

Chapter Five
Interviews with Indonesian illegal immigrants

Introduction
TABLE OF FIGURES

Fig.1 The Intelligence System. 360
Fig.2 Notes on the inside cover of an Indonesian passport. 361
Fig.3 Certificate of loss of Indonesian nationality. 362
Fig.4 News item: “The 3,000 Indonesians we can’t send home.” 363
Fig.5 Article 18 – Republic of Indonesia Nationality Act, No. 62 of 1958. 364
Fig.6 Advertisement in a Sydney Indonesian language newspaper. 365

LIST OF TABLES

Table 1. Statistical analysis of refused applications for refugee status. 366
       Notes to accompany Table 1. 367
Table 2. Indonesian illegal immigrants – Methods of arrival and survival. 369

APPENDICES

Appendix 1. Questionnaire administered to illegal immigrants in immigration detention. 370
ABSTRACT

This thesis is a study of some of the schemes used by illegal immigrants to circumvent Australia’s visa entry requirements. The study encompasses twenty years of personal observation of Australia’s illegal immigration industry. By the end of the 20th Century, illegal immigration into Australia was out of control. The most visible form of illegal entry was by small boat via Australia’s northern approaches, and from 1989, until it was stopped in August 2001, a total of 13,475 people had entered Australia illegally by this method. But by far the greatest number of migrants to have entered Australia illegally over the past two decades came through our airports via the insidious technique of visa misuse. This misuse was a byproduct of Australia’s visa entry requirements which are based on procedures which can be manipulated, processes which can be fabricated and documents which can be forged. Both Labor and Liberal Governments during the past two decades had policies aimed at stemming the tide of illegal immigration into Australia. However, the only policy which was totally successful was the Liberal Government’s “Pacific Solution” which ended the trafficking of boat people. This thesis explains why other policies were only partially successful and why illegal immigration during these years was a continuing process.
ACKNOWLEDGEMENTS

My sincere thanks go to my supervisor at Charles Darwin University, Associate-Professor Dennis Shoesmith, for his patience and understanding during the years of my research and during the production of this thesis. I also thank the staff of the University’s Research Branch for keeping my enrolment alive during the several extensions it was necessary for me to have in order to complete this thesis. To the Hon. Philip Ruddock MP, former Attorney-General of Australia, for granting my study-leave and the access necessary for this research when he was Immigration Minister and I was a serving Immigration officer; to my Immigration colleagues who by Departmental decree cannot be named, for sharing my work load when I was on study-leave and for other assistance with my research; to my regular informants who cannot be named for security reasons, and to the illegal immigrants who told me their stories and co-operated with me in this research project, I am sincerely grateful.
INTRODUCTION

Statement of thesis topic

This thesis is a study of some of the schemes used by illegal immigrants to circumvent Australia’s visa entry requirements. The study encompasses twenty years of personal observation of Australia’s illegal immigration industry, including fifteen years when I was an Immigration enforcement officer stationed in Sydney.

The thesis is set in the context of Australia’s formal and official immigration policy as in operation from 1984 to 2004. Illegal immigration was a continuing phenomenon during these years, and within the general immigration policy framework the thesis examines various methods used in the attempt to eliminate illegal immigration. It explains how illegal immigration continued to thrive in what was generally seen as a regime of restricted immigration intake under continuous policy control. To show how illegal immigration operated, the thesis studies some of the more frequently occurring forms of visa abuse which were used by some illegal immigrants to come to and to stay in Australia, and it examines as a case study, the situation of 200 Indonesian asylum seekers and 50 Indonesian illegal immigrants detained in Immigration custody and interviewed in Sydney during the period 1993 to 1996. In this context, the thesis contains memoirs of my personal acquaintance with illegal immigrants, their families, their lawyers, and their migration agents and also with other interest groups within Australia’s illegal immigration industry, and because my recollections are so vivid and so personalised, the thesis is written in the same way that I recall my Immigration experience; that is, with anecdotes, dialogue and reminiscences. Throughout this thesis, when discussing people generally, I use the word “he” although its use is intended to include the female gender unless a more appropriate use of “he” or “she” is clearly indicated.
By the end of the Twentieth Century, illegal immigration into Australia was out of control. The most visible form of illegal entry was by small boat via Australia’s northern approaches, and from 1989 until it was stopped in August 2001, a total of 13,475 people had entered Australia illegally by this method. But by far the greatest number of migrants to have entered Australia illegally over the past two decades came through our airports via the insidious technique of visa misuse. This misuse was a byproduct of Australia’s visa entry requirements which were based on procedures which could be manipulated, processes which could be fabricated and documents which could be forged. This thesis examines how visa entry into Australia was possible with strategies based on fiction, fabrication and fraud, by people from several countries in Asia.

Both Labor and Liberal Governments during the past two decades had policies aimed at stemming the tide of illegal immigration into Australia. However, the only policy which was totally successful was the Liberal Government’s “Pacific Solution” which ended the trafficking of boat people. This thesis explains why other policies were only partially successful and why illegal immigration into Australia was a continuing process. As an example of illegal immigration by visa misuse, this thesis examines the practice of making groundless applications for refugee status in Australia by illegal immigrants from Indonesia. However, as this was only one of many different clandestine strategies used by illegal immigrants to stay in Australia, my study of visa misuse by Indonesians is prefaced by a study of other forms of visa misuse by people from other countries in Asia. Together these show the context which nurtured a continuing flow of illegal immigrants into Australia.

Aims and significance

In relation to the abuse of the onshore protection visa program it is of some significance that of those asylum seekers in this case study who lodged their refugee applications in 1994 and which were subsequently
rejected, 48% were still in Australia at the end of 1999. Although never recognised as refugees, they had successfully resisted all efforts to repatriate them back to Indonesia. One of the aims of this thesis will be to examine the methods which these Indonesians used to legally prevent their removal from Australia. This examination will reveal significant insights into the inadequacies of Australia’s onshore protection program, and the manner in which some Indonesians have systematically exploited these inadequacies. This case study also reveals how the program has been subverted by what might be called sections of the ‘illegal immigration industry.’

In Australia, illegal immigration thrives for the same reason that illegal drug trafficking thrives; there are so many people who make so much money from it. Some observers have suggested that illegal immigration is as profitable as drug smuggling (Salt & Stein 1997) and the occasional glimpse into Australia’s illegal immigration industry which this thesis will give, will lend credence to claims of the huge profits to be made from illegal immigration. As illegal drug trafficking in its obverse way helps to support those who work in legitimate mainstream industry, such as the police, the legal profession, the prison industry, and the medical profession, so also illegal immigration has spawned its own legitimate spin-off industry. In this context illegal immigration in Australia supports a legitimate contingent of migration agents and migration lawyers. It also attracts a significant commitment from Australia’s Immigration Department, and Australia’s coastal surveillance service. This industry also supports an expanding privatised immigration detention service, and a significant part of the case load of Australia’s Federal Court and of its High Court, and also of course, all the infrastructure which keeps all these institutions operating.

Illegal immigration in Australia is big business, and the dynamics of this business will loom large in the pages of this thesis, demonstrated from time to time by examples taken from the case studies of Indonesian illegal immigrants. These case studies will show that the significance of
Australia’s illegal immigration industry is that it flourishes notwithstanding Australia’s policy of controlled immigration. This policy is evidenced by its elaborate visa system with detailed and sometimes very complicated entry conditions. The policy is two-pronged, permitting on the one hand an annual intake of legal migrants of various categories, while on the other hand actively discouraging illegal immigration by means of a harsh deportation-without-trial system.

In the administration of its controlled immigration policy, Australia should benefit from its geographical isolation because as an island continent, it is spatially isolated from all other countries in the world. It has no Rio Grande across which illegal immigrants can wade, and no common international land borders. Therefore, because of its harsh deportation system coupled with its geographical isolation, it would seem to be a relatively easy task for Australia to keep illegal immigrants out. It is significant, therefore, that despite its isolation and its policy of controlled immigration, during the period covered by this thesis, Australia had a constant and a continuing illegal immigrant population, and one of the aims of this thesis is to explain why this was so. In pursuit of this aim, I will use as one example that part of Australia’s illegal immigrant population which originates from Indonesia.

The reason why Indonesians in Australia were chosen for this study is this: asylum applications are continually being made in Australia by people from as many as 150 different countries, from Afghanistan to Zimbabwe, and most other countries in between (DIMA 1996a). Of course, the distribution of asylum seekers has never been symmetrical across this spectrum, and it never will be, because humanitarian conditions in all countries throughout the world at any given time are not the same. However, by the end of 1997, asylum seekers from Indonesia were outnumbering asylum seekers from any other country (DIMA 1997d). At first glance, this would not seem surprising considering the proximity of Indonesia to Australia and the endemic Indonesian trouble spots of Aceh, Ambon, and West Irian, and also at that time, the then
Indonesian province of East Timor. So, a flow of genuine asylum seekers into Australia from Indonesia could have been expected during that era. But what is surprising is that of all the asylum seekers in Australia, from all the countries they came from in the world, it was the Indonesian applicants, who had the highest rejection rate. This rejection rate was as high as 99.5% in 1997 (DIMA 1997a, p.48) and higher still at 99.8% in 1998 (DIMA 1998a, p.68). In the administration of Australia’s onshore protection program, such a high rejection rate in the normal course of events would be of extraordinary significance.

For example, if Indonesians had the highest approval rate for asylum seekers in Australia, a continuing flow of Indonesian asylum seekers into Australia might be better understood. But why was it that with a rejection rate higher than that of all other nationalities, Indonesian asylum applicants continued to flow into Australia? After having been rejected, many Indonesian asylum seekers remained in Australia as illegal immigrants, and by December 1996, amongst all the nationalities of illegal immigrants in Australia, Indonesians (DIMA 1997c) were outnumbered only by British and Americans.

The reason why our refugee program attracted into Australia so many Indonesians who were not refugees, and the reason why these people were permitted to remain in Australia when they were not refugees, will be explored in some depth in this thesis. Meanwhile, in 1998, the top-selling non-fiction book in Australia was Among the Barbarians, by Paul Sheehan (The Australian 9/9/98). In this exposé of Australia’s immigration program, one of the examples of widespread immigration malpractice in Australia which Sheehan refers to is the refugee racket. I use the word ‘racket’ throughout this thesis to mean the various schemes used to exploit the regulatory system of visa issue. Thus by ‘refugee racket’ I refer to the various schemes used to exploit the regulatory system which controls the issue of protection visas by which refugees are granted residence status in Australia. Most of the rackets referred to in this thesis consisted of different schemes some of which were illegal, and as we shall
see, some of which were not. The various rackets mentioned in this thesis will be explained in due course. Sheehan did not explore the refugee racket in any great depth, nor for that matter did he explore any other immigration racket to which he refers. This thesis will, and while I will make some reference to the more popular immigration scams like those involved with phoney marriages, and bogus student visas, my main focus will be on the refugee racket.

At this point it should be mentioned that in Australia, there is nothing strange about immigration rackets in general, nor in rackets which are specifically favoured by particular nationalities. In the early 1980s there were for example the Filipino mail-order bride rackets, and the Indian chain migration rackets. In the late 1980s before the Tiananmen Square massacre, there were the bogus Chinese student rackets, and the Hong Kong business migration rackets. About the same time, there were also the baby-dumping rackets of Tonga and Hong Kong, which in a more limited form, continue to this day. It is also important to mention here that immigration rackets come as the opportunity offers, and go as the legal or procedural loopholes through which these rackets pass are gradually sealed up against them. What remains as a constant, however, is the continuous flow of illegal immigrants into Australia, and this flow is like any other flow: it does not stop at its source just because it is blocked somewhere downstream; it simply flows in a different direction, or else finds another loophole in the same direction.

So, whilst the principle rackets of the 1980s ebbed away when Australia’s citizenship and migration laws were amended to defeat them, so also we can expect that the refugee rackets of the late 1990s will eventually fade away when their turn comes. By then a new direction, or a new loophole will have been found and in this context, as this thesis is being written, we are seeing how a flow in a different direction operates with recent Chinese illegal immigration to Europe (Mann 2000a) and how a new loophole in the same direction was found by way of ‘back door’ immigration via New Zealand into Australia (Metherell 2000a). All these
rackets mentioned so far will be explained in this thesis in due course, simply to show that illegal immigration in Australia thrives and flourishes, and that Australia’s ‘controlled’ immigration policy, is not very well controlled at all. We will also see how various nationalities specialised in different kinds of rackets to circumvent Australia’s immigration laws, and what official policies were adopted to confront these particular rackets. Judging by past experience we can assume that illegal immigration into Australia will continue in one form or another into the foreseeable future. In order to understand why it is likely to continue, it is first necessary to understand how illegal immigration operates. So the principal aim of this thesis is to explain how illegal immigration operates in Australia, and in pursuit of this aim I will use as an example the well established refugee racket. It is in this context therefore, that this thesis will examine Australia’s onshore refugee program, with a particular focus on those who benefit most from the misuse and abuse of this program; the Indonesian illegal immigrants in Australia.

Definitions

Australian immigration English is laced with jargon. In addition, it contains expressions of significance in an immigration context which in plain English do not have the same meaning. Conversely, there are plain English expressions which can have a different meaning in an immigration context. The most important of these, as we shall see, is ‘illegal immigrant’, which is an expression with no official status at all. How is it possible therefore to write a thesis on illegal immigration from Indonesia, when the expression ‘illegal immigrant’ is not even mentioned in the Migration Act? As far as Australian law is concerned, there is no such person as an illegal immigrant. Similarly, according to the Act, a person who is an ‘asylum seeker’ is not a ‘refugee applicant’. These expressions in law refer to two separate and distinct immigration statuses. Also, when trying to understand why certain decisions were made or were not made, we need to know if the ‘Missouri Syndrome’ was operating. There is, in
addition, a problem in defining who is, and who is not an Indonesian. For example, Commonwealth government statistics identify migrants in Australia by their country of birth (DIMA 1998c). Thus, Dutch people born in Indonesia are classified together with Indonesians born in Indonesia even though in 1986 for example, 65 per cent of the people in Australia who were born in Indonesian were in fact, Dutch nationals (Jackson 1991, p. 81).

Then there were ethnic Chinese who were born in Indonesia, who considered themselves to be Indonesian but were not recognised by the Immigration authorities of Indonesia as Indonesian citizens. Their Indonesian passports were endorsed “of Chinese descent.” Then there were Chinese-born Indonesians, recognised by the Indonesian authorities as Indonesian citizens, but who did not recognise themselves as Indonesians, and claimed themselves to be stateless. Then there were the East Timorese who, before independence in 1999, were recognised by the Indonesians as Indonesian citizens, but whom the rest of the world recognised as Portuguese. The East Timorese of course, considered themselves to be neither. Because of this bewildering array of ordinary terminology at cross purposes with each other, it is necessary at the beginning of this thesis to decide first on what definitions to use, and secondly to decide on what kind of English to use.

I have opted for the plain English version. In order to do so, it is first necessary to set the parameters for those expressions in plain English which have a particular meaning in an immigration context, and to explain some immigration expressions which do not have a clear meaning in plain English. It is also necessary to define which people this thesis considers to be “Indonesian”. For the purposes of this thesis then, the following expressions are defined:

The Act
The Department
Indonesian
Illegal immigrant
Arrest and detention
Removal and deportation
Asylum seekers and refugee applicants
The Missouri Syndrome

The Act

Under Section 51 of the Australian Constitution, the Commonwealth Parliament is empowered to enact laws for “the peace, order and good government of the Commonwealth in respect to ... (amongst other matters) (xxvii) Immigration and emigration: (and), (xxviii) The influx of criminals.” The Parliament was quick to do so, with its first Immigration Restriction Act of 1901 passed during the first year of the Commonwealth. Several amending and enabling Immigration Acts then followed over the ensuing years, up to 1948. Then in 1958 these previous Acts were repealed and a new Act was passed. The Act currently in use still bears the title “Migration Act 1958" although the original 1958 Act was extensively amended on 1 September 1994.

The 1994 amendments combined the previously separate function of visas and entry permits, and introduced mandatory removal, bridging visas, and other innovations now in operation. In explaining the purpose of these amendments on behalf of the then Labor Government, Dr Theophanous, then Parliamentary Secretary to the then Prime Minister told Parliament that one of the key objectives of the amendments was to:

clarify the status of all non citizens in Australia. In simple terms, all non-citizens in Australia will be required to have a visa to be lawful. A non-citizen who does not hold a visa must be detained and is then subject to removal from Australia. Grant of a bridging visa will provide a non-citizen, who would otherwise be subject to detention and removal, with lawful status for a limited period.

(Hansard, House of Reps. 24 March 1994, page 2166)
It was a significant policy development because, prior to these amendments, people could become illegal immigrants for the most innocent of reasons. For example, an English girl on a working holiday in Australia might meet and marry an Australian man during the currency of her temporary entry permit. Sponsored by her Australian husband she would apply for permanent residence in Australia, on the grounds of her marriage to him. Processing of her application could take months, or even years and in the meantime, her temporary entry permit might expire, thus converting her into an illegal immigrant, liable to be deported. In practice, the Department would take no deportation action during the currency of her application for permanent residence, but she would nevertheless be in a state of limbo, lawfully married under Australian law to her Australian husband, but illegally in Australia at the same time. In this situation, accidents could happen, and they frequently did. For example, with nothing in her passport to indicate a lawful status in Australia, she could be caught up in a dragnet for illegals, during an Immigration swoop on the apartment building where she lived with her husband. Eventually it would all be sorted out, and she would be released from custody to rejoin her husband, but for her it would have been nevertheless an unpleasant experience. But under the new bridging visa regime created by the 1994 amendments, she would automatically be granted a bridging visa immediately upon lodging her application for a spouse visa, so that it then did not matter if her temporary entry permit expired, because her bridging visa would then begin operating immediately giving her a continuing legal status in Australia. This bridging visa, glued into her British passport, would remain current until the application for her spouse visa was decided and provided that the marriage was genuine there would be no Immigration unpleasantness thereafter.

The new provisions for mandatory detention of illegal immigrants also solved a perplexing custody problem which had plagued policy implementation prior to the 1994 amendments. The policy had always been, and still is, to detain and deport illegal immigrants from Australia without delay. But under the regime prior to these amendments, illegal
immigrants who had been arrested had to be taken within 48 hours before a magistrate to be remanded in custody during the deportation processing, or while awaiting the result of any application lodged since arrest. In the normal course of events deportation processing would be completed within a few days, and the court appearance before a magistrate in such cases was just a minor administrative inconvenience. But sometimes it was such a problem that under certain circumstances it could render the deportation policy totally inoperable. For example, if an illegal immigrant in custody could not be identified, deportation would not be possible, since no passport could be issued, and no country would accept him. Magistrates would not remand the illegal in custody indefinitely, and unless the Department could identify the illegal within a reasonable time, further custody would be denied, and the illegal immigrant would be released.

This was a policy implementation failure of some magnitude which prior to the 1994 amendments had no remedy. Then there was the problem of stateless illegals. The worst case of this kind of policy implementation failure involved 3000 illegal immigrants from Indonesia who had deliberately made themselves stateless while working illegally in Australia (Kirk, 1992). Because they were stateless, they could not be deported, and although they could still be arrested because they were still illegally in Australia, they had to be released within 48 hours because no magistrate would remand them in custody indefinitely. But the mandatory detention provisions of the 1996 amendments cured this problem in the manner later discussed in Chapter 3 of this thesis under the sub-heading “The Indonesian lapsed nationality scam”.

Both these examples show how certain policy implementation problems which had existed beforehand were cured by the 1994 amendments. However, the same set of amendments also introduced a new set of policy implementation problems because the introduction of the bridging visa gave to illegal immigrants extensive opportunities for visa abuse. For them, the bridging visa was another visa to abuse. It allowed
them time to lodge fraudulent and groundless applications for permanent residence and it spawned one of the biggest immigration scams of all time by inadvertently creating for anyone who wanted to use this opportunity to defraud the Commonwealth, the status of lawful temporary resident in Australia. Thus foreigners who did not qualify under any circumstances for permanent residence in Australia could easily obtain lawful temporary residence for many years until their groundless applications for permanent residence were rejected. This situation suited perfectly the Indonesian practice of circular migration which Jellinek (1978) has described. Jellinek states (p.4) that the circular migrants she studied “could endure their existence in the city because they did not regard it as a permanent way of life. They worked in the city under trying conditions in the hope of improving their life in the village. Eventually when they had earned enough they planned to retire there” which is what most of the Indonesians I interviewed also told me. But the ‘city’ Jellinek was referring to was Jakarta, and she was studying the circular migration of Indonesian workers from the Javanese countryside into Jakarta and back to the village again. The Indonesians in my study followed a similar pattern of migration although the ‘city’ in my study was Sydney. So what my Indonesian informants had done was to extend the ‘circle’ of their circular migration to include Sydney, which was for them only a one stop flight from Jakarta. This extended circle provided for them the circular migration in what was to become one of the subjects studied in this thesis: illegal immigration from Indonesia.

The research period for this thesis bridges the changeover date of 1 September 1994 so that for part of the research period the law as it was prior to 1 September 1994 applied, while for the latter part of the research, the law which then applied was that which operated after the 1 September amendments. These amendments dramatically altered the immigration scene from what it had previously been, but there was no change to the title of the Act, and although the current Act is still referred to as the Migration Act 1958, it is important to note that it bears little resemblance to the Migration Act 1958 as in operation prior to 1
September 1994. Because both Acts have the same name therefore, for the purpose of this thesis the following expressions are used: The Act as in operation prior to 1 September 1994 is referred to as “the old Act”. The Act as in force after that date, and during most of the time this research was conducted is referred to as “the new Act” or, where no comparison is necessary with the old act, simply as “the Act”. It is also important to note that Immigration law is constantly changing to thwart immigration rackets as they are exposed, or to give legal status to changing immigration circumstances. Most of the changes to immigration law occur by way of amending Regulations. However, the Act can also change, and it is important to note here that some of the loop holes in the immigration laws which are mentioned in this thesis and which were in existence when the research for this thesis was conducted, may well have been amended out of existence by the time this thesis is presented.

**The Department**

Although the Act did not change its name since 1958, the Immigration Department has done so frequently. At the time this thesis was written its name was “The Department of Immigration and Multicultural and Indigenous Affairs” (DIMIA). Previously, it was “The Department of Immigration and Multicultural Affairs” (DIMA), and before that, “The Department of Immigration Local Government and Ethnic Affairs” (DILGEA) and, again, before that “The Department of Immigration and Ethnic Affairs” (DIEA). All these name changes occurred while I was with the Department, during which time notwithstanding these different official names, in plain English the Department was always called the “Immigration Department,” and that is how it will be referred to in this thesis. More simply, I will generally refer to it as “the Department”.

As the Department changed its name, so also did its authorship of its publications. Quoting references to these publications can be confusing, because to the uninitiated, the difference in names could appear to refer to different departments. Thus for in-text references to the
Department as author to its publications, under whatever name it might have had at the time of publication, I will assume the name of “The Department of Immigration and Multicultural Affairs,” and I will refer to the Department in this name by its generic acronym “DIMA”.

**Indonesian**

For the purposes of this thesis, “Indonesian” includes the “ethnic Indonesians”, that is, the descendants of the original Proto-Malays and the Deutero Malays (Zainu’ddin 1968) who now make up the bulk of the population of the Indonesian archipelago. These people may also be distinguished in this thesis from time to time by their cultural and linguistic divisions, such as the Javanese, Sundanese, Balinese, Batak, Minangkabau, Minahassa and so on. In this thesis “Indonesian” also includes ethnic Chinese who were born in Indonesia, whether or not recognised as citizens of Indonesia by the Indonesian authorities. Conversely, the East Timorese, although recognised by the Indonesian government prior to independence as being Indonesian, are excluded from the thesis definition of Indonesian.

**Illegal Immigrant**

There is no reference to “illegal immigrant” in the Migration Act. The nearest definition in the Act of a person who in plain English might be referred to as an “illegal immigrant” is under the new Act called an *unlawful non-citizen*. Prior to the new act coming into operation on 1 September 1994, such a person was known as a *prohibited non-citizen*, *an illegal entrant*, and a *prohibited immigrant*, depending upon which particular amendment to the old Act was in force at the time. The International nomenclature for this kind of person is *undocumented immigrant*, as in Espenshade and Calhoun (1993) *An analysis of public opinion towards undocumented immigration*, and as in Powers and
Seltzer (1998) *Occupation Status and Mobility among undocumented Immigrants by Gender* (my emphasis). This definition is confusing in the Australian context, since most illegal immigrants in Australia are very well documented. It is true that some illegal migrants are detected entering Australia without documentation, for example, by boat from Indonesia, and they are referred to in Departmental records as “unauthorised arrivals”. However, this nomenclature is also not helpful in a generic sense, since it includes “those refused entry on bona fide grounds.” Bona fide refusal includes incoming passengers thought to be of “character concern” which is an all embracing euphemism under which known or suspected criminals are refused entry, together with people on the Department’s alert list, or those who have mismatched travel documents, for example someone else’s visa in another passenger’s passport (DIMA 1999a). Some of these “unauthorised arrivals” may nevertheless be very well documented.

Although the number of unauthorised arrivals has increased in recent years and amounted to 1555 persons who were refused entry to Australia during 1997/98, by far the greatest number of illegal immigrants in Australia are those who arrived legally with proper documentation, but then overstayed their visas. The Department refers to these people as “overstayers”. and in that same year there were 51,000 of these in Australia (DIMA 1998a, p. 44 & 54). In relation to them it is not their documentation which is of concern, but their immigration status. This status has itself become confused since the introduction of the new Act, because of the bridging visas now is use, and currently a non-citizen in Australia can oscillate between a legal and an illegal status, according to the success or otherwise of different visa applications.

Under the new Act, a person who might otherwise be illegally in Australia but who is eligible to make a substantive application to remain in Australia and subsequently does make such an application, is automatically granted a bridging visa pending the result of the substantive visa application. The bridging visa then gives that applicant temporary
legal status in Australia, notwithstanding that the substantive visa application might be false, fraudulent or groundless, or otherwise has no chance of success. In fact, as the case study will show, the substantive visa application need have no claims on it at all. It can be a blank application form, with nothing written into it other than the applicant’s name and address, even if the name and the address are also false. So for a fee of only $30, which was the cost of lodging an application for a protection visa, a fraudulent refugee applicant can remain legally in Australia, with access to Medicare and other government assistance (Henderson, 1997) until such time as the application is rejected. After having had his application for a substantive visa rejected, the applicant can make use of the normal avenues of appeal, through which he can legally remain in Australia for years. In the case study used during this research, the *minimum* period such an applicant could expect to remain “lawfully” in Australia was seventeen months.

Indonesians interviewed for this research project showed that during this time, an ordinary Indonesian labourer working in Australia could expect to repatriate to Indonesia about $9,600 and a prostitute about $140,000. Given the prevailing exchange rates, these amounts represent enormous incomes in Indonesia, totally beyond the reach of ordinary Indonesians in Indonesia. It is no wonder then that our onshore refugee program attracted Indonesians into Australia in a situation which, according to former Senator John Stone, “must make Australia’s name a laughing stock, whenever any group of people-smugglers is gathered together” (Stone 2000, p.9).

In 1994, two months before the bridging regime came into operation, the Department estimated that there were 69,600 unlawful non-citizens in Australia. Exactly one year later, the estimate was 51,300. So where had all the others gone? The answer is that they had gone nowhere. In relation to these ‘missing’ illegal immigrants, a departmental report stated:
Applicants for further visas and those without a valid visa who come to the Department’s attention and who are not placed in detention are now made lawful (my emphasis) by the grant of a bridging visa. Many of these were previously considered unlawful for the purpose of overstayer statistics. (DIMA 1996b)

In other words, the ‘missing’ illegal immigrants had not departed Australia. They were still here. They had simply been legislated out of existence temporarily. Thus it can be seen that since 1994, the official number of illegal immigrants in Australia is distorted by the bridging visa regime. This of course makes any research into illegal immigrants in Australia very difficult if the research is to be confined to the narrow parameters which would include only those foreigners in Australia who are without visas. These people now fall into the category which the new Act describes as “unlawful non-citizens.”

This terminology, by itself, is of little value in the wider research context when studying immigration fraud and visa misuse, which together constitute the most frequently used methods by which illegal immigrants enter Australia. This is because, under the new Act, these people cease to be “unlawful non-citizens” as the above report (DIMA 1996b) explains, as soon as they lodge a fraudulent application to remain in Australia, or a spurious appeal to the Federal Court.

So, until the current matter, whatever it is, is decided, the automatic bridging visa system keeps these people ‘lawful’. In fact, as we shall see, in the case study of groundless refugee applications which is one focus of this thesis, 42% of the Indonesians involved arrived in Australia, remained here, and departed in due course, without ever becoming “unlawful non-citizens” under the Act. So if it were confined only to those people defined as “unlawful non-citizens” under the Act, any study into illegal immigration into Australia, would become a journey through a maze of contradictions. The reason for this is that some of the subjects some of the time would oscillate between a legal and an illegal status, while some who were performing the same sorts of immigration
rorts and frauds and for the same reasons, would never be “illegal” at all. It would be even more confusing to suspend research into people who temporarily become “lawfully” in Australia because of a bridging visa, between bouts of “unlawfulness”, and to recommence research when they became “unlawful non-citizens” again. In this context the Act, both in its old and also in its new form, has always lacked a convenient all embracing definition for the kinds of people who take part in illegal immigration. Even the ‘official’ definitions were generally so clumsy as to be avoided in normal Departmental conversation. The only official definition ever to have had some currency during normal conversation was that of “prohibited immigrant” which in its plural form could be written as “PIs” and pronounced as “Pea-eyes”. In the new Act “unlawful non-citizen” is such a mouth full as to be inconvenient in normal conversation, and even its acronym (i.e. UNC, pronounced as “Unck”) is a guttural unpleasantness.

So, since 1958 throughout their various legal reincarnations as “prohibited immigrants” “illegal entrants”, “prohibited non-citizens” or “unlawful non-citizens,” and whether they were “unauthorised arrivals” or “overstayers” the jargon supplied what the Act has always failed to give, and that is a convenient definition for describing people who have no right to be in Australia. The jargon simply referred to all these people collectively by the plain English expression “illegal immigrants,” and in ordinary conversation they were simply called “illegals.”

Thus, because the Act has no other way of describing them, and unless a particular legal definition is used for comparative purposes, I generally use the plain English definition “illegal immigrants” to include all those foreigners who succeed in entering Australia other than for legitimate purposes within the intention of the Act. I also include in this definition those foreigners who arrived in Australia legally, but who continued their stay in Australia either by overstaying their visas, or by lodging fraudulent or groundless applications. Furthermore, in conducting this research into illegal immigration into Australia from Indonesia, the
bridging visa regime has, when convenient, been ignored, simply because it clouds the issue. For the purposes of this thesis therefore, an “illegal immigrant” includes any foreigner in Australia who does not meet the requirement of any substantive residence visa, either temporary or permanent, whether that person holds a bridging visa or not. For convenience, the expression “illegal immigrant” will sometimes be used in its shortened form “illegal,” and, following the jargon, “illegal immigrants” will sometimes be referred to simply as “illegals”.

**Arrest or Detention**

Whilst there is no reference to any “illegal immigrant” under the new Act, there is also no reference to the “arrest” of any person illegally in Australia. According to Section 189 of the new Act, unlawful non-citizens must be “detained”. In the immigration context the ordinary expression “detained” has a special meaning, which in plain English terms could be equated with “arrest”. But as far as any illegal immigrant is concerned, whether he or she has been “arrested” or “detained” makes little difference because in either case, the view from inside the cell looks exactly the same. So in this thesis the word “detained” will be interchangeably used with “arrested” to mean “detained in immigration custody under the Act”.

**Removal and Deportation**

In plain English, “removal” is what happens to your furniture when you change house. But in immigration legalese, since the new Act came into operation, “removal” has acquired its own ominous meaning. It is what happens to an illegal immigrant when there is no further chance of visa grant in Australia, and that illegal immigrant is unwilling to leave Australia voluntarily. In plain English, we might refer to this situation as “deportation”, and under the old Act it was. But the new Act has reserved “deportation” for criminals, and has assigned “removal” to mean what in plain English we might refer to the deportation of ordinary illegal immigrants who have not been convicted of serious offences in Australia.
Although it is geographically isolated from the rest of the world, Australia nevertheless has its share of international criminals. Drug couriers, contract murderers, ‘stand-over merchants’, hit men, and thieves, all have their reasons for coming to Australia. Even the lesser international criminals, like pick pockets find profit in Australia, because there is a fortune to be made by selling to other illegals the contents of stolen wallets. Stolen credit cards, and drivers licences can be cancelled by their owners, but in the hands of illegal immigrants they can still establish a new identity and a new name for the purposes of evading immigration detection.

Foreigners in Australia who are convicted and sentenced to imprisonment of one year or more, are liable to criminal deportation. This applies to any foreigner, even those who have been legally resident in Australia for less than ten years. But criminal deportation is a messy business, subject to all sorts of appeals, and even those criminals who would seem to be the most deserving of criminal deportation, are often rescued by the Courts, as in Teoh’s case (1995, 183 CLR 273) in which, with an application for permanent residence still in process, Mr Teoh was convicted on six counts of importing and possessing heroin and was sentenced to six years imprisonment. On these facts alone, this would seem to have been a clear case for criminal deportation. However, Mr Teoh was the carer of seven children and the compassionate claims of dependence by his wife and children were not seen as compelling enough in view of the crimes he had committed, and the Department rejected his application for permanent residence and ordered his deportation. Mr Teoh appealed to the Federal Court where he failed, but on further appeal to the Full Court of the Federal Court he succeeded, and the Minister then appealed to the High Court. At issue was the effect of the United Nations Convention on the Rights of the Child which had been ratified by the Australian Government in 1990 but which had not been incorporated into Australian statute law. Article 3 of the Convention stated that in all actions undertaken by administering authorities in matters concerning children “the best interests of the child shall be a primary consideration.” So the
question was how did the ratification of this Convention impact upon Mr Teoh’s circumstances. In the Full Court of the federal Court, Justice Lee decided that the ratification had provided parents and children with a legitimate expectation that the decision-maker in this case would act on the basis that the best interests of the children would be treated as a primary consideration. He found that in this case the Minister’s delegate had failed to initiate appropriate inquiries as to the welfare of the children in the event that Mr Teoh were deported, and that this failure involved an error of law. The High Court followed this reasoning. By way of summary Lacey (2004, p. 12) explains that Teoh’s case did not prevent deportation in cases which involve children, but that the Convention is a relevant consideration which must be taken into account by a decision-maker. Thereafter, in the Department, it became mandatory to ensure that primary consideration be given to the best interests of any children likely to be effected by deportation orders.

Even when the courts do not deliberately prevent deportation, the court process itself can be used to remain in Australia. One particular criminal in NSW has evaded deportation for fifteen years, and although he has been in jail for half this time, he avoids deportation simply by committing more offences. His speciality is middle level fraud; a non-violent, unsensational criminal activity, which attracts little media attention, and therefore no pressure for swift justice. But by continually having one or more cases pending before the courts, with several appeals in the pipeline, this particular criminal is perpetually within the jurisdiction of the courts, and hence immune from deportation. He even has an application for revocation of his deportation order pending, which of course cannot be determined until he is free of the court process, and that is unlikely to ever happen. One characteristic of this criminal’s success is his ‘good behaviour’. Polite, well dressed and unassuming in court, with a continuous good behaviour record while in jail, he is able to remain at large and on bail between court appearances. All this of course he manages with the assistance of a barrage of high profile Australian lawyers whose exorbitant fees he pays up front by swindling someone
else for this purpose. Our criminal deportation system simply cannot cope with this kind of criminal.

Then there is a host of other criminal matters such as making false statements in official immigration applications, and uttering forged certificates and false documents used in sham marriages and other kinds of visa applications. There are also more serious physical offences like assaults on immigration officers, escape from immigration custody, wilful damage to Commonwealth property inside the detention centres, taking part in riots within detention centres and so on. All these are technically offences under the Crimes Act, or the Migration Act, and which, upon conviction and sentence, could eventually lead to criminal deportation, some time after the subsequent prison sentences have been served. But in reality, most of these offenders never see the inside of a court room. The reason for this is that where the offender is a visa applicant or is already an illegal immigrant, it is far more practical to refuse the application and/or to simply remove the offender from Australia, than it is to go through a lengthy and costly prosecution. Removal is all done quickly, and ‘administratively’ without any clumsy court process.

Even the police find the “removal” process of the Migration Act to be to their advantage in ridding the streets of petty foreign criminals. For, after an arrest for some minor offence like shoplifting, bag snatching, stealing, or even some minor traffic offence, if they think that the culprit could be an illegal immigrant, police will refer the matter to the Department for a quick status check. If the offender is found to be an illegal immigrant, then it is far more practical for the police to allow the Department to proceed with removal, than it is to press charges. So as far as the police are concerned, their crime problem is then solved when the criminal is literally and absolutely removed from Australia via the Immigration removal process.

In 1997-98 for example, there were sixty criminal deportations from Australia. But there were also 444 “referrals” by police to the Department
(DIMA 1998a, pp. 43 & 55). In plain English this means that 444 foreigners were arrested by police for lesser criminal offences, then passed over to the Immigration Department for removal action. One incident involved three Asian ‘stand-over merchants’ who had been invited to Australia by a local crime syndicate to enforce collection of a backlog of bad debts. The men arrived on visitors’ visas on an early morning flight, and with a lot of work to get through, they began immediately. They assaulted their first victim later that morning in a street in Kings Cross. This method, of course, was the way they normally operated in their country of origin, where public retribution was seen as a deterrent to other miscreants.

Unfortunately for these stand-over men, they had not been in Australia long enough to know that we generally do things differently here and in the course of assaulting their first victim, during peak hour, in public, on the crowded footpath in Kings Cross, they were arrested by police. The true nature of their visit to Australia was then discovered, and by quick liaison between police and the Immigration Department, immigration officers cancelled the visitor visas. Cancellation turned these stand-over men into illegal immigrants, and on that basis they were removed from Australia, later that same day, back to the Asian country they had come from.

It doesn’t always happen as quickly as this, but this incident shows that in this kind of situation, it is pointless prosecuting illegal immigrants for offences like this, because prosecution can in some circumstances, exacerbate the original problem. Court hearings, adjournments, bail, and the appeal process, could allow such offenders to stay in Australia for years longer than their original visas permitted, thus enabling them to continue to perpetrate their illegal activities in the meantime. What all this also does of course, is to blur the distinction between the deportation of criminals and the “removal” of persons involved in criminal activity, since the official criminal deportation statistics do not give a true picture of the number of international criminals detected and forced to leave Australia. In
other words, more criminals are deported from Australia than the official figures actually show.

There is, thus, a further blurring between the removal of criminals and the removal of ordinary overstayers not involved in criminal matters at all. This distinction is also not helped by the fact that research for this thesis was conducted among some illegal immigrants who were deported prior to 1 September 1994, that is, before “removal” came into operation under the new Act, and also among others who were removed under the new Act. Since there is a possibility of confusing deportation of ordinary overstayers under the old act, with deportation of criminals under the old Act, and deportation or removal of criminals under the new Act, with removal of ordinary overstayers under the new Act, I have decided in this thesis to make no distinction at all. For this reason, I will use the word “deport” interchangeably with the word “remove” to mean removal as it applies under the new Act, whether the deportation or the removal occurred before or after the new Act came into operation, unless criminal deportation is involved, in which case I will so specify “criminal deportation”.

Asylum seekers and refugee applicants

There is a clear distinction under the Migration Act between people seeking asylum and people seeking refugee status. Asylum can be granted only by way of a Class 800 visa. This visa is specifically limited to people “who have been granted territorial asylum in Australia by instrument of a minister” (Mig. Reg. Sched 2, Subclass 800), and, to my knowledge, asylum has never been granted to anyone under the new Act. On the other hand, there are different kinds of refugee visas, granted both in Australia and outside Australia, but the only refugee visa which concerns this thesis is the Class 866 Protection (Residence) visa which is granted in Australia.

For this particular visa, the applicant can lodge an application while
in Australia, and can subsequently be granted this visa while in Australia, without ever having to leave Australia. In 1996/1997, 2,168 such visas were granted in Australia (DIMA 1997a, p.47). A visa of this class is granted if the Department recognises the applicant to be a refugee within the meaning of the United Nations Convention on Refugees. The processing of applications for this kind of visa will be further explored later in this thesis. Whilst the law recognises the difference between asylum and refugee status, both these separate statuses are often confused as one and the same.

Even the Department has some difficulty in finding the difference. For example, the Department’s Fact Sheet No: 41 with the title Seeking Asylum within Australia states “Australia offers protection to asylum seekers who meet the united Nations definition of a refugee” and so on, giving information, not about people seeking asylum within the meaning of the Act, but about refugee applicants in Australia. This Fact Sheet also includes information about the Asylum Seekers Assistance scheme, which it says, provides financial assistance to eligible protection visa applicants, who are of course refugee applicants and not asylum applicants within the meaning of the Act (DIMA 1997d). So, because of the alternate usage of these visa categories even in official documentation, it is necessary to arrive at a suitable definition for the purposes of this thesis, when referring to Indonesians in Australia who have applied for refugee status while they are in Australia.

This thesis will therefore follow this course: While recognising the difference between asylum and refugee status, the expressions “asylum seeker” and “refugee applicant” or “applicant for refugee status” will (unless otherwise specified) be used interchangeably. Thus, in this thesis, both “asylum seeker” and “refugee applicant” will mean only an “applicant for a class 866 Onshore protection (residence) visa” and, unless otherwise specified, the word “asylum” when used in this thesis does not refer to asylum within the meaning of the Act, but instead refers only to refugee status.
The Missouri Syndrome

Why the USS Missouri was ever chosen to symbolise Australian immigration administrative inertia, is a mystery which was long ago lost in the annals of the Department’s myths and legends. Nevertheless, the syndrome by any other name is just as real, and is explained in this way:

Imagine that the USS Missouri is threading its way carefully through the shallows of the Tuamotu Archipelago, bound for Tokyo Bay. Suddenly it receives a signal from CINCPAC to change course immediately for Auckland, New Zealand. So, does it change course immediately? No. It cannot change course immediately, because it must first find its way out of the Tuamotus. Now, imagine the Department’s management trying to make sense of the tangled web of administrative directives, rambling regulations, budgetary shortfalls, entrenched attitudes, archaic procedures, resource restrictions, and legal minefields under which the Department normally operates, and it is given a new policy directive to be implemented immediately. Does it implement the new policy immediately? No, it cannot, and it never will, because it must first find its way out of the existing administrative tangle.

Considine (1994, p.28) explains this phenomenon this way: Most major initiatives involve new or revised legislation. Policy makers inside and outside government must push and cajole various other formal participants bringing them into sequence at just the right time in order to enact a new law. Many a brilliant policy initiative has been left languishing on a parliamentary committee agenda. Frequently, a new program already promised by the government cannot be brought forward because of low commitment of other agencies which must give their clearance. Technical issues to do with law and administration loom and often overshadow substantive goals and objectives. In this thesis I will identify this phenomenon of policy implementation delay with the name by which it was known in the Department, and that is “the Missouri Syndrome.”
How long does it take to implement a new policy directive? It can take months, sometimes years, and in one important aspect of policy change, it took no less than one year. This occurred after the Federal elections of 6 March 1996 when thirteen years of Labor administration abruptly came to an end in a landslide electoral victory for the Coalition. The Immigration corridors of power in Canberra were jolted by the result, particularly when the new Government acted promptly to replace the head of the department. On their first day back at work after the election, immigration officers were greeted on their computer screens by the farewell message from their departed departmental head, and with the news that they now had a new boss. It appeared as though the new Government was intending to implement its new immigration policies immediately. But down in the trenches, nothing changed, and the Department continued to implement the immigration policies of the previous Labor government for months afterwards, as if the election had never happened. Wanna (1997, p.63) explains that “Cabinets, Ministers and policy advisers” often criticised departments for being beyond effective political control, where bureaucrats, rather than elected leaders, shaped policy. As Davis (et al)(1990, p. 38) have already observed, government is rarely a machine which efficiently translates into practice the decisions of elected officials. Delivery is not always reliable, they say, for policy can be derailed by the bureaucracy, and I can confirm that in the Immigration Department it sometimes was.

The Australian public might have taken heart at this unabated continuity of purpose, but for the incoming Minister, it was a frustrating time. Sheehan (1998, p.116) saw it this way:

Thirteen years of Labor had seen political patronage spread to every nook and cranney of the public sector. After Labor lost office, its surrogates inside the bureaucracy conducted a guerrilla war against the new Howard government.

Whilst there was no obvious guerrilla war inside the Immigration Department, it nevertheless took a long time for the immigration policies of the new Government to be implemented. A simple example of this
policy implementation delay emerged during a departmental management committee meeting in NSW, in November 1996 where the Minutes record “We have a new Minister who expects compliance with the law as exemplified by a greater reliance on bona fides testing.” This meeting was held exactly eight months after the election, yet the Minister was then still being referred to as the “new Minister” as though he had just come into office only the day before the meeting. What is of significance here is that the Minister’s policy of tighter bona fides testing had already been widely advertised and had been reported by the mass media less than four weeks after the election (Willis 1996); that is, seven months before this meeting, but in all that time the Department had not yet got around to implementing the new policy. As in this example, the Department’s failure to respond quickly to important policy initiatives from the Government of the day, is of particular significance when trying to understand its poor performance in dealing with quickly developing immigration problems such as the current refugee racket. This poor response, for the reasons stated, will be referred to from time to time throughout this thesis as the “Missouri syndrome.”

These general definitions explain the language in which this thesis is written, and from time to time throughout the thesis, other immigration terms and expressions will be defined when necessary, within the text in which they are found. Meanwhile, I will review the literature pertinent to the research on which this thesis is based.
LITERATURE REVIEW

There is an extensive world wide body of literature on most aspects of migration, but it is all too vast to be reviewed in any meaningful way in this thesis, and mixed up in the general store of migration literature, is that literature which refers to “undocumented migration.” Although undocumented migration is a widespread form of illegal immigration, it does not, for reasons already described, fit comfortably with the definition of “illegal immigration” used in this thesis.

There is also a considerable amount of literature on asylum and refugee law, based on the 1951 United Nations Convention, and the 1967 Protocol relating to the status of Refugees. These documents, together with a considerable amount of case law, form the basis on which refugee status is granted in Australia. For Australia, this body of literature is well summarised by Mary Crock in her books Immigration and Refugee Law in Australia (1998), and Future Seekers (2002) co-authored by Ben Saul. Also contributing to the debate on refugee issues in Australia is Don McMaster’s Asylum seekers (2001), and the journal article “Asylum seeking in Australia” by Christine Stevens (2002) in the International Migration Review.

But notwithstanding the general bipartisan approach by the major political parties in Australia to immigration and refugee issues generally, a matter which will be discussed later in this thesis, these authors, together with other commentators have been highly critical of Australia’s response to refugee arrivals. For example, Dauvergne (2004) raises the issue of freedom of settlement for all refugees on the basis that Australia’s draconian response is as a result of “an international moral panic about migration” and that in a post modern world of increasing globalisation where borders do not have the same significance as they once did have “control over the movement of people has become the last bastion of sovereignty” (p.588), which, she implies, is a waste of effort since the non-refoulment provision of the Refugee Convention constrains nations
with the most sovereignty the least. This, she says, is because “of the approximately 20 million potential candidates for refugee status currently in the world, a comparatively small number are in prosperous Western nations” (p.597). The vast majority spill over national borders into areas of contiguous sanctuary.

Mary Crock (2002) says “Australia’s treatment of asylum seekers and refugees who arrive without permission is a debate with no end in sight” (p.3), and this is confirmed by commentators from disciplines other than law or politics. For example, writing in The Australian and New Zealand Journal of Psychiatry, Silove (2002) states that Australia’s asylum policy is steered by complex political motivations which in reality produce acts of desperation by asylum seekers, particularly those in long term detention, and in the International Journal of Mental Health Nursing Procter (2005) criticises Australia’s new temporary protection visa regime because it could produce exposure to extreme mental stress in the event of a subsequent application for a permanent protection visa being rejected. Also, in The Australian and New Zealand Journal of Psychiatry, Koopowitz and Abhary (2004) claim that the experiences of asylum seekers detained in Australia are similar to those of people detained under the previous South African apartheid regime.

The ‘Tampa Precedent’ and the ‘Pacific Solution’ which together stopped people-smuggling by small boat through Australia’s northern approaches and which will be mentioned in greater detail later in this thesis have produced their own criticism. In the Singapore Journal of Tropical Geography, Rajaram (2003) claimed that the ‘Pacific Solution’ has created a regional refugee problem in the Pacific Islands where there never was one before, and Mary Crock and Ben Saul (2002) claim the Tampa incident has been described as a crisis manufactured by the government to increase its electoral support (p.2), and it certainly did increase the government’s electoral support, as we shall see. Paul Kelly (2006) said that the Tampa incident triggered a dispute not just about asylum seekers but also about governing principles. The Prime Minister’s
position was that Parliament had the right to determine who entered Australia. But his critics have argued that Australia had a universal moral and legal obligation under the Refugee Convention to accept bona fide refugees. This, Paul Kelly said, amounted to a conflict between competing principles with different sources of legitimacy (p.22). So the debate continues to rage, as Mary Crock has opined, with no end in sight. But by far the greatest criticism of Australia’s refugee policy and one which has direct relevance to this thesis is that known in the jargon as ‘The Double Detention Standard’ under which illegals who entered Australia illegally were detained, while those who had entered with visas were not. McMaster (2001) explains the controversy this way:

Under the migration Act 1958, any person who arrives in Australian territory without a visa will be detained until refugee status is determined. Detention can continue, at times for years, until refugee status is obtained or the applicant is refused and removed from the country. In contrast, people who enter Australia on tourist visas and then overstay their entry permits and then make application for refugee status are generally not detained (p. 68).

Then he asks “Why are unlawful non citizens such as boat people detained immediately, while lawful non citizens who become overstayers (i.e. those who then have the equal status of unlawful non citizen [my note]) if apprehended are rarely detained? Most migration commentators ask the same question. The answer they give is that all unlawful non-citizens should be treated equally, that is, released on bridging visas like the overstayers. The popular press was coming to the same conclusion. For example, referring to the 2000/01 financial year when 8586 visa holders arrived by plane and later applied for asylum, which was, more than twice the number of asylum seekers who arrived illegally that year without visas and who were detained, Steketee (2002) reported:

Those who flew in on visas but then claimed to be refugees were not locked up for months or years while their claims were assessed. They were free to live in the community. Didn’t they arrive as legal visitors? Well, no. They lied to Australian authorities to obtain visas coming here as tourists or students. Boat people are no more a threat to our sovereignty than plane people.
Meanwhile, outside the present Government there are other
defenders of mandatory detention for boat people. One is Peter Walsh
(2002), a former Finance Minister in the Hawke Labor Government which
introduced the policy of mandatory detention, and who supports the
present Coalition Government’s continuing support of that policy. He
stated:

It is said that the detention policy is racist because although most
unauthorised residents are overstayers from the US, Britain and
similar countries, only the boat people are put in detention. This
ignores the qualitative difference between a group that entered the
country legally, and those who did not. It also ignores the fact that
when overstayers from countries such as the US and Britain are
identified, they are promptly deported. Some critics of detention
policy argue that detention for long periods is inhumane. Almost all
people in long-term detention are there for three reasons: They
have thrown away all evidence of their identity: Their application for
refugee status has been rejected and they remain in detention
because their Australian lawyers use and abuse our review and
court process; or, deportation orders have been issued but no
country will accept them (p.25).

All of which is true, but the other reason for mandatory detention
mentioned by Stevens (2002) is to control the numbers of onshore asylum
seekers, and also to deter organised people smuggling (p.884). But as
mandatory detention only applies to unauthorised arrivals (i.e. boat
people), it does not control the number of visaed air arrivees who later
claim asylum, and it does not deter people smugglers who use visaed air
travel as their method of relocating people into Australia, as we shall see
when we examine the methods used by the Triad to bring Chinese illegal
immigrants to Australia. Also, the Indonesian illegal immigrants who were
one focus of this thesis, all arrived with visas by air, and 61% had used
the services of people smugglers. So, mandatory detention of boat
people had obviously not deterred these air arrivees.

This begs the question: if more onshore asylum seekers come by
air than by sea, why should the proposition of equal treatment for all not
operate in reverse? That is, as soon as an overstayer lodges a protection
visa, he should join the boat people in detention until his application is
finalised. That would have deterred the Indonesian illegals studied in this thesis, because as we shall see, they were basically circular migrants intending to remain in Australia only long enough to accumulate sufficient capital to enable them to retire in comfort back in Indonesia. They would have been unlikely to try this if all their time prior to rejection was to be spent in detention.

As we shall see, most Indonesians who sought asylum in Australia were not refugees within the meaning of the Convention, yet without the deterrent of mandatory detention there was no practical obstacle preventing them from lodging groundless applications for refugee status, working in the meantime, and knowing that their applications would not be successful. In fact, if this reverse order proposition of equal treatment had been in operation, this thesis never could have happened, because the Indonesian illegal immigrants on which part of it is based would have gone elsewhere, for example, to Malaysia, which has for many years hosted a huge population of Indonesian illegals (see page 44).

Most writers on refugee issues do not distinguish between genuine and bogus refugees. Another problem with the available literature is that it does not adequately categorise the kind of illegal migration on which this thesis is focused. For, as we shall see, by world and even by Australian measurements, Indonesians in Australia constitute a very small, unique class of immigration, like none other in the world. In this context, and in her thesis “Indonesians in Australia” Penny (1993, p. 22) says “The main question to be addressed is whether the circumstances of Indonesian migration to Australia …fall into any of the patterns described in the various typologies in the literature, or whether a variant pattern has emerged. I suggest that this group does not conform to any single pattern of mobility, motivation or integration described in the literature.” I agree with Penny who, incidentally, in her study of Indonesians in Australia, also did not distinguish between those who are here legally, and those who are not.
My study of Indonesians in Australia is specifically confined to those who were in Australia illegally. These Indonesians feared that there was a risk that their illegal status might be betrayed if they mingled with Indonesians legally in Australia. For this reason they disassociated themselves from the Indonesians legally in Australia, and lived separately from them (Indomedia 1998). So the Indonesians studied for my thesis were an even more exclusive target than Penny’s, one which is more unique than hers, and one which is even further removed from the mainstream stereotypes in the established migration literature.

Nevertheless, some of the established literature has a bearing on my field of study, and in order to understand the reasons for illegal immigration from some countries of Asia into Australia, it is useful to examine some material from the vast store of available migration literature, which is directly relevant to this thesis. This material covers

(a) the theory of migration generally;
(b) world wide illegal migration generally;
(c) illegal immigration from Asia generally,
(d) illegal immigration from Asia into Australia generally, and,
(e) illegal immigration from Indonesia into Australia.

As I have already mentioned, the continual flow of unsuccessful Indonesian asylum seekers into Australia was at first glance, a puzzling phenomenon. It begged the question, if they were so unsuccessful in obtaining asylum, why did they continue to come to Australia and apply for refugee status here? But on closer examination, it can be seen that unique though they may be, to some extent these Indonesians were taking part in an expanded form of that well established practice which is defined in the current literature, as “circular migration” (Jellinek 1978).

Circular migration is only one category within the wider conceptual framework of general migration which, according to Lee (1969) is defined broadly as a permanent or semi permanent change of residence. So broad
is this traditional definition of migration, Lee says, that “a move across the hall from one apartment to another, is just as much an act of migration as a move from Bombay to Cedar Rapids” (p. 285).

Lee further explains that not every person who migrates intends to remain, but that every act of migration involves an origin, a destination and an intervening set of obstacles, and that “the overcoming of the intervening obstacles by early migrants lessens the difficulty of the passage of later migrants and in effect, pathways are created which pass over intervening obstacles as elevated highways pass over the countryside” (p.292). This is a clever analogy, and an apt explanation of how illegal immigrants from Indonesia continued to flow into Australia. They did it by “overcoming the intervening set of obstacles” as easily as if they passed over the obstacles by way of “an elevated highway” and the manner in which they overcame these obstacles so easily will be explained more fully later in this thesis.

We can also see in the established migration literature, how Indonesian circular migration into Australia, fits neatly between the other categories of general migration. For example, in A General typology of migration, Petersen (1958) explains that all migration everywhere, can be categorised into five separate types. These are: primitive migration, impelled migration, forced migration, free migration, and mass migration. For primitive migration, Petersen (p.261) refers to the wanderings of people with a low level of material culture. In relation to Indonesia, it would have referred to the way the Proto-Malay ancestors of the present day Indonesian population occupied their islands by a gradual movement south from China, during the later stone age (Zainu’ddin, 1968, p. 29). Impelled migration, according to Petersen, is when things get bad at home for whatever reason, and people leave of their own volition, although still retaining some power to decide whether to leave home or not. He contrasts this with forced migration, of the kind which occurs when invading armies leave death and destruction in their wake, and people have no choice but to leave. In an Indonesian context, we might consider
the sudden depopulation of East Timor to fall within this category, when immediately after the 1999 plebiscite for independence, some 250,000 East Timorese were forced by Indonesian authorities to cross the border into Indonesian West Timor (Murdoch, 2001). Such an incident might also qualify as mass migration, although it was on a far lesser scale than that which occurred during the partition of India in 1947. This has been described as “the greatest mass migration in history” during which 12 million people left their homes in either India or Pakistan to seek shelter in the other Dominion (Ali, 1985).

Petersen’s final migration type is that which he describes as free migration, which he says is rather small, and consists of individuals motivated to seek novelty or improvement. They blaze trails, he says, that others follow (p 263). To some extent, it is this category of free migration into which the illegal immigrants from Indonesia fell, because in terms relative to the size of Indonesia’s population they were few in number. Nevertheless, they were well motivated and well skilled and well drilled in overcoming the “intervening obstacles” which Australia’s controlled immigration program placed in their way. Their success in overcoming these obstacles has certainly blazed a trail which other Indonesians continue to follow, and the trail from Indonesia was blazed, so long ago, that even the Indonesian press back in 1988 expressed surprise that Australian immigration authorities were deporting 37 West Sumatrans from Sydney, which had by then been a destination in the circular migration of the people of Guguak Tinggi village in West Sumatra, for the previous 20 years. That is, since 1968 (TEMPO 12/3/88).

But in order to see illegal Indonesian migration into Australia in its proper perspective, it is useful at this stage to review the literature on illegal immigration on a world wide basis. In this context we can see in the literature the same dilemma world wide which I found at the very beginning of my study, and that is the problem of definition. Comparative studies on illegal immigration across the world can never be accurate because “estimating numbers is made difficult by differential definitions. In
some countries, rejected asylum seekers pursuing appeals are granted residence during the process, while in others the appellant is considered illegal and liable to repatriation” (SIGCARM 1995, p.18).

Furthermore, expressions such as “refugees”, “asylum seekers”, “economic migrants” or even “migrants” are freely used inclusively and interchangeably throughout the literature on world migration generally, and can include people who may be ‘illegal immigrants’ in one country but not in another, or illegal in all countries, or none at all, and unless the writer makes clear the definitions and the parameters being used, the reader cannot be certain that the study includes a focus on illegal immigration or not.

In addition, as Salt and Stein have noted (1997, p.470), from an across the world perspective, there is some confusion and considerable problems in separating legal from illegal forms of migration because at various stages, migrants may drift in and out of a legal status. In Australia, because of our bridging visa system, this is exactly what happens. To make matters more complicated, Salt and Stein (1997, p.484) consider that trafficking in illegal immigrants ought not to be considered simply as a form of illegal immigration, because traffickers clearly exploit legal as well as illegal methods of entry, and as we shall see, this is also exactly what happened in Australia, where legal forms and processes were manipulated for illegal purposes. It is for this reason that most academic studies on world migration do not differentiate between legal and illegal migrants.

But governments do differentiate, and it is to government or semi government literature or to investigative journalists quoting government statistics and government officials that we must look to for as clear a picture as possible of the world wide flow of illegal immigration. It is from such sources that we learn that 350,000 illegal immigrants entered Western Europe in 1993 (ICMPD 1994, p. 19) while that same year there were 3,379,200 illegal immigrants in USA (SIGCARM 1995, p. 16),
100,000 in Japan (Asiaweek 11/8/93, p.41), and 79,800 in Australia, of whom 2,400 were Indonesians (DIMA Fact Sheet 6), 1000 illegal Burmese migrants were entering Thailand every day (Far Eastern Economic Review, 29/7/93, p.9), and by the following year Thailand and Malaysia were each hosting 500,000 illegal immigrants (Bromby 1996). Meanwhile in the United Kingdom, in 10 years to the year 2000, the illegal population rose from 4000 to 91,000 (Mann 2000). When 12.1 million refugees world wide of differing legal status are added to the equation, with Pakistan taking 2 million, Iran taking 1.8 million, and Germany taking 906,000 among the major receiving countries (The Australian 19/9/01, p.7) this world wide illegal population assumes staggering proportions.

What does it all mean? Given the different definitions of illegal immigrant between countries and the uncertainty of numbers in some countries, accuracy is impossible. There could be more illegal immigrants on the move or there could be less than the figures quoted. One factor is certain however and that is that there is a groundswell right across the world of people moving into countries other than their own, illegally, and like the meltwater from a gigantic ice field, this illegal population movement will flow in whichever direction suits it best. But, notwithstanding the differential definitions of “illegal immigrant” across the literature, one assertion which is a common theme in studies of transnational migration movements across the world is that the illegal trafficking of migrants is big business.

In this context, Salt and Stein (1997, p.472) estimate that at US$30,000 for each illegal Chinese smuggled into the United States, each boat load of illegals is worth US$15.7 Million to the smugglers, giving them an annual revenue of between US$5 Billion to US$7 Billion. Boyd and Barnes (1992) investigating people smugglers in Thailand, found them processing not only Thais, but also Chinese, Pakistanis, Indians, Burmese and Bangladeshis, for illegal entry into Western nations and that there were believed to be twenty-five to thirty people smuggling gangs operating
within Thailand. One police raid they said, found 488 assembled false passports, with equipment for making 5000 more. Smith (2001, p.4) describes a frightening picture of organised international people smuggling ranging from fairly simple unsophisticated networks to complex transnational criminal syndicates which have developed reliable networks of transit stations and safe houses.

The Australian experience for 2001 was that in that year alone, as a result of people-smuggling activities, more than 5000 boat people either arrived in Australia, were turned back to Indonesia, drowned in transit, or were deflected to nearby countries in accordance with the Australian government’s ‘Pacific Solution’ to this problem (Clennell 2001). Interviews with Afghan asylum seekers bound for Australia confirm Smith’s account of transnational syndicates with transit stations and safe houses. In one account, Murdoch (2001a) describes a people smuggling experience to Australia, which for one family cost A$23,000. The journey began in Kabul, transited by road to Lahore, thence by air to Indonesia and included in the fee were false Indonesian visas, conduct to a safe house in Jakarta, and accommodation there while awaiting further transit by sea to Australia. Murdoch reports that the organisers fulfilled all expectations of the asylum seekers up to this point. Thereafter, things went bad, and on the way to Australia, the boat sank as many did, during this, the most hazardous part of the journey. But that is another story. The point of all this is that the literature has established that Australia is just as much a target of world wide illegal people smuggling, as is Britain or the United States, and although by comparison it may only be a somewhat modest market, it is a reasonably lucrative one nevertheless, since if Clennell’s figures are correct and if the smugglers only made a net profit of $2000 per illegal immigrant, their overall net profit for 2001 would have been A$10 Million.

As we shall see, Indonesian illegal immigrants in Australia are also part of an organised racket, but one which takes place almost entirely within Australia, thus making it unique amongst the annals of organised
people-smuggling. But before we examine the Indonesian method, it is first useful to trace the history of people movement from Indonesia to Australia. There is literature suggesting that there was a migration connection between Indonesia and Australia as far back as 30,000 years ago. According to Morwood (1999), this connection can be traced from similar artefacts of this date, found both in eastern Indonesia and also in northern Australia; that is, on both sides of the Timor Sea. The Indonesian language press in Australia showed considerable interest in this finding when Morwood revealed it during an international conference on Human Palaeoecology which had been organised by the Indonesian Institute of Science in Jakarta in 1993 (Warta Barita Aquila, 1 Dec. 1993). However, Morwood’s finding of this early migration link refers to people who were not Indonesians within the definition of this thesis. They were the original inhabitants of the islands, more closely related to Wajak Man (Zainu’ddin 1968, p.1). Nevertheless, Morwood’s findings indicate how far back in history the literature does trace a migrant connection between Indonesia and Australia.

The Proto-Malays and the Deutero-Malay people whose descendants now conform to the thesis definition of “Indonesians” did not arrive in Indonesia until 4000 years ago, and it is not until the age of empires, first Srivijaya (circa A.D. 450 -1300), and then Majapahit (circa 1300 - 1500) that the literature begins to indicate migrations of Indonesians outside of what is present day Indonesia. There is some speculation that during this period, there was Indonesian migration close to Australia along parts of the Papuan coastline as far east as Rigo. This is still evidenced in the faces of the people who now live there and who to this day look more Malay than Melanesian. There is also a legend that, “the northern side of the Torres Strait (i.e., Daru and the Fly River estuary) belonged, in theory at least, to the Sultan of Tidore, King of the principal state in the Moluccas. He harvested the twin crops of Bird of Paradise and slaves with difficulty, as the inhabitants had a reputation for ferocity” (Singe 1979, p.16).
Indonesian traders might well have visited Australia at the same time but there is no significant evidence that they did, and the available literature indicates that the migration connection between Indonesia and Australia began much later, with visits by Macassan trepang fishermen. “Macassan” in this context is used as a generic term, since although the beche-de-mer or trepang industry was based in Macassar, the fishermen hailed from a variety of different ethnic groups, including Madurese, Bugis, and the Bajau Laut (Fox 1998). It was the Bajau who pioneered the search for trepang on Ashmore reef and eventually found their way to mainland Australia (Fox 1998, p.120) and so the “Macassan” migration began. According to MacKnight (1976, p.1), parts of Northern Australia were frequently visited by Macassan beche-de-mer fishermen as far back as 1700, but even though they came in fairly large groups of about twenty-five prahus each with a crew of 30 (i.e. a total of about 750 seamen) they only ever stayed for the season. Their contact with Australian aborigines renewed every year left a legacy of Macassan words in the Northern Australian dialects, but there is no evidence of permanent Macassan settlement in Australia. Visits by Macassan fishermen continued until 1906 when in order to protect the local northern Australian fishing industry the South Australian Government introduced regulations prohibiting Indonesian vessels from entering Northern Australian waters. In all those years before then, the Macassans had come and gone according to the seasons, but had never settled permanently in Australia (MacKnight, p.128). Theirs was an early example of Indonesian circular migration.

Thus, from 1906 until 1945, there was an hiatus in Indonesian circular migration into Australia. But it was not the South Australian regulations alone which stopped the flow, it was a much wider range of circumstances, which included the White Australia Policy but which had more to do with what might be described as the historical development of diverse empires. In this context Penny (1993, p. 20) explains that although independent after federation in 1901, Australia’s foreign affairs continued to be handled by the British Foreign Office until the Australian Department of External Affairs was established in 1939. Meanwhile, even
before the first white settlement began in Australia in 1788, Indonesia had been a Dutch colony, with all its foreign affairs conducted through Holland. So, even though Australia and Indonesia were geographic neighbours, their focus for diplomatic contact was literally, half a world away. But all these diplomatic niceties were ignored during World War II when some Australian prisoners of war found themselves arbitrarily located in Indonesia, and some Dutch nationals including some ethnic Indonesians found themselves of necessity taking refuge in Australia.

Thereafter, from the end of the war in 1945 and Indonesian independence in 1949, both Indonesia and Australia were then free to conduct their own diplomatic relations directly towards each other. But with hangovers from the war to contend with in Indonesia, coupled with the massive influx of post war migrants into Australia from war torn Europe, any kind of orderly immigration from Indonesia into Australia was not part of any official agenda. From then on, even up to the present day, immigration from Indonesia has been sporadic to say the least. Penny says “Indonesians have never been inclined to move south to Australia in large numbers” (1993, p. 18), and not only that, but as a result of displacement during the Indonesian war of independence against the Dutch, which immediately followed the Second World War, nearly one third of the Indonesian-born who came and settled in Australia, are either of Dutch, or mixed Dutch ancestry (Penny 1993, p.16; Mangiri & Coughlan 1992, p.160).

From the 1996 census, the Department of Immigration produced a birthplace index, showing that on census night 1996 there were 44,157 Indonesian born people in Australia. (DIMA C96.2.0 1998, p.6) But a raw figure like this in not very helpful by itself, as an indication of Indonesian permanent migration into Australia, since it would have included students and visitors who at that time were only in Australia temporarily. That census might even have included some illegal immigrants if they had considered themselves safe enough to supply the information required by the census, or else saw some advantage in taking part in it. A more
accurate picture might be obtained from the 1986 census figure of 17,730 (BIR 1991, p. 111) when there would have been less visitors and students, and to which is added the Department’s record of settler arrivals of 7,432 since then (BIR 1993), less of course, deaths and departures since then. But none of these figures distinguish between the ethnic origin of persons born in any particular country, including Australia. Therefore it is difficult to distinguish from these figures people of Dutch or part Dutch origin who are not ethnic Indonesians, or the number of people who were born in East Timor which was then part of Indonesia, and who do not meet the thesis definition of “Indonesian”.

So, trying to estimate the number of Indonesian born now living permanently in Australia and who meet the definition of “Indonesian” for the purposes of this thesis is somewhat of a haphazard undertaking. Since Penny has done the most comprehensive and authoritative study to date of Indonesian settlement in Australia, I am happy to accept from her estimates a current total of 13,700 settlers in Australia within this thesis definition of “Indonesian.”

Given the current population of Indonesia of 240 million, and a proximity which puts Indonesia only a four day boat ride away, or a one hop plane stop from Australia, this is an extraordinarily low number, but it does conform with Penny’s observation that Indonesians have never been inclined to move into Australia in large numbers (1993, p.18). Yet in comparison with other countries as we shall see, the illegal Indonesian population of Australia is also extraordinarily low in number. For example, as at June 1995, there were 51,300 illegal immigrants in Australia, of whom only 2,400 were Indonesians. (DIMA Fact Sheet N0.6) Penny (1993, p.8) notes that some instances of modern illegal movement from Indonesia may be more closely related to the natural historical circulatory movement of the Macassan fisherman already mentioned, than to the impetus to settle permanently.

Circular migration is of central importance to this study, since as
Penny suggested and as we shall see, there is a high incidence of it in Australia amongst the Indonesians illegally here. So to better understand the dynamics of Indonesian illegal immigration generally it is useful at this stage to look at the literature on illegal Indonesian immigration for the country where it occurs the most, and that is, Malaysia. As in the case with Indonesia and Australia, Indonesia and Malaysia also had differing colonial experiences, with different colonial masters, with the focus of diplomatic contact between the two countries located on the other side of the world. But there the similarity ends. Indonesia and Malaysia share a land border across the island of Borneo, and the sea between the two countries in places is so narrow that parts of each country can be seen from parts of the other.

So, for the illegal movement of people out of Indonesia, Malaysia is far more easily accessible than Australia. For Indonesian illegal immigrants trafficked into Malaysia, the journey by boat from the Riau islands in Indonesia to Johore in Malaysia can take as little as three hours, and in most cases no pre-payment is required. For according to Guinness (1990, p.119), the people-smugglers are so well organised, that they arrange for the transport costs to be deducted from the wages after the Indonesian illegal immigrants begin work in Malaysia, and there is no problem in organising this payment since employment for the illegals is arranged before their departure from Indonesia, through contractors who supply labor to the Malaysian plantations. And how many illegal Indonesians are working in Malaysia? We will probably never know, but estimates run into the hundreds of thousands. Stahl (1992, p.38), quoting Malaysian government sources estimated that in peninsular Malaysia alone there were 350,000 Indonesians working illegally. Asiaweek estimated that two fifths of the population of the Malaysian state of Sabah were illegal immigrants mostly from Indonesia, numbering more than 350,000 (Asiaweek 1/9/93, p.26) and in 1994, the International Labor Organisation estimated 800,000 illegal Indonesians working in the Malaysian plantation and construction industries (Stalker 1994).
Whatever the real figure, the reality is that Malaysia is host to many hundreds of thousands of Indonesian illegal immigrants, and Guinness has already explained the quick sea crossing into peninsular Malaysia, and for the Malaysian states of Sabah and Sarawak, Indonesians can just walk across the border. This would be easy enough for Indonesians who live in the border area, but others from elsewhere in Indonesia can engage the services of people-smugglers. In 1993 for example, the Indonesian press in Australia was quoting the regular trafficking since 1985 of girls recruited in Java and delivered across the border into Sabah to service the sex industry operating out of tourist hotels in island and peninsular Malaysia. According to this report, four separate prostitute smuggling syndicates were involved in this cross border trade (Warta Berita Aquila 16/12/93, p.18).

The people-smuggling network which supplies the bulk of the movement of illegal Indonesian migrants into peninsular Malaysia is a vast organisation which recruits illegal workers at village level, and transports them across Java and Sumatra to the assembly points in the Indonesian off shore islands for the final short journey by boat to Malaysia. It works well because the intermediaries who keep the network operating reap large profits, and they play a decisive role by stimulating and facilitating this migration (Spaan 1994, p.94).

The people-smuggling network on Java works much the same way as the network described for processing Afghan asylum seekers into Australia. That is, it involves transit stations and safe houses, but it differs in volume and distance. Spaan’s research into the Javanese networks, complete with flow chart and historical references gives an excellent insight into the dynamics of the flow of Indonesian illegal immigrants into Malaysia. Having arrived in Malaysia, the Indonesian illegal immigrants then have very little difficulty in melting into the native population there. This is because Indonesians and Malays are similar in appearance and culture, with a similar language. In this context, High Malay and Standard Indonesian are regional variations of the same
language. This is the language of the literature, the newspapers and the television newscasters of both countries, and a standard grammar for both languages can be contained in the same grammar book (Mintz 1994). At their more basic levels however, that is Bazaar Malay, and Common Indonesian, the languages diverge into different pockets of dissimilar regional variation and some of these offshoots at first hearing can be mutually unintelligible. Nevertheless, even at village level, both languages retain the same common base and speakers can make the transition from one to another albeit with some initial difficulty. Guinness’s study into kampong life in Johore explains the assimilation of Indonesians into the Malay population in this way: “Indonesians were considered Indonesian, that is, foreign, only for as long as they did not embrace kampong values and behaviour, including, for example, speaking the Johore dialect of Malay, attending Friday prayers at the mosque and other kampong Islamic ceremonies” (Guinness 1990, p.142).

The problem which other countries have when trying to estimate their population of illegal immigrants is exacerbated in Malaysia because Indonesians and Malaysians look alike (more or less) and because they speak the same language (more or less) and because it is easy for Indonesians to come and go across the common border, and assimilate into the Malay communities in the manner described by Guinness. Although there is a significant absence of reliable academic literature which can give accurate information on the numbers of illegal Indonesians in Malaysia, we can at least conclude that compared to Malaysia, Australia’s problems with Indonesian illegal immigrants pale into insignificance, and it may be because of this that there have been no previous extensive in depth academic studies into Indonesian illegal immigrants in Australia.

There is, nevertheless, a vast amount of information produced by the Department of Immigration on illegal immigrants in Australia generally, including information relating to Indonesian illegal immigrants in particular. Much of the Department’s information is contained in policy statements
and Fact Sheets published from time to time, and which are generally available on the internet. But most of the published Departmental material consists of raw statistics without any meaningful social analysis. There are also situation reports and intelligence documents, minutes, memos and statements by officers and illegal immigrants themselves. Then, of far greater importance to this thesis, is the vast store of information about individual Indonesian illegal immigrants held in departmental individual files. But all of this material is classified.

For the purposes of this thesis, this departmental material was a goldmine of information. This is the reason why in this thesis reference is frequently made to departmental material. So it is these official documents together with innumerable press reports published in local Australian newspapers which generally form the literature on which this thesis is based. Some of the feature articles in these newspapers are of academic standard, written by investigative journalists who have lived and worked in Indonesia, and who through a lifetime of reporting have attained an intimate proximity to the issue of illegal immigration. For example, the leading analysis on the *Tampa Precedent* and the *Pacific Solution* both of which will be discussed later in this thesis, was not written by an academic, but by two journalists (Marr & Wilkinson, 2003).

Since illegal immigration is frequently a hot political potato in Australia, the newspapers often run well researched news items which are of direct relevance. For the purposes of this thesis, these feature articles are unmatched by anything in the mainstream academic literature. To some extent then, these newspaper sources have filled the gap left by an absence of academic literature on this subject, and it is for this reason, that selective newspaper material is quoted frequently throughout this thesis.

Finally, there was the Indonesian language press in Australia. This press, almost by definition, had a special focus on matters of interest to Indonesians in Australia, and this focus of course includes matters of
interest to Indonesians *illegally* in Australia. Because of such a focus, Indonesian language publications in Australia often contained articles by Indonesian illegal immigrants, or failed asylum seekers, telling of their experiences with Australia’s controlled immigration policy. Such articles were of direct relevance to this thesis. This was particularly so, where they succinctly describe how their Indonesian authors were able to overcome Lee’s (1969, p. 292) “intervening set of obstacles” and continue to remain in Australia. Although published openly, such material traditionally had a natural camouflage from the prying eyes of Immigration officialdom, simply because the Department never conducted any systematic official surveillance of the Indonesian language press. So it was left to the unsystematic browsing of the Indonesian language press in Australia by two Indonesian speaking immigration officers (one of whom was myself) working in their own time, to bring occasional items of interest to the attention of the Department.

Revelling in their previous linguistic camouflage, some of these articles were extraordinary in their openness. One such article published in the Sydney based Indonesian language newspaper *Mitros Pos* even spawned its own Departmental jargon. Known forever after as the ‘Mariyani Method’ it was a detailed lesson by its author Yani Mariyani (Squire 1997) on how to lodge a rejection proof application for asylum. An application guaranteed to succeed! How could it be?

Her method was simple. The Refugee Review Tribunal in its wisdom, publishes its decisions, even on the internet. The purpose of course, is honourable. It is to show prospective applicants the kinds of spurious applications which will be rejected, and as we have seen, most Indonesian applications were rejected. Mariyani’s application was also rejected, but reflecting afterwards on the reasons given to her by the Tribunal, her advice to her fellow Indonesians was to study the published decisions of the Immigration Review Tribunal, and see which claims will *not* be rejected. Tailor your application with *these* claims, she suggested. The inference was clear. It was to cut the cloth to fit the suit, and to stitch
up an application so perfect that it could never be rejected; a sure method to overcome Lee’s “intervening set of obstacles.” In deference to the publishers, it must be said that an accompanying editorial note distanced the newspaper from this method.

Other items from time to time in the Indonesian language press in Australia advised Indonesians who were illegally in Australia how to avoid detection and subsequent deportation. One item advised Indonesians illegally in Australia to avoid the company of Indonesians who were legally here. Based on the wartime slogan of “loose lips sink ships” the advice was if you never talk to them, they will never know your immigration status, and therefore cannot gossip about it within the hearing of Immigration informants (Indomedia Nov.1998, p.13). Also included in the Indonesian language press in Australia from time to time were advertisements by Australian lawyers. One of these advertisements is reproduced in this thesis, at Figure 6. These particular advertisements gave practical advice to Indonesian illegal immigrants in Australia on how to overcome Lee’s “intervening set of obstacles” (1969, p.292).

The main obstacle for these illegal immigrants was what prevented them from obtaining legal status in Australia, and this was their lack of an appropriate visa. These advertisements showed them how simple it was to overcome this obstacle. According to these advertisements, a quick phone call, a free consultation, a modest fee, an application for refugee status, and voila (or more appropriately, itulah) legal status via the magic of the bridging visa. The reality of a 99 per cent chance of rejection two years down the track, was of course, never mentioned. It might be considered somewhat extraordinary that the ways and means for illegal immigrants to continue to remain in Australia would be explained so succinctly and so openly in the Indonesian language press in Australia, but the material was there, nevertheless, for those who had eyes to see it.

All of this then, is the background literature for this study of this very unique and exclusive community of Indonesian illegal immigrants in
Australia. This community is far removed from the mainstream migrant stereotypes, and in Penny's words (1993, p.22) it “does not conform to any single pattern of mobility, motivation or integration described in the literature.” The way in which I studied this community and the manner in which at the same time I did my share of enforcing Australia’s policy towards illegal immigration, will be explained more fully in the Methodology section of this thesis which now follows.
METHODOLOGY

Introduction to Methodology

I began research for my thesis while I was a serving immigration officer, stationed in Sydney, in the Department’s Compliance and Enforcement Branch.

The objective of this Branch, was to protect the Australian community by promoting acceptance of and adherence to entry and stay requirements, particularly restrictions on access to work and other benefits, and enforcing such requirements including through detention and removal of unlawful non-citizens (DIMA 1997a, p.91).

In plain English, the objective was to find and deport illegal immigrants.

In seeking illegal immigrants in pursuance of the objective, Enforcement officers operated in teams. Sometimes I was the Team Leader, and sometimes I was a member of another team. The size of the team could be anything from two or three officers to twenty or more, depending on the size of the premises to be visited and the number of illegal immigrants expected to be found there. This search for illegal immigrants was undertaken strictly in accordance with the Migration Act and under search warrants issued in accordance with the Act. Sometimes the illegal immigrants could be found where they worked, but if their work places were not known to the Department or if it was not practicable to find them there, then we were forced to seek them in their homes. As there was no point in trying to find them at home if they were away at work, home visits had to be made outside the illegal immigrants’ normal working hours, so in most cases this meant visiting the homes of illegal immigrants at night after they had returned from work, or in the early morning before they went to work.
The officer in whose name the search warrant had been issued commanded the search. The warrant specified that that officer could use “whatever assistance necessary” so the other team members were the “whatever assistance” component of the warrant. If violence was expected, the team might also include armed police officers who were ex-officio Immigration officers under the Act. Illegal immigrants could always surrender themselves voluntarily and cooperate with the Department in other ways, and when they did they were always treated with the utmost courtesy and with due respect for their privacy, and culture. But for those illegal immigrants who were uncooperative or who otherwise did not want to be found, extraordinary methods were sometimes necessary in order to find them. It is therefore constructive to consider some of the elements of the Department’s search methodology.

Immigration, refugees and illegal immigrants are highly controversial issues in Australia, and it might be supposed that any official search for illegal immigrants in Australia would tread warily through the emotive minefields of political correctness, ethics, gender and privacy.

Ethics, gender, and privacy issues.

The milieu of the illegal immigrants was a shadowy world of deceit, deception, and dishonesty where truth was tenuous, and trickery was typical, and where perceptions were clouded by false names and false pretences, and where illegal immigrants employed all manner of skullduggery and subterfuge to evade immigration detection. On the other side of the ledger a certain amount of guile and subterfuge was also employed by the Department in order to locate illegal immigrants who did not want to be found, and into this harsh real world of illegal immigration, the intricacies of political correctness, ethics, gender neutrality, and privacy, did not fit comfortably with the Department’s entry and search methodology.
The Department’s entry and search methodology

I mention this methodology here because it is a precursor to my own research methodology. That is, before I could conduct any research into illegal immigrants in custody, they had to be found first.

It is true that officers were sometimes able to find illegals via the ‘orthodox’ method of door knocking the address the illegals had previously given to the Department. This was always the first strategy employed, so that if the matter later went to court the judge would know that we had given the illegal the benefit of any doubt that he or she was where he or she said they would be. But illegal immigrants intent on evading deportation were generally not silly enough to tell us where they could be found. So, if they did not live at the addresses they might have given the Department, or, if in fact they had never given the Department any address at all, how could we possibly find them? In this context it was not considered good enough for officers to simply return to base empty-handed with a hard luck story that the illegals they had sought could not be found. The whole purpose of the Department’s Enforcement Branch was to find them. So if the illegals could not be found by the ‘orthodox’ method, then of course various kinds of unorthodox methods would have to be used, and the methodology for finding illegals who did not want to be found is summarised in Fig.1, and in the section headed “Locating illegal immigrants” and I will say more about this later.

However, once the true address of an illegal was known, there was also the problem of accessing his premises. The ‘orthodox’ method was simply to knock on the door, and in most cases this was sufficient. Officers would show their identities, state the purpose of their visit, and ask to enter the premises. If the occupier objected and refused entry, officers would produce their search warrant and explain that this warrant authorised reasonable force to be used in order to enter and search the premises. Again, this orthodox method was usually sufficient, and no further methodology was needed. But now and again, obstinate illegal
immigrants intent on evading deportation would refuse to open the door. This called for different methodology some of which might be considered to be not only unorthodox, but also intrusive, unethical and disturbing. But as I said, illegal immigration is a shadowy world of deception and subterfuge, where if one method does not work then another one is tried. In cases where entry was refused, the law allowed us to break open the door and enter forcibly. But the ramifications of such an entry were manifold and messy. For example, the neighbours might be disturbed by the sound of breaking doors, and worried co-tenants of the building alerted by the noise, might fear home invasions of their own premises by burglars or other miscreants and might call the police. When this happened, the Immigration operation might be distracted temporarily while all this was sorted out, with the police deployed to calm the startled neighbours. Even if the police were not called, the owner of the premises might later sue the Department for damage to the door, and there would be subsequent reports and investigations and tangles of red tape to wade through and the drama might drag on for months afterwards. Then there was always the possibility that the person sought might not even be on the premises anyway. The media would get to know of any bungled raid and would go into a feeding frenzy, questions might be asked in Parliament and the Minister might be exceedingly embarrassed. Far better to employ other less forceful tactics.

Often the methodology employed against recalcitrant illegals who refused entry resembled that traditionally used by burglars. For example, in the case of a free standing house out in the suburbs, even though entry might be refused at the front door, the back door might be found unlocked or a bathroom window might have been left open. If it was not open, it could often be forced open with no damage done. In such cases an officer might gain entry that way, then walk through the house and open the front door for his colleagues, much to the surprise of the occupants. Alternatively, for a front door which had a simple Yale type lock, a small semi rigid thin piece of plastic, like a credit card, might be inserted between the door and the frame, thus springing the lock open without any
damage being done. Officers would then walk in calmly as though they had been invited to do so. In residential units with balconies, even though the occupants might refuse entry through the front door, entry could often be gained via the open balcony door. One of our officers known to us as “Spiderman” was an expert at balcony entry. Even in multi story residential units he was adept at climbing like a spider up the outside of the building from one balcony to the next above, until he reached the target unit where he would casually step over the balcony railing, go through the open balcony door, walk nonchalantly past the startled occupants, and open the front door for his colleagues who were waiting in the corridor outside.

Securely locked high rise apartment buildings with no balcony access, called for different entry methodology. Such buildings might have dead locks, or some other form of double key locks which were not easily opened, even from the inside, without the cooperation of the occupants themselves. The methodology here was to trick the occupants into voluntarily opening the front door, and the most effective method was the ‘honey trap’. Most of these buildings had peep holes in the front doors of the residential units so that occupants could see who was knocking. For illegal occupants inside who were intent on evading Immigration arrest, one look through the peep hole at the burly Immigration officers outside was usually sufficient incentive to refuse entry.

So the trick was to offer a different view through the peep hole. Since the nature of the occupants and the nature of the building was known in advance, arrangements were made during the planning stages of the raid on these premises, for an attractive female officer to accompany the Immigration team. Female officers were included in all Immigration Compliance Sections necessarily for the purposes of searching and escorting female illegal immigrants in custody. However, they were also used as decoys. If a suitable female officer was not available from Compliance personnel, then one was temporarily recruited from another Section of the Department, for example, from Residence,
Students, or the Citizenship Sections. The lure of three hours minimum overtime payment for five minutes work and a free ride home in an Immigration car afterwards was often enough incentive for a pretty young female officer to agree to join the team temporarily for that one job only. She would be told what to do beforehand, and the team would approach the target door quietly, and position themselves flush against the outside walls, so as not to be seen through the peep hole. Then the female officer would knock on the door gently. After a moment one of the occupants would peer through the peep hole, and seeing only a pretty girl outside would ask what she wanted. Usually the answer went something like this, “Hi, I’m from one of the units upstairs and I was wondering if I could borrow some sugar. I only need half a cup, and I can repay it tomorrow, if you would be so kind,” and she would hold up a tea cup borrowed from the Immigration lunch room. There would be some discussion behind the door, sometimes with other occupants taking a peep at the girl, then there would come the sound of pad bolts being removed, and dead locks being unlocked, and the door would open. But before the occupants could have had any further discourse with the girl, the other team members would appear from concealment in the corridor and brush past the girl briskly, the Team Leader saying “Excuse us Miss, we have business with these people inside,” and they would enter the premises closing the door behind them. The female officer would then unobtrusively return to the Immigration vehicles parked outside the building, and await her free ride home. In all my years in Immigration, I never knew of a honey trap that did not open a door.

Some Immigration operations were quite intrusive. For example, having gained entry to residential premises, the next task was to locate the passports of the illegal immigrants who lived there. The ‘orthodox’ method was simply to ask for the passports, and in most cases the passports were produced and there was no unpleasantness. But you see some illegals thought that their last bastion against deportation was to refuse to produce their passports. If this happened, they were shown the warrant which authorised a search of the premises, and officers would explain that they
would search until the passports were found. Again, in most cases, this threat to search the premises was sufficient to produce the passports. But now and again recalcitrant illegals would refuse, and the search would begin. There are hundreds of places in a residential unit where a passport could be hidden, but we knew every one, and the methodical search for the passports was often distressing for the occupants because the search would inadvertently reveal some of their innermost secrets. For example, while searching for the passports in cupboards and drawers, we might see sex toys, unwashed underwear, pornographic magazines, personal papers, or lurid photographs of the occupants. But we always found the passports.

Sometimes during the passport search we came across the passports and pay slips of other illegals not then present. These documents might lead us to their workplace, where we might find not only these illegals, but also some of their co-workers who might also be illegal. A continuing visit to their homes might discover other illegals living there and so on. This was called in the jargon ‘the warrant trail’ because the search warrant which took us to the first premises also led to a trail of other premises, and we followed this trail until it ended. Thus, an operation which began at 8 p.m. in relation to one premises might not end until 6 a.m. the following morning as we followed the trail to other premises.

The Department’s view on all this stress and privacy invasion was that the illegals had brought it on themselves. They always had the option of voluntary departure, and even if they could not afford the fare home, all they had to do was walk into the nearest Immigration office and surrender themselves and the Commonwealth Government would pay their fare home for them. Even after the Department had located illegals, their best option was to cooperate, and the Department’s intrusion into their private lives would then be minimised. However, to deny entry to officers armed with search warrants was for recalcitrant illegals, often an unpleasant experience but one which evoked little official sympathy.
It comes as no surprise that being the Department of Multicultural Affairs (i.e. the MA part of the Department’s acronym DIMA) the Department was itself multicultural. On any day, officers of varying ethnic origins could be seen working behind the counter in any Immigration office, and the Enforcement Branch was no exception. For example, in our Sydney Immigration office, we had officers of Philippine, Thai, Chinese, and Indian ethnic origins. They were all Australian citizens and Gazetted Immigration officers, and they had gained their promotions by merit just like the rest of us. The Asian females in our office were slim and trim, diminutive and demure, but they did not in any way fit the public perception of the Immigration Enforcement officer. This of course was their greatest asset, because they could be deployed in surveillance tasks where the presence of ordinary white Australian officers might arouse suspicions. For example, in an Immigration raid on a Chinese restaurant in search of a Chinese illegal immigrant working as a waiter there, a frontal approach might be successful, but the process of searching for him through the tables of a crowded restaurant might cause alarm and despondency amongst the patrons, and it would fail if the person sought was not on the premises at the time. The media might get to hear about this incident and press reports embarrassing the Minister might follow. The operation could still fail if the waiter was on the premises at the time of the raid but panicked at the sight of official looking Caucasians entering the restaurant. Illegals have been known to barricade themselves in the toilets, run out the back door, and even jump through windows in an attempt to evade arrest, even at the slightest suspicion of an Immigration presence on the premises. They just panic and run. Far better a more subtle approach like this: Without identifying themselves, two Immigration officers enter the crowded restaurant and sit at a vacant table. One is a white Australian man, the other an Asian female. Mixed race twosomes like this are a frequent sight around the Asian haunts of Sydney and arouse no suspicion. While the man ponders the content of the menu, the female officer begins talking into her mobile phone; another typical and reassuring sight in any restaurant in Sydney. Meanwhile, outside the restaurant the Warrant Officer (the Immigration officer in whose name the
search warrant has been issued and who is thus in command of this operation) is awaiting the female officer’s call to his own mobile phone. She tells him quietly that she has identified the waiter and that he is on the premises. The Warrant Officer deploys his team, by sending two officers around to the rear of the restaurant, while the others hang around nonchalantly on the pavement at the front, acting like prospective patrons contemplating a meal at this restaurant. In reality they are held in reserve there in case the situation turns bad and they are needed inside. The Warrant Officer waits until the girl reports that the waiter has gone into the kitchen, then he signals by radio to the officers at the rear of the building to enter the restaurant kitchen via the back door, but he himself enters the restaurant via the front door and explains to the manager at the front counter, the purpose of the visit. The officers at the rear of the restaurant enter the kitchen by the back door, meet the waiter in the kitchen and invite him outside the back door for a chat. Everything else in the restaurant proceeds as normal. The kitchen staff might be surprised by the visit, but the patrons remain undisturbed, never knowing that while dining at their favourite restaurant, they had been present during a successful Immigration raid. In this kind of situation, one of the features which was crucial to the success of the operation was the presence in the Immigration team of the Asian female officer.

Asian females were a feature of many other kinds of immigration operations, simply because public perception never seemed to associate young Asian females with Immigration law enforcement. Their demure mannerisms, their pleasant personalities, their inscrutable poise and their diminutive size aroused no suspicions amongst illegals we might want to find, and in the crowded markets of Chinatown and other Asian enclaves in Sydney they could blend unobtrusively into the babbling background just as though they were not there. In short, they had a perfect racial camouflage through which they could glean all manner of immigration intelligence which no white Australian would ever find. They were excellent immigration operatives and informants and later in this thesis I explain how I came to acquire my own female Asian informants.
All this may sound racist, sexist, inquisitive, intrusive, invasive, and unethical, but unlawful and unprofessional it was not. Every search method used was diligently recorded in the files in what was known as the ‘Warrant Return.’ This was an official report on how each search warrant had been executed. It detailed a list of the people found on the premises, what resistance had been met, what counter measures had been taken, what documents had been found and so on. If a matter later went to court then the Judge would know exactly what we did and why we did it. It was all there in the Department’s records indicating precisely how each operation was conducted.

Research methodology

Whilst the process of arrest and detention was often a harrowing experience for some illegal immigrants, their participation in this research project was not. By the time I got around to interviewing those illegals who took part in this project, it was usually some hours, or in most cases some days after they had come into Immigration custody, and only after I had already established a good rapport with them. The interviews therefore took place in a calm and secure atmosphere, and with the informed consent of the illegals who participated. Both the Department and the University took great care in establishing that my research was independent of the Department’s normal operations, and later in this thesis in the sections titled “Accidental informants” and “Surveys” I explain how this was done. So, as far as the research was concerned, I operated independently of the Department, just like any other researcher. However, because I was a serving Immigration officer at the time I did my research for this study, I was assisted considerably by my own working environment, and by my friends and colleagues within the Immigration Department. Much of the material I obtained for my research project came to me automatically in the course of my ordinary immigration duties. That is to say, it was because I was an immigration compliance officer that I was able to meet and talk to so many Indonesian illegal immigrants who later assisted me in my research.
In general, information for this research came from four principal sources. These were;

(1) official documents,
(2) informants,
(3) observation, and
(4) surveys.

I will here briefly described the ways in which I used these sources.

(1) Official documents

The Immigration Department has a record of everyone who enters and departs Australia via the established border control points at airports and sea ports. All these points are linked by computer, and each point has access to the records of the others. Immigration offices throughout Australia are all linked to the same system, so that if someone departed Darwin for West Timor, we would know about it immediately, in Sydney. For arrivals and departures only, the records are brief. They normally consist of name and flight details and little else. But once a visitor to Australia lodges an application for a visa, or an overstayer is investigated, then a file is generated, and information on that person begins to accumulate on that file. The “file” is both electronic, in the form of computer records, and physical in the form of paper records. The more dealings the person has with the Department, the bigger the file. Most ‘paper’ files range from a few folios in a single manila folder, to an accumulation of different documents which might not fit into a single folder and might extend into subsequent folders. The general rule is that the bigger the file, the more dealings a person has had with the Department. The biggest file I ever processed extended over 8 manila folders, and two lever arch files, and weighed eleven and a half kilos. It ‘belonged’ to the illegal immigrant mentioned earlier who was such an habitual criminal, that he was always either in jail or on bail, and because he was always within the jurisdiction of the courts, we could never deport him.
The sum total of all the files of all the illegal immigrants in Australia contains a wealth of information. The Department extracts some of the information in its files to produce statistics which are freely available to the public. These statistics appear in the form of annual reports, fact sheets, and a multitude of publications which the Department releases from time to time. I had free access to these statistics just like any other researcher, and the documents in which this information appears are quoted in this thesis from time to time. But because of my privileged position as a serving immigration officer, at the time I was collecting my research data, I saw a lot more documentary evidence than would otherwise have been made available to any other researcher. Most other researchers might only have seen the Department’s statistical summaries of what was in the files, but what I saw was the actual content of the files. This gave me the ability to compare the content of any one file with the content of all the others I examined. It is true that the content of individual files was examined during the Department’s assessment process, and re-examined by the Refugee Review Tribunal, or the Immigration Review Tribunal, or the Federal Court, and sometimes the High Court, depending upon how far an appeal may be taken. But these were individual examinations of individual files, and rightly so, since a court was only interested in the evidence of the matter before it. When hearing an appeal, a Judge did not compare the content of the file relating to the case before him, with the content of all the other files of all the other cases he had heard. But I did, and it was this opportunity to compare one file with all the others I examined which formed the basis of my research for this thesis. It was this comparison of files which led to my analysis of failed refugee applications which is presented in Chapter 4 of this thesis. The Department allowed me to use the privileged information I saw, provided that it was first processed into the same format that the Department itself uses when releasing information. That is, it had to be statistical in nature. My own statistics, gathered in this way, are quoted in this thesis.

The Department’s statistics do not identify any illegal immigrant, nor any of its other clients. The Department imposed the same restrictions on
my research, and made a further stipulation in relation to its own officers. This was that no immigration officer other than myself was to be identified in my thesis. This meant that official reports, records of interviews with illegal immigrants, and information supplied to me by other immigration officers could not be acknowledged in the normal academic way, lest an officer, or an illegal immigrant, or a client of the Department be accidentally identified as the source of that information. I could overcome this problem if the same information appeared in press reports, or in some other outlet available to the public, in which case I quote those press reports, or those outlets. Otherwise, I quote the information without identification.

(2) Informants

During the period covered by this thesis, it was common practice for experienced Immigration enforcement officers over the years to acquire a stable of regular and reliable informants. Each of each officer’s informants never knew his or her other informants, but each informant tended to be bonded to the officer through trust and from shared immigration experiences. Sometimes these informants were only a voice on the telephone, and the relationship might never have materialised into anything more substantial than that. But sometimes the bond between officer and informant blossomed into a friendship which might continue for years, with the full identity of the informant known to the officer, but never disclosed by the officer, not even to other officers. Such relationships were the best, with information being exchanged over lunch, drinks, or at some other friendly meeting. I was fortunate to have acquired several such regular informants, who gave the Department, through me, valuable information over the years. They were never identified in official documents, and were only ever referred to as “my regular informant on these matters” or by a particular code name. These informants were an important source of information for my research, and I never could have done it without them.
For example, when probing into the machinations of an Indonesian people smuggling racket, an Australian accent on the telephone will get a researcher nowhere. Similarly, a white Australian asking searching questions around the Indonesian haunts of Kensington or Randwick in Sydney’s eastern suburbs, will be met with evasive responses, feigned ignorance or blank stares. An Australian can’t do it… But an Indonesian can. For this reason, a considerable amount of immigration detective work in those days was conducted at the front line not by Australian immigration officers themselves, but by their informants. These informants were generally, but not always, of the same ethnic background as the persons under investigation. And so it was with me, that when searching for Indonesian illegal immigrants in Australia, much of the front line investigations were done not by me but by my Indonesian informants. The same informants also worked with me on this research project. As was the case with information I gathered for the Department, the informants for this research project were of three different categories. These may be described thus:

Regular informants: Those who knew I was an immigration officer and who had also, through me, supplied the Department with information on a regular basis.

Accidental informants: Indonesian illegal immigrants who had been arrested or who had voluntarily surrendered themselves to the Department and were in custody when they gave the information, knowing me to be an immigration officer and,

Incidental informants: Those who gave information incidentally, during ordinary conversation. Some of these informants were in Indonesia at the time they gave their information, while I was conducting research there. They did not know I was an immigration officer. Others who gave information incidentally in Australia did know.
Accidental informants, that is, Indonesian illegal immigrants who had been arrested or who had voluntarily surrendered themselves to the Department, generally gave information only about themselves. That is, they told me how they came to Australia and what visas they had applied for since arrival, how they had survived in Australia without permission to work, and so on. Generally, because these people were only talking about themselves, they were in no danger from anyone else. However, for the regular informants, giving information to the Department was a risky business. The reason for this was that these informants gave information not about themselves, but about other people who had a lot to lose if their identities were known to the Department. Thus in relation to this research project, the regular informants were generally Indonesians, at some risk for giving information about other Indonesians.

During the period covered by this thesis, the resident Indonesian community in Sydney was small compared to the populations of other ethnic minorities, as we have seen. In one sense, this community was divided into the same religious and ethnic sub-groupings of its homeland. In another sense it was united as any other linguistic minority is in any other foreign country. But either way, it was a small world for them in Australia, where rumour travelled fast. So when the information given was about traffickers of illegal immigrants or about other scams involving payment of large sums of money or about illegal immigrants involved in organised illegal activities, gathering information for me was a hazardous undertaking for my Indonesian regular informants. For this reason, I followed the usual Departmental practice of never keeping records of an informant's true identity.

This means, unfortunately, that I cannot even acknowledge the assistance each gave to me, because to do so would be to identify them, and this, even now, could put them in peril, and despite the risks involved, the Department neither encouraged nor discouraged information from informants. There were no informants on the pay roll, and no fees were paid for information given.
Even though my regular informants had always been reliable, I always cross checked the information they gave me. I did this by asking another informant, unknown to the first, for the same information. I did it like this: One day one informant telephoned me to say she knew of an Indonesian people-smuggler who was bringing Indonesians into Australia firstly on visitor visas, then after arrival, by applying on their behalf for onshore protection visas, knowing of course that none of them was a legitimate refugee. Because of the processing delays which will be examined later in this thesis, this people-smuggler was guaranteeing to his clients, a 4 year ‘legal’ stay in Australia. The fee, according to my informant, was $4000 per person. It was a package deal which included the cost of passport, visa, and air ticket, and on arrival, accommodation in a safe house for one week in Sydney. In other words, this people-smuggler was operating a typical bogus refugee racket. The informant gave me the people-smuggler’s telephone number, and other possible contact information. When I asked the informant how she knew about this, she said “everybody knows, Malcolm. People are bringing their relatives in from Indonesia this way.” By “everybody knows” I assumed my informant meant that some Indonesians would know, and those who did not know could easily find out by way of the Indonesian grapevine. It would have to be so in a scam like this, since the smuggler would have had to rely on word of mouth publicity in order to attract business. So to test this information, I telephoned another Indonesian informant, who was not known to the first. And without giving the second informant any of the details other than the name of the people-smuggler, I asked her only if she had heard of him. She said she had not heard of him and did not know anything about him so I asked her if she could check him out for me by telephoning around through the Indonesian community in Sydney asking at shops and restaurants and any other establishment operated and frequented by Indonesians. When she asked what she should say, I said “Tell them your mother was refused a visa to visit you in Australia, and do they know of any other way your mother can come here.” Within two hours she called back, with the same contact information that the first informant had given me. In addition, the second informant told me that
the people-smuggler’s agent had assured her that there would be no problem bringing her mother to Australia, but that the fee would be $4000 which she must pay in advance. This is how I double checked my informant’s information which I gave to the Department, and for the purposes of this study, this is how I double checked all the information given to me by my regular informants.

Regular Informants:

Introduction

During the period covered by this thesis, people gave information to the Department for a variety of reasons, but because no payment was ever made for information exchanged, the rapport between officer and regular informant had to be kept alive by other means. Usually this was done by an exchange of favours. To illustrate the kind of rapport I had with my regular informants and the relationship between us, I will give some examples. In these examples, I have given the informants fictitious names, to protect their identities.

Regular Informant 1 Abdul

Abdul was an unsavoury character. To me, he was only ever a voice on the telephone. He lived by extorting his fellow Indonesians in Australia. His modus operandi was simple. By diligent inquiry amongst the Indonesian community in Sydney, he would identify those whom he thought were in Australia illegally. He would then approach them individually with the news that someone he knew, knew that they were here illegally, and would report them to Immigration unless they paid a regular protection fee. Abdul would pretend to be the victim’s friend, and pretend to be the go between. The Indonesian victims had no option but to pay, and so long as they did, they were safe. But if someone defaulted, Abdul would contact me and advise me of the whereabouts of the
defaulter. An Immigration raid would then follow on the premises of the defaulter, which in the process would quite often catch other Indonesian illegal immigrants living on the same premises. With each such raid Abdul was happy because his shady reputation amongst the Indonesian community in Australia would soar, and the Department was happy because it had ‘discovered’ a nest of illegal immigrants in Sydney and had diligently deported them.

Abdul supplied another service to his fellow Indonesians in Australia. Illegal immigrants in Australia cannot obtain social security benefits, and if out of work their options are limited. Even their option to return to their home country is limited, if they have insufficient money remaining to buy a ticket. Sometimes, they would surrender themselves to the Department, and ask to be repatriated. This meant they would spend some time in immigration detention while they were being processed out of the country. But for such Indonesian illegal immigrants, Abdul could arrange (for a modest fee) a quick departure, with very little time spent in detention. Abdul gleaned his ‘fee’ from the remaining funds of his clients. For example, if Abdul knew a client had $100 or so, which was not enough to buy an airline ticket home, Abdul would offer a free ride home in return for that $100. This was an offer the client could not resist, and Abdul would telephone me in advance with the relevant details. I would then check to see that his client was in fact illegally in Australia, and I would prepare all deportation documents in advance, I would arrange air tickets at the taxpayers’ expense and I would prepare to receive the client into immigration custody. Then, checking with me later that departure arrangements were confirmed, Abdul would send the Indonesian illegal immigrant to me, together with his luggage all packed up and ready to go. The illegal would ask for me at the front counter of the immigration office, and I would arrest him then and there and deport him quickly. Generally he would depart Australia that same day. Abdul would be happy because of the fee he had earned, the unfortunate illegal immigrant would be happy, relatively speaking that is, because of the quick and painless deportation process and a free ride home, and the Department would be
happy because of the rapid turn around time between arrest and departure. As far as the Department was concerned this was a cheap, efficient administration of the Compliance program and it all made for good arrest statistics.

All this led to such a good rapport between Abdul and me, that even though Abdul was only ever a voice on the telephone to me, I could ask him for certain information, and he would supply it. He was always a reliable informant, and he was also a good research assistant, because before he despatched to me the illegal immigrants he was sending back to Indonesia, he would explain to them that I was researching illegal immigration from Indonesia. Abdul would ask them to cooperate with me and to allow me to interview them while they were awaiting repatriation, and as I was giving them a free ride home (free to them, that is. They were repatriated at Commonwealth expense) they always did cooperate and in a friendly manner.

Regular Informant 2. Mariko

Unlike all my other regular informants who were Indonesians, Mariko was Japanese. Like Abdul, Mariko began as a voice on the telephone, but the relationship between us soon developed from there. Mariko’s specialty at first was to report female illegal immigrants of any nationality, working in Australia as prostitutes in the Eastern Suburbs region of Sydney. At first she would speak to any of the immigration officers, that is, whoever picked up the telephone when she called. But for some reason she began to favour me, until finally she would only report to me alone. Since her information was always accurate, and always led to arrests, it was important to get closer to her and to coax more information from her. Also, we were interested in discovering what was motivating her. So, one day I was instructed by the Assistant Director (Compliance) to set up a meeting with her, and the next time she telephoned me, I said I wanted to meet her, and she suggested we have lunch together alone.
That is, with no other immigration officer present. It was to be the first of many such lunches which we were to have over the following fifteen years. That lunch at the Hilton Hotel lasted all that afternoon. But from an Immigration intelligence perspective, it was time well spent. In that time I learned that the reason Mariko was reporting prostitutes who were illegally in Australia, was that she was in the process of eliminating her competition. Mariko was also a prostitute, servicing an exclusive male clientele, from a luxury apartment in Sydney’s Eastern Suburbs. She told me she had begun her working life as a housemaid to a Japanese diplomat who was posted together with his family and his servants, to Jakarta. While she was there, she learned to speak Indonesian, and she was befriended by many leading Indonesian businessmen. One night at a Japanese Embassy diplomatic function, she met an Australian businessman who later brought her to Australia. They soon parted company, and she then had to fend for herself. She had no academic qualifications to speak of, but she was exquisitely beautiful, and she soon found that by frequenting the right bars and clubs in Sydney, she had no problem attracting wealthy Australian businessmen who would pay for her services. But her suitors were faithless swains she told me, and when not with her or their own wives, they were want to stray into the arms of other pretty Asian girls who were operating, like her, in the exclusive Eastern Suburbs of Sydney. These other girls were syphoning off from their clientele, money which Mariko felt might have been better spent on herself, so she set about eliminating the competition.

Prostitution in Australia attracts illegal immigrants like flies to a honey pot. This is firstly because it pays so well, and secondly because prostitutes can hide behind the anonymity of their ‘professional’ names, far removed from the prying eyes of friends or family back in the home country. Also, operating from secluded premises, their immigration status is less likely to come to the notice of the Department than if they were working more openly, for example, in a shop or factory. Mariko told me her modus operandi was to tease out from her suitors the names and addresses of the other prostitutes they were visiting. Mariko would then
visit these other prostitutes in their own apartments or the establishments where they were working, and in a friendly manner discuss their mutual clients. Then, pretending that she was an illegal immigrant, she would draw the other women into discussions about their own immigration status. By this method Mariko was able to assess which of the other women were illegal immigrants, and she would pass this information on to me, and in due course we would raid the premises, and deport these women. Of course many of these establishments are open twenty-four hours a day, with different prostitutes working different shifts. Exact timing was therefore the essence of these operations, and in order that we could find the illegal women on the premises when we arrived, we needed to know what shifts they were working. Mariko supplied all this information to me. The irony of it all was that while the women were in the detention centre awaiting deportation, Mariko would visit them there. She would commiserate with them and tell them that she had heard from an Immigration friend, that an irate wife had reported them after having discovered her husband’s dalliance. In this way, no suspicion ever attached to Mariko.

As the years rolled by, Mariko and I would often meet for lunch or drinks after work, when we would discuss tactics, and she would pass on the latest information to me. As was the case with Abdul, Mariko’s information supplied us with quick, cheap statistics, and she made our arrest rate look good. This arrangement continued until one year Mariko was befriended by one of her clients. This particular client was a wealthy Sydney businessman, recently widowed. His own adult children were preoccupied with their own families, and he was lonely in his big mansion at Double Bay. So he took to visiting some of the exclusive Eastern Suburbs establishments, and in due course he discovered Mariko. It then did not take them long to come to a mutually advantageous arrangement, and Mariko gradually shed her other clients and in return for an enormous financial endowment, she became exclusively his alone. So because she had withdrawn herself from her profession, she no longer needed me to arrest her competitors, and I might therefore easily have
slipped from Mariko’s social horizon. But now that she was isolated from the glamorous world of high class prostitution, Mariko was lonely. For, despite her striking beauty, she did not exactly fit the image of the Sydney corporate wife, nor for that matter, of the Sydney corporate girl friend. Although she enjoyed accompanying her friend on various overseas trips from time to time, back in Australia Mariko felt uncomfortable around the corporate wagging tongues of the Sydney cocktail circuit.

Now secluded with her friend most nights, Mariko’s daytime hours droned by in wealthy boredom and social isolation. It was because of this situation, that she often sought solace with me. So, in her new life as executive girl friend, one habit which did not change was our regular lunches and after work drinks together. By this time, most of our conversations together were about this research project which I had just begun, and once during the course of one of these conversations I mentioned that I was having a problem infiltrating the Indonesian community in Sydney because of my own ethnicity, and because of my status as an Immigration officer. No problem, Mariko said. She would do it for me. Being Asian, and fluent in Indonesian, Mariko could move freely through the Indonesian community in Sydney without arousing suspicion. She could overhear gossip, and make observations and discrete inquiries, without ever arousing any suspicion that she was a regular immigration informant or that she was involved in this research project. And more importantly, she could diverge with complete safety and without fear, into the shadowy reaches of Australia’s immigration underworld.

Mariko loved being my regular informant. It added spice to the otherwise dull relationship she now shared with her wealthy friend, and she relished again the drama and intrigue and excitement which she had previously enjoyed in that exotic world of Sydney’s high class prostitution circuit. Only this time, she did not need the money. On two occasions, when I needed to inquire into people smuggling operations in Indonesia, she went there for me, reactivating the connections which she had previously had with Indonesians when she lived there, and she traced the
tentacles of several organisations which funnel illegal immigrants into Australia; all courtesy of her wealthy Australian boy friend, who paid for all her expenses. This project owes a lot to her, and the strange fact is, that in all the years I knew her, I never knew her real name. She never told me, and I never asked. It was all part of keeping secure the identity of our immigration informants.

Regular Informant 3    Ratih

Actually, Ratih was never a regular informant. But her sister was, and it all happened like this: During a Compliance operation in Newcastle, I arrested a twenty year old Indonesian girl who had overstayed her visitor visa. We were conveying her back to Sydney, to lodge her in the Immigration Detention Centre at Villawood, prior to her repatriation back to Indonesia. Immediately before her visit to Australia, Ratih had been a receptionist at a big tourist hotel in Bali. She spoke good English, and for that reason she found no difficulty in obtaining employment (albeit illegally) while overstaying her visa in Australia.

It had been a long day for us, beginning at 4 a.m., and from an Immigration perspective, it was not a very successful operation, since Ratih was the only illegal immigrant we had found that day, and that afternoon we were driving down the Pacific Highway, approaching The Entrance, three Immigration vehicles in convoy. I was in the lead vehicle, and Ratih was in the middle vehicle together with three of my officers. One of my officers called me on the radio to ask if we could stop for lunch, as we were all by then tired and hungry. There was some discussion by radio between the vehicles as to where we should stop, and the general consensus favoured one of The Entrance restaurants famous for its buffet lunches. So I ordered a stop over at this restaurant, and one of the officers in the middle vehicle radioed “We’ll take this girl around to the police station and lock her up there, and we’ll meet you at the restaurant.” Parking detainees in police stations during extended operations or during
long stand downs was standard procedure in the Department. However, in this case, I felt sorry for the girl, knowing that it had already been a bad enough experience for her being arrested that day, and that it would be an infinitely worse experience for her being locked up, alone, in a strange police cell, while we had lunch. “No,” I replied, “she can come with us.” There were some objections to my proposed departure from the standard procedure, so to put everyone’s mind at rest, I said I would give the girl the choice, since, in any case, she might have preferred the police cell to our company.

All three vehicles stopped in line outside the restaurant. I walked over to the middle vehicle, and spoke to the girl through the window. I explained to her that we were stopping for a long lunch, and that she had the option of coming with us, or waiting in a police station cell. Ratih considered her options momentarily then said, “If I come with you, do I pay?” I explained to her that because she was in my custody, the Commonwealth Government would pay for her. So she decided to come with us. I then explained the ground rules to her. She would sit between me and one of my female immigration officers, but as it was a buffet lunch, she was free to move around the restaurant, provided that one of us went with her. I warned her that we could out run her, if she attempted escape. “I won’t escape” she promised, and we had a terrific lunch.

Off duty immigration officers when gathered together like this, tend to tell tall tales. And Ratih was enthralled as she listened to some of our more hilarious experiences, like the time an illegal was so engrossed in a torrid sex act with his girl friend that neither of them heard us break into their house, and we had to stand around their bed watching momentarily until we had their undivided attention; or the time another illegal in an attempt to evade us when we came through the door, he jumped out the window. He forgot his unit was on the fifth floor. But not to worry, his fall was broken by a tree, an awning, and a pile of garden mulch, and unhurt but for a few scratches and bruises, we deported him two days later. And so the stories came thick and fast, and joining into the spirit of the
occasion, Ratih told a few stories of her own. She told us how some Indonesian illegals she knew had avoided arrest during immigration factory raids by hiding in rubbish bins, paint lockers or air conditioning ducts, and she had us in fits as she told the story of one of her girl friends (also illegal) who was having her morning shower when she saw through her bathroom window, some immigration vehicles parking in the street outside. In a panic, the girl bolted out the back door, and clutching her bath towel in one hand she ran stark naked down a side street in full view of people going to work, until she reached the safety of a friend’s house nearby. It was only then that the girl discovered that the immigration officers were not raiding her own house, but a different house, further down the street.

All the time during that luncheon, no one would ever have guessed that Ratih was an immigration detainee in our custody. It just looked like we were all having an office party, and that Ratih was one of us. And when the luncheon came to an end, we returned to our vehicles, and the car Ratih was in took her to the Detention Centre, and the rest of us returned to our Sydney office. But four days later, Ratih telephoned me from the Detention Centre. “I’m leaving Australia tomorrow, Malcolm,” she said. I told her I already knew, because I had signed her Movement Order the previous day. “Before I go,” she said, “I want to thank you for taking me to lunch, instead of locking me in a police cell.” I told her it had been a pleasure, and that we had enjoyed her company. “I know that when I get home, no one will believe me when I tell them that the officer who arrested me, also took me to lunch,” she said, “that would never happen in Indonesia,” and I said, “It doesn’t happen in Australia either. It’s just that at the time I felt it would be too distressing for you to be locked in a cell.” Then she said, “Thank you for being so kind to me.” We said goodbye, and she returned to Indonesia the following day.

But that is not the end of this story. In fact, as far as this research project is concerned, it was only the beginning. I knew from our records, that Ratih had a married sister, living in Australia as an Australian resident,
and one week after Ratih departed, the sister telephoned me at my office, to thank me for being kind to Ratih. I was grateful for the call but I thought nothing more of it until about six months later when I received another call from the sister to say that their mother had arrived in Australia on a visit and wanted to meet me. So, the following week when I had a day off, I went to the sister's house to meet their mother. It was an emotional, tearful meeting in which the mother sobbed her thanks in Indonesian for the kindness I had shown to Ratih when she was in my custody. Of course I had bent the rules a bit at the time, but I did not think that what I had done with Ratih warranted all the tears. But I was to learn that when Ratih's parents had heard she had been arrested and was being deported back to Indonesia, they were totally devastated. The only kind of arrest and detention they then knew, was that imposed by the brutal regime of Suharto's New Order. At that time, they thought they would never see their daughter again, or that if they did, she would be emotionally scarred by the experience forever. So when Ratih returned home bubbling with the news that she went to lunch with her arresting officer, and that it wasn't such a bad experience after all, the parents were so overcome with gratitude that they resolved then that if they ever met me, they would thank me, so that was the purpose of the invitation to me to meet the mother.

When it was time for me to leave, the mother asked me if there was anything the family could do for me. Well, yes, I said, I could always use another informant for my research project but I hesitated to get them involved, because they were such a decent family. They were not like my other regular informants most of whom, like Abdul, were shady fringe dwellers of the immigration underworld. The mother looked at her daughter inquiringly. "I'll do it, Mother," Ratih's sister said, and she did. I am grateful for the help which Ratih's sister gave to this project. She became one of my closest and best informants, not because of greed, or revenge or some other base motivation like some of my other informants, but because of that single act of kindness I showed to Ratih, that day when I arrested her. And now, six years after I retired from the
Department, we still keep in contact. Ratih used to write to me regularly after she returned to Indonesia, but these days, now married with two children, she does it all by e-mail. And in December 2004 I received an email from her, inviting me to lunch in Sydney. She was coming back to attend a conference and would be staying with her sister. And as we sat around the table talking at lunch, a thousand memories swept over us, and Ratih reminded us that it was exactly ten years ago that day that I had deported her. “What a coincidence” I said, “that we should meet again on this tenth anniversary.”

“Insha Allah, Malcolm.” Ratih said.

Regular Informant 4. Diwi.

Abdul, Mariko and Ratih’s sister were all free ranging regular informants. That is, they were free to move around Sydney because they were not illegal immigrants in custody. However, for various reasons, I also needed informants inside the Detention Centre, and one of these was Diwi. She was a typical Indonesian asylum seeker. Her application for refugee status had been rejected because, like 99% of those from other Indonesians, it was completely groundless. Nevertheless, like those other illegal immigrants mentioned by the then Immigration Minister Philip Ruddock, she “took legal action simply to prolong her stay in Australia” (McKinnon 1998). One appeal led to another, and then to another, and while all this was happening, she was in immigration detention at Villawood for months. I had originally arrested her in her home at Manly where she was living with her Indonesian boy friend. He would telephone her once or twice a week, and visit her every weekend at the Detention Centre. But from Monday to Friday during the day she got bored looking at the high fence and the razor wire and she could not contact her friends when they were working, so she used to telephone me frequently, just for something to do, and because I spoke Indonesian.

I never discouraged these calls because during these telephone conversations she would prattle on about this and that, and sometimes
she would pass on snippets of information which were useful to me. So, whenever I was at the Detention Centre on immigration business, I would visit her, just to say hello. One day when she telephoned me, she started to nag me about the food in the Detention Centre. She couldn’t eat the pork she said because she was Muslim, and the lamb was too fatty, and the beef was too tough, “So why don’t you people serve something I can eat?” she demanded. “Like what?” I asked. “Like Kentucky fried chicken.” She said. So the next time I had to go to the Detention Centre on business, I brought her a family size pack of Kentucky fried chicken. I asked the guards to bring Diwi to one of the interview rooms and when she arrived, I produced the family pack from behind the desk. “Did Madam order Kentucky Fried Chicken?” I asked. The effect on her was electric. “Oh Malcolm,” she said, “I was only teasing you,” and she put her hands to her face and wept. But through her sobs she said she was grateful, and I told her that I had arranged for the caterers to keep the chicken in the fridge, and to heat it and serve it to her whenever she asked for it, and thereafter, I kept replenishing the stock so that whenever she tired of the regular food at the Detention Centre, there was always Kentucky Fried Chicken for her.

During her next phone call Diwi offered to help with the research project. I had previously interviewed her as a respondent to one of the surveys, so she knew what it was all about and from then on, she would approach other Indonesian detainees at the Centre and ask them to consent to be interviewed, and all of them did. I got the impression that for them my interviews were a pleasant diversion from life behind the razor wire. But time was running out for Diwi. Nine months after I had arrested her, she was deported. Yet the phone calls did not stop. She continued to call me, this time from Jakarta. She was also calling her boyfriend more frequently than she called me, and the phone bill must have been astronomical, and I told her so. Not to worry, Diwi said, it’s all free. I knew her father worked for Pertamina, and the free phone went with the free house, as perks of the job she said, and even though Diwi was happily rejoined with her family again, her heart was still in Australia where
her boyfriend was still battling his own immigration problems, and she would often ask me what the progress was with him. So, equally as bored at home as she had been in the Detention Centre at Villawood, Diwi was still offering to help me, and now and again she would do odd jobs for me in Jakarta. But sadly, it all came to an end. About one year after she returned to Indonesia, her father died, and her last tearful phone call was to say goodbye. The family had to vacate the Pertamina house, and there would be no more free phone calls. During that last phone call I thanked Diwi for all the help she had given me, and I commiserated with her over the loss of her father. “You are my father now, Malcolm” she said, and that was exactly how I had felt, ever since the day I had arrested her….. But I never heard from her again.

Regular Informant 5: Rini

After Diwi was deported, I still needed an informant inside the Detention Centre, to continue the contact work which Diwi had done for me while she was in our custody there. Diwi’s successor was another long term failed asylum seeker, a Javanese girl named Rini. But there the similarity ended. For while Diwi had been friendly, sweet natured, and pleasant, Rini was the exact opposite. She was pretty in a hard bitten sort of way, but she was sullen, moody, bitter and unfriendly, and she resented the immigration detention system which had terminated her lucrative (and illegal) sojourn in Australia. She had been found working illegally in Australia with an overstayed visitor visa during a routine Immigration raid on a brothel and she was arrested then and there. While being arrested, Rini had bitten, kicked and scratched her arresting officer and had struggled so much that she had to be restrained in handcuffs. So Rini was not the typical sweet natured Indonesian girl we normally met in the course of our duties. Nor was she in the same class as Mariko, whose exquisite beauty could turn heads when she walked down the street. Rini could not turn heads, but she could certainly turn tricks. When arrested, her hand bag was found to have contained $14,000 in cash
which she later told me represented “about two week’s work.” She was a surly insolent detainee and she took devious delight in antagonising the guards in a manner which was so subtle that they had no defence against it. She responded to the male guards with such a “come to bed” aura that it excited their fantasies, and she responded to the female guards with a sullen vacant stare which looked right through them as though they were not there, and this infuriated them. As a result, the male guards adored her and the female guards hated her, and that was just the way she wanted it.

I had not been present when Rini was arrested but knowing about this research project, her case officer told me about her. So my first contact with Rini was at the Detention Centre where I found her sitting alone under a gum tree on a park bench type seat inside the secure area. I said hello to Rini in Indonesian, and asked if I could join her. She ignored me, so I sat down next to her anyway, and introduced myself. It took a lot of coaxing to get her to talk, but like other Indonesians in custody, when she realised I was not there to hassle her, she began to respond in a desultory manner, as though to break the boredom of sitting there alone. Rini told me that in an attempt to avoid Immigration detection she had moved frequently from one brothel to another and that she slept at whatever brothel she happened to be working in at the time. She said she carried all her earnings in her hand bag, and that when it was full, she went into the nearest bank in Sydney and remitted the whole lot to her bank account in Jakarta. Then she started accumulating cash again. She told me she had remitted more than $150,000 to her Jakarta bank account since her arrival in Australia. She kept her figure slim and trim by eating little, and she frequently attended the free VD clinic at Sydney Hospital. She said she had few expenses, she paid no rent, paid no tax, had no address, and she traveled light, taking all her property with her in a small shoulder bag wherever she went. It contained only a few skimpy dresses which she wore in the brothel waiting rooms, some cosmetics, a few tops, a few changes of underwear and a pair of daggy jeans with a faded denim jacket, which is all I ever saw her wearing. Thinking of Mariko’s elegant
and expensive wardrobe I asked Rini why she had so few clothes. She said, “What does it matter if I have few clothes. I have to take them off anyway, because when I work, I work naked.” She was, I had to admit, practical, to say the least.

Although I began conversing with Rini in Indonesian, she soon lapsed into a rough gutter style of Australian accented English, frequently laced with uncouth four letter words, and when I asked her how she had learned such appalling English, she said “from screwing old guys like you.” I also asked her if she was practising her profession inside the Detention Centre amongst the other detainees and she said “they don’t have enough money,” and when I asked her if she had ever done it for love, she said “don’t make me sick.” She was so brash, uncouth, and churlish, and so embittered against the Department that at first I wondered if she would ever be of any use to my research project. But she soon warmed to my visits and to the presents I brought her from time to time, although my first present was a disaster. It was a box of chocolates, and without a second glance at it she promptly threw it in the rubbish bin beside her. Oops! Wrong present. But I soon learned what presents she would accept. At that first meeting she passed me an empty lipstick tube, and an empty mascara bottle, and I got the message. Thereafter I kept her supplied with cosmetics. But any brands and colours and shades she did not like received the same rubbish bin treatment, while those she did like she accepted without a word of thanks.

During my visits to the Detention Centre, I always found Rini waiting for me on that same park bench, and the female guards told me that she had staked out this bench as her own territory, just like a street walker stakes out her own portion of pavement. The bench was near the guard house and within full view of the guards inside, and Rini would sit there for hours preening herself with all the make up I brought her. With some application and a good deal of brush work, she could make herself quite attractive in a bordello sort of way, much to the delight of the male guards and the envy of the female guards who were openly hostile towards her.
Frequently they would say to me “Why do you keep bringing her these presents Malcolm? She is such a bitch.”

But in her own perverse way, Rini revelled in their hatred, and seemed to derive some perverted pleasure from assisting me, particularly if when doing so, she could show up the inadequacies of our detention system. On one occasion when we were sitting together on her favourite park bench, an Indian detainee shuffled past, accompanied by some minders who led him by the hand. At the time, horror stories were appearing in the press, proclaiming the inhumane treatment of this poor blind Indian detainee in our detention centre and it was indeed, a pitiful sight to see him shuffle past. He had applied for refugee status on the grounds that he would be persecuted for being blind if returned to India. The Department was sceptical about his condition, but he insisted he was blind; all the other Indian detainees said he was blind; the guards said he acted like he was blind; and his lawyer was emphatic that he was blind, and all this was enough to send the media into such a frenzy that wags in the Department wondered how long it would be before the Minister gave up and released the Indian into the community where of course he would disappear from immigration control, never to be found again.

But Rini said in her usual sullen manner “You people are so stupid Malcolm. He’s not blind, he’s tricking you.” And when I pressed her for details she said “he’s only blind when there are immigration officers and guards around. When there are no guards around he can see perfectly.” And when I pressed her even further, she said “well he can see well enough to come up to me alone and unassisted and ask me for sex.” So, armed with this information, I set a trap for the blind man. I called him into the office on the pretext of discussing his release from custody. His ‘minders’ were told to stay outside. Eager to be released, the blind man shuffled down the narrow corridor alone, towards the interview room where I was waiting. Beforehand, the guards had put a few obstacles in the way. They placed a rubbish bin and a bucket in the middle of the narrow corridor, and they propped some brooms and a mop against the
walls, as though the cleaner had suddenly been called away. A real blind man would have tripped over these obstacles. But our ‘blind’ man carefully walked around the bucket and bin, and stepped over the brooms and mop. I then told the ‘blind’ man that unless he withdrew his application, he would be prosecuted for making a false and misleading statement that he was blind. The ‘blind’ man then, unaided, wrote out a withdrawal notice in his own handwriting, and I telephoned his lawyer. I told the lawyer that the Indian was not blind, and that his application for asylum was a fraud. There was a pregnant silence at the other end of the line, and the lawyer said nothing. We deported the Indian two days later and the media, of course, made no further comment.

Later when I thanked Rini for her help, she said “Will you be releasing me now?” and when I did not immediately respond, she answered her own question, “I thought so. You’re just like all the others, Malcolm, you’re full of shit.” But whether I was or not, she was a good informant for me, for not only did she help my research project, she also helped the Department in other ways. She seemed to take fiendish delight in showing up the inadequacies of our detention regime and on various occasions we were able to prevent a riot; avert a campaign of property damage; and seize a cache of crude weapons some detainees had made. We did all this by acting on information which Rini had given me. On each occasion when I thanked her for her help, she gave me the same sort of response in grating gutter English.

Finally, when it was time for her to be deported, I took her to the aircraft myself, accompanied of course by two female guards each of whom had hated the way she had tormented them in the Detention Centre. Since the feeling was mutual, I wondered if Rini might get her revenge at departure, by staging a tantrum or by some other demonstration of defiance before she entered the plane, and she did, although not in the manner I had quite anticipated. The four of us walked together down the loading ramp to the aircraft which was where our jurisdiction ended. Once she boarded the aircraft, Rini would be free,
although of course, not free to reenter Australia. I handed Rini’s boarding pass to the stewardess at the door, and indicated for Rini to board. Then, standing beside the stewardess Rini turned to me, put her arms around me and kissed me. But the kiss was not a sign of affection for me. It was a vehicle for her to deliver her final message to her captors, because with her hands behind my back in a tight embrace, Rini gave the guards an insolent one finger salute. It was her final act of defiance in Australia. Then she turned and walked into the plane without a single word of goodbye.

The use of anecdotes

Anecdotes like these will continue throughout this thesis, whenever they can best explain the dynamics of illegal immigration in Australia.

Summary of regular informants

There may be some concern that I gained for the Department and by extension for this research project, valuable information by encouraging shady or criminal activities. But the objective of the Department’s Enforcement and Compliance Branch was to find and deport illegal immigrants, and in pursuit of this objective the Department needed information on where illegal immigrants could be found. In its quest for this information, the Department was not too particular about who was supplying the information or how the information was obtained, provided of course that the Department’s own officers were not themselves involved in criminal activities. So, when giving information over the telephone, casual informants were never asked to identify themselves, and were not quizzed on how they obtained the information they supplied. As a matter of policy, no payment was made for supplying information and it was therefore left to individual officers to cultivate their own sources of information, some of which might have been considered unorthodox to say the least. In this context, it is true that my regular informant Abdul was a minor extortionist, but the Department had no sympathy for illegals who
paid protection money, because they could easily put an end to their own extortion themselves, simply by going home, which was what the Department was trying to get them to do in any case. As I said previously, the milieu of illegal immigrants was a shadowy world of deceit and deception, where Immigration officers themselves might use deceptive tactics in the search for illegal immigrants, and in my experience, one of the most effective deceptive tactic was the use of young Asian females as informants. This was because of their unthreatening demeanors and because they did not fit the public image of Australian officialdom. They could therefore operate safely and unobtrusively in any environment without arousing alarm or suspicion. It was just another version of the ‘honey trap’, Asian style. Whether this is construed as sexist, racist, objectionable, undesirable, obnoxious, or demeaning, the plain truth is that it was the most effective form of covert surveillance, for reasons I have already given. Like the squeaky wheel which usually gets the most oil, so the attractive girl can usually get the best information. There is nothing unique about all this. Honey traps are used by intelligence agencies the whole world over.

If my relationship with my regular female informants could be misconstrued as one of a white, male Immigration officer in a position of authority taking advantage of vulnerable Asian females in custody, then I hasten to add that my relationship with them was on a much higher plane than that. Diwi was like a daughter to me, and there is no denying that. There was no element of predation or vulnerability in my relationship with her, and the same can be said of Ratih who was only in custody for a few days, and her sister of course was never in custody, so there could never have been any element of vulnerability there, and I soon established with them a friendly familial relationship which continues to this day. However, my relationship with Rini was different. She was a fringe dweller on the periphery of the immigration underworld, a drifter and a loner, but a real life survivor of the harsh real world of sordid prostitution. I always had the feeling that to her, I was just another client, and that she accommodated the research tasks I asked of her just as she would have accommodated
any other client’s sex act preference. The only difference was that they gave her money and I gave her presents. But although she was a good research assistant, she never did me any favours, and when she did give me intelligence information vital to the Department, it was for her own reasons and not to please me. For example, when she reported the ‘blind’ Indian, it was because he was continually pestering her for sexual favours, but could not pay for them. So she got rid of him by denouncing him to me, and she reported all the other intelligence matters to me, for the same reasons.

I should also point out here that every illegal immigrant at Villawood Detention Centre had unrestricted telephone access to lawyers, the media, and anyone else outside the Centre. If there had been any impropriety in any of my relationships with any female illegals in custody, then they could easily have complained to their lawyers, the police, their own friends outside or anyone else. It would only have taken one complaint to the Minister’s office, and I would have received a call to close down this research project permanently. But in all the years I was conducting this research, that call never came, because there was never any reason for it. I should also add that friendships frequently developed across the razor wire divide. One of my colleagues was so infatuated with one Indonesian girl he arrested, that after she was deported, he followed her to Indonesia, married her and brought her back to Australia where they still live happily ever after. Similarly, during my time in Immigration, two female guards at Villawood married detainees they had met there. Cupid’s arrows can land anywhere, even inside Immigration Detention Centres.

It should come as no surprise then, that I had good friendly relations with all the Indonesians in custody who assisted me in my research, and I have explained my relationship with my regular informants at some length to show that they cooperated with me without fear or threat or coercion of any kind and that they gave their information voluntarily and of their own volition. None of them knew the others but each was a friend
to me, and although I never actually met Abdul face to face, I knew the others quite well, in a friendly sociable relationship which in the case of Ratih and her sister, continues to this day. Each had their own reasons for helping me. Abdul was motivated by greed, Mariko by boredom, Ratih’s sister by gratitude, Diwi by kindness, and Rini by malice. It takes all kinds to make a stable of regular informants, but when all their disparate energies are harnessed together they make a wonderful intelligence network, and that is exactly what I had. I could not have done this research without them and I am grateful for their help.

Accidental Informants

I call these informants “accidental” for a very good reason. I often found them accidentally. For example, when conducting a raid on premises in search of illegal immigrants, we often found some illegals ‘accidentally’ while searching for other illegals. Thus, when we raided a factory to search for illegals A, and B, against whom we had information that they were working there, we might also find on the premises, illegals X, Y and Z, whom we did not know were there. Since our search warrant allowed us to arrest any illegal on those premises, we would arrest them all, even those we had found there accidentally.

Similarly, if we went to a residential unit looking for illegal C, he might have long before changed address before we arrived. Instead, illegal D might then be occupying the premises, and we might find him there, by accident. This often happened in Sydney, where certain premises were notorious for housing illegals. These premises were usually derelict, run down and in need of repair. In fact, there were colleagues in the Department who claimed they could tell if illegals lived on the premises, just by the state of disrepair of a building, knowing that the average Australian would refuse to pay the high rent demanded by the owner to live in such a place, but illegals of course were in no position to complain.
There was a very important difference in my approach to my accidental informants, and this concerned the informed consent requirement. Whenever speaking with a regular informant, it was not necessary to go through any form of elaborate introduction because by the time this research project was under way, my regular informants already knew about this project, and had consented to take part in it, since it began. But with accidental informants it was different. All my accidental informants were in Immigration custody when interviewed, so with them the whole introductory concept had to be broached with some dexterity. This is because both the University’s Ethics Clearance and the Department’s requirements for this research project stipulated that informed consent had first to be obtained from all interviewees, before anything they said could be used for this project. I had to introduce myself, or be introduced by someone else, and the purpose of this research had to be explained to each informant. It was also necessary to explain to each informant that my research was independent of my role in the Department and that they were not obliged to answer any question relating to the research, or to assist this research project in any way.

During her study into *Indonesians in Australia*, Penny (1993, p.113) stated:

Indonesians like most people, are more likely to believe that information will be kept confidential and used without prejudice to themselves if the interviewer is introduced by someone they know. Introductions from a network of personal acquaintances was the most effective way to achieve that trust.

And so it was for me, and for my “network of personal acquaintances,” I used my regular informants in the way I have already explained. Thus, part of my ‘understanding’ with Abdul, was that before he sent his ‘clients’ to me for rapid repatriation to Indonesia, he would have explained to them beforehand, the nature of my research project and the requirements of informed consent. If I had time when they came into my custody, I would check with them that he had done so. If I did not have time to do this, then in relation to this research project, I would
proceed no further with them. On many occasions, there was no opportunity to interview Abdul’s ‘clients’ for this research project, particularly if they were to depart Australia the same day I arrested them, and we were in a hurry to get them to the airport on time.

Similarly, when visiting the Detention Centre on Immigration business, and there were Indonesians in custody there who could be interviewed for this research project, I might ask one of my regular informants inside the Detention Centre (for example Diwi or Rini) to approach them and explain everything to them, and obtain their consent for an interview. There were occasions however, when a regular informant was not available to assist, and there was no option for me but to make the introduction alone. When this happened extreme caution was needed, and I never even attempted to seek information for this research project from Indonesians then in custody, until some kind of rapport had first been established with them.

For example, both my regular informants Diwi and Rini began life in this research project as accidental informants, and I have already explained my first meetings with them, and how rapport was established with them. It was not until they were comfortable talking with me, some time after these first meetings and after several visits to them in the Detention Centre that I asked them to participate in an interview. After that, as already explained, they became my regular informants inside the Detention Centre, where they did the initial contact for me in relation to other Indonesian detainees there.

Without this initial contact it would have been a waste of time for me to approach any Indonesians at the Immigration Detention Centre and announce I was conducting a research project and then start asking questions. The natural reaction would have been for them to have clammed up and said nothing. For this reason, the only Indonesians from whom I sought information, and who had not first been approached by one of my regular informants in the manner described, were those whom I had
arrested myself, or those who had been arrested in my presence by other immigration officers, and for whom I was acting as interpreter. In this situation, we might already have been in each other's company for some hours, and were by then talking to each other about general matters, and in a friendly manner. For example, a car trip from Newcastle to the Immigration Detention Centre (IDC) in Sydney's western suburbs takes about two hours. If we had arrested an Indonesian illegal immigrant in Newcastle and taken him direct to the IDC, by the time we arrived I might have been sitting next to him in the car for the last two hours, or more, if we had stopped somewhere along the way for a meal. If we had to do other jobs along the way, which was usual, the journey might have taken much longer. During this journey we would have struck up a conversation, just to pass the time, and we would have talked about the same sorts of things that Indonesians themselves talk about when sitting together for so long, and we would have learned about each other's home and family and other interests. In the course of this conversation the Indonesian would have volunteered all the information I needed to know for the purpose of this study. Since I was not permitted to identify any informants in any way, they knew they had nothing to fear, and they would consent to the use for research purposes of whatever information they might have given, simply because of the good rapport we had already established.

During all my conversations with Indonesians in custody, I never asked any questions which might have embarrassed them, or which expected answers from them which they might have been reluctant to give. As a result, not one Indonesian in custody ever objected to being questioned by me on matters relating to this study. So the method of seeking information from accidental informants was always the friendly approach, and this approach worked well. It worked best with Indonesian females, especially Javanese girls. They would at first enter immigration custody like frightened tearful waifs, not knowing how they would be treated. Then, after a while when they knew we were not likely to harm them, they would be speaking with us in a friendly manner, at first shyly, and then with full confidence. After a couple of hours they would be giving
us cheek, and then after that they would be flirting with our younger officers. At this stage they would be quite happy to tell me whatever I needed to know for research purposes.

Some of these accidental informants even became so friendly that they would write to me after their return to Indonesia, to thank me for treating them well when they were in Immigration custody in Australia, just like Ratih did. And when the Rupiah collapsed and Indonesia was plunged into economic chaos, two of them wrote and asked me for help. And even though I had been their arresting officer in Australia, I sent them money gladly. They had helped me in Australia when I needed their help for this research here, and I was happy to help them now that they were back in Indonesia, when they needed my help there. The research project owes a great deal to those many Indonesian illegal immigrants who willingly helped me in a friendly manner by supplying information about themselves, of interest to this study. Finally, there were the incidental informants, who gave me information when I was researching both in Australia, and in Indonesia.

Incidental Informants

I made several visits to Indonesia during the course of this project, basically to check out information which was not available in Australia. Indonesians I spoke with there did not know that I was an Immigration officer in Australia, nor that I was conducting this research project. In any event, the questions I was asking them were of a general nature, of the kind an inquisitive tourist might ask. I was following two channels of inquiry in Indonesia, the answers to which I could not find in Australia.

The first was:
Given the huge fleets and the variety of very seaworthy traditional sailing craft in Indonesia (Horridge 1986) why was it that there had been no waves of illegal migration of Indonesians into Australia, in the same way that we have recently seen waves of people of other
nationalities arriving from Indonesia by boat into Australia? (Clennell 2001), (DIMA Fact Sheet 81).

And the second was:
Given the extraordinary number of prostitutes in Indonesia (Walters 1994) why had we not been finding illegal Indonesian prostitutes trafficked into Australia by people-smugglers, in the same way that we had been finding so many Thai prostitutes? (Harris 1994).

In search of the answers to the first question, I visited Ujung Pandang the home of the legendary Makassan schooner, and I went aboard several such vessels there and spoke with their captains. I also visited Kupang in West Timor, which, being the closest port to Australia in Indonesia, was then the last point of departure for most boat people attempting to migrate illegally into Australia. I never discovered the answer to this question. The only conclusion I can come to is to endorse Penny’s finding which is that “Indonesians have never been inclined to move south to Australia in large numbers.” (1993, p.18). In any case, this thesis is primarily concerned with studying those Indonesians who were in Australia illegally, not those Indonesians who never came here. But it is a puzzle nevertheless and one which I will leave to future research.

In relation to the second question, I had been puzzled for years at our inability to locate any Indonesian prostitutes in Australia. The thought that there were none here, never crossed my mind. I always assumed that there were plenty here, but that we could not find them. When I put this question to Mariko, she told me that of all the sex workers she had known in Australia, not one had been Indonesian. She was just as puzzled as I was, and she even visited likely brothels around Sydney on the pretext of searching for a job, but in reality searching for any Indonesian girls who might have been working there. She never found any. It was not until August 1995 that I arrested the first Indonesian prostitute found working illegally in Australia. She was really surprised when I appeared almost overjoyed to find her, but even she said she did not know of any
other Indonesian prostitutes then working in Australia. And the only other one I ever knew of was Rini. So we were still none the wiser, and I concluded that the only way we would ever know why Indonesian prostitutes were not coming to Australia was to go to Indonesia and ask some. Surabaya is said to be the home and work place of 30,000 Indonesian prostitutes (Walters 1994), most, but not all, operating out of a seemingly endless carpet of brothels centered around the two main entertainment suburbs of Dolly and Jarak. I chose Jarak.

In relation to Jarak, Dalton (1988, p.171) reports:

Jarak is like a huge honky tonk Mexican border town in the orient...In row upon row of gaudy little dollhouse shanties, 15,000 girls and women work and live.

I found no reason to contest Dalton's description of Jarak, and I was able to establish good rapport in ten such houses, in each of which I was able to interview five prostitutes. Of all of these, only one admitted that she liked the work. All the others claimed that they were shackled into this industry because of different kinds of family or personal problems. They were the products of the poverty cycle of a country without an adequate social security system, and notwithstanding that some of them were quite attractive and easy to talk to, they generally appeared to be at the bottom end of the social equation, in one way or another, trapped by their personal problems to their homeland, here on Java. But why some enterprising people-smuggler had not mobilised some of these unfortunate women into a prostitution racket in Australia in the same way that Chinese and Thai women have been trafficked here, still remains a mystery to me. The answer appears to lie in the differential structure of the disparate people-smuggling operations. For as we shall see, the Chinese and Thai prostitutes were part of a ‘go now, pay later’ type of operation, whereas the Indonesian illegals in Australia came here on a ‘pay first, go later’ basis. This being the case, none of the Indonesian prostitutes I interviewed in Indonesia had sufficient means or motivation to pay first. The two I interviewed in Australia did. They both came here on visitor
visas, of their own independent means and volition, and were not trafficked.

Immigration officers

There remains one other group of informants to mention, without whose assistance this research could never have been possible. These were my fellow officers in the Department. For years they assisted this research project with snippets of information passed on files, or over the telephone, by internal e-mail, or simply when stopping at my desk to chat. Anything my colleagues thought might have been of interest to my research project, they told me. I could not have done it without them. Some of these officers also carried my immigration work load for me, when I was off researching somewhere else. I would like to thank these officers for the help they gave me, but unfortunately, I am not permitted to identify them in this thesis. But they know who they are, and they know they have my sincere gratitude.

(3) Observation

Conducting this kind of research as a serving immigration officer, I was privileged to have had the best opportunity imaginable to observe illegal immigration as it was happening. No amount of library research can replicate this real life immigration experience; or as General MacArthur said,

*Reports, no matter how penetrating, have never been able to replace the picture shown to my eyes.* (MacArthur 1964, p. 30)

So, a good deal of the information revealed in this thesis came from what I observed in the ordinary course of my immigration duties. For example, our regular informants were telling us about ‘safe’ houses. These were places where people-smugglers were accommodating the illegal immigrants they were bringing into Australia. The reason these
houses were ‘safe’ was because the illegal immigrants who stayed in them, were protected there from immigration arrest. The protection came not from guard dogs or high walls, or wire fences, but from the Australian immigration law, as we shall see. The houses themselves, were ordinary suburban houses you might find anywhere in a Sydney suburb. There was one difference though, and this was that these houses were overcrowded with Indonesians, and as it often happened, the first time I saw one was by accident. It happened after one of Mariko’s visits to Jakarta, when she told me that she had found a people-smuggler, advertising openly for ‘work migration’ to Australia. Posing as a prospective migrant, she made inquiries. She learned that $4000 paid in advance, would cover passport, visa, ticket, and initial accommodation after arrival in Australia. When she inquired where she would be staying in Australia, she was told further information would be supplied on payment. She did not pay, but she found some Indonesians who had already paid and had been ticketed by this people-smuggler, and were soon to be on their way to Australia. From them she learned that “the further information” supplied by the people-smuggler was only a rendezvous point in Sydney they were told to go to on arrival. It was the lobby of a well known hotel near Sydney’s Chinatown. There they would meet the people-smuggler’s agent who would take them to their Sydney accommodation, and arrange for their ‘work permits’.

Not long after Mariko told me this, an Indonesian illegal immigrant was arrested at his workplace during an immigration raid on a small factory in one of Sydney’s northern suburbs. I was not present at that time, but I was called into the case later because of a problem locating his passport. In the normal course of events, he would have been told to get someone else to deliver his passport to the Immigration Detention Centre (IDC) at Villawood where he was being held until his passport arrived, and then he would have been repatriated back to Indonesia. This man said that his passport was with his belongings, in the room where he was staying but that he did not know anyone well enough there to ask them to find his passport, and there was no telephone there for us to ask
somebody. Another complication was that the Indonesian did not even know the address of his lodgings, although he knew how to get there by walking from the nearest Cityrail station. A further complication was that he did not speak English. So the plan was for two officers to take the Indonesian from the IDC to his lodgings, find the passport and then return him back to the IDC again. I was to double as interpreter.

We found the place without any trouble by following the Indonesian’s directions from the rail station. It was an ordinary, old, unkempt, three bedroom suburban house, with lawn not mowed, a few broken windows, paint peeling off and so on. But inside, it was crowded with Indonesians, eleven of them, and momentarily I thought we had been led into a trap. But the other Indonesians took no notice of us, as we followed our Indonesian detainee into one of the bedrooms where he searched for his passport. He shared the room with six other Indonesians. There were no beds, but the floor was covered with seven dirty mattresses, interspersed with the belongings of the occupants. One other bedroom looked exactly the same. The house had the appearance of an Indonesian ‘doss house’. In Immigration jargon, this is a place where Indonesian illegal immigrants sometimes live. These houses are habitually owned by an Australian citizen of Indonesian origin, who charges illegal immigrants rent to live there. Conditions are habitually crowded because the occupants are only temporarily on the premises, moving to different Indonesian doss houses from time to time whenever they feel the necessity to evade immigration officers. Also, nobody bothers about maintenance of the doss houses because the illegal immigrants who use them are in no position to complain. Doss houses like this are scattered all over Sydney, giving their owners a handsome income. It’s all part of Australia’s illegal immigration industry. In the normal course of events, when immigration officers enter a doss house, the occupants bolt. They jump out of windows, hide in the ceiling or in closets, and do everything possible to evade arrest. But in this particular house we were then in the Indonesian occupants were taking no notice of us and I could not understand why, so I thought we should investigate. But we were
insufficiently resourced to investigate eleven Indonesians, and guard the
other Indonesian in our custody at the same time, so I needed
reinforcements. “Call in the nearest Immigration car,” I told the other
officer. He put out a general call on his portable radio, and within five
minutes a car arrived from our Investigations Unit at Bankstown with two
immigration officers on board. They happened to be passing by on their
way to another job and responded to our call. With four immigration
officers on the premises the Indonesians started to take more interest in
us, but still made no attempt to escape. I produced the search warrant I
had for the purposes of finding the passport we had come for, and
announced I would be checking the immigration status of all persons on
the premises. As if they had all been carefully drilled beforehand for this
purpose, all the Indonesians immediately produced their passports, and
we proceeded to check their status. We did this by relaying passport
details via mobile phone to my office, where other officers who had
already been alerted by my colleague, were standing by their computers.
Within minutes, the checks were complete, and to my amazement, all the
Indonesians on the premises (except the Indonesian whom we had
brought with us) were lawfully in Australia on bridging visas issued
automatically upon lodgment of protection visa applications immediately
upon arrival in Australia. That is to say, they were all asylum seekers. But
they didn’t look like refugees to me, so I asked them in Indonesian “Are
you people refugees?” They looked at me blankly, some shaking their
heads. “Then why are you in Australia?” I asked. “To find work” some said.
“Have you applied for refugee status?” I asked. “No” they all said. Then I
showed one man the bridging visa in his passport. “Do you know what that
is?” I asked him. “It is my work permit,” he said. In a sense, he was right,
because that bridging visa gave him permission to work in Australia
pending a decision on his refugee status application. But further
questioning revealed that neither he, nor any other occupant of that house
had the slightest idea that what they had applied for was refugee status in
Australia. All that had been handled by the people-smuggler’s agent who
told them only that they had been granted a work permit to stay in
Australia. They were currently living in this particular safe house, waiting
for the agent to find jobs for them. They were all part of a bogus refugee scam, and they had paid amounts varying from $4000 to $8000 each, to be trafficked into Australia for work purposes. I asked them who had arranged their entry to Australia, and they all gave the name of the people-smuggler Mariko had found. So we had stumbled upon his safe house in Sydney, as it usually happens in Immigration, by accident. I then called my superiors to explain that in the course of searching for the original passport we had come for, we had inadvertently stumbled across eleven bogus refugees, and what should be done with them. Nothing, I was told, they are all lawfully in Australia, and under the then current processing times, they would continue to be lawfully in Australia for the next three or four years. This was of course, the correct legal situation. We then had no lawful occasion to remain on the premises, so we had to leave, taking our original detainee and his passport with us. But before I left, I made a few more inquiries about how the system worked. Since none of Indonesians had anything to fear from us, they spoke freely. They told me that after the first week on the premises which was rent free, each was permitted to stay in the safe house for as long as he liked on payment of $50 rent per week. For this modest rent he was supplied with a mattress on the floor in a shared room, together with one meal of rice and tinned fish per day. One among these occupants of these premises was the house keeper, who slept alone in the third bedroom, with bags of rice and cases of tinned fish, rent free, on condition he collected the rent from all the others, and did what little catering for them that was supplied. The house keeper even showed me the book in which he kept the tally of who had paid what in rent. There were only twelve people on the premises, yet the book contained more than one hundred names. Where had all the others gone? Well, said the house keeper, no body liked living in these crowded conditions, so as soon as protection visa applications had been lodged and jobs were found, most of the house guests moved out to more comfortable accommodation where they could better enjoy the fruits of their illegal immigration into Australia. And why had they been so calm in our presence? Because the people-smuggler’s agent had told them that they were perfectly safe from immigration in this house, and except for the
man we had in custody, of course he was right. The house keeper added that the agent had told them that in the event of an Immigration raid, everyone was to remain calm and cooperate with the immigration officers. What about the man in our custody? I asked. Well, said the house keeper, the agent found him a job, but must have been a bit slow in lodging his false asylum application, and as a result his visitor visa must have expired, thereby leaving him illegally in Australia. But our visit here will remind the agent, the house keeper said, who will lodge the application before this man can be deported, and as it happened, he was right. The application for refugee status was lodged that very same day, and the following day our illegal immigrant was released on a bridging visa to become another satisfied client of this people-smuggler. There were dozens of Indonesian safe houses like this all over Sydney, each helping to perpetrate the asylum seeker hoax in Australia.

Sometimes I found that some illegal immigrants made it blatantly clear that they are here to stay and that nothing will send them home. In this context I was able to observe the immigration underworld in operation, but this time at the more affluent end of the spectrum. Because I spoke Indonesian, I often attracted telephone calls or other contact direct from Indonesians whom I had never met before, simply because word had spread through the Indonesian community that I spoke Indonesian. This made me a useful contact for them in the Department. One day in my office I answered a telephone call from an Indonesian female who said she had a friend with an immigration problem. I tried to inquire what it was all about but she didn’t give me enough detail on which to base any advice. She seemed pleasant enough, but the conversation was going nowhere, so I suggested her friend come into the office with his passport, and we would proceed from there. She asked if she could accompany him, and I consented, and an appointment for an interview with her friend was made. On the appointed day, this beautiful Indonesian girl arrived, accompanied by an older Indonesian man of Chinese descent. I asked him what the problem was, and he said simply “I want to know how I can stay in Australia.” I took his passport and did a status check. I found that
he had applied for asylum, been rejected, applied for review to the Refugee Review Tribunal, been rejected, and had now appealed to the Minister. This whole process had taken more than two years, but would soon reach a conclusion when the Minister made a decision. I invited the Indonesians into one of our interview rooms, where we all sat around a table. The door was open into our main office, and immigration staff passing by and seated nearby could have heard our conversation, but would not have understood it, because it was in Indonesian, and it went something like this: I said, “Are you a refugee?” and he said “No, I only applied for refugee status because I could not think of any other way to stay in Australia.” I said, “Well, your application has been rejected, and your review was rejected, and the matter is now awaiting the Minister’s decision. Without prejudging what the Minister will do, I would also expect a refusal from him. The Minister decides these matters promptly, so in the normal course of events I would expect him to reject your application within the next thirty days.” Then I told him he would have to go back to Indonesia. “But I have important business here,” the man said, “and a big house I bought in Kensington. You can see it as you drive by. Here is the address,” and he wrote the address on the note pad I had placed on the table. “You people patrol around that part of Sydney don’t you?”

“Yes”, I said, “frequently.”

“Good,” he said, “next time you are passing by, drop in for a cup of coffee.”

“Thank you,” I said, just to be polite, but with no intention of accepting his invitation. Then he added, “or, a massage.”

“A massage?” I queried. “Yes,” he said. I have girls working for me.” Because I assumed that some of these girls might be illegally in Australia, I began to take an interest in this information. “What sort of girls?” I asked.

“I have Thai girls, Malaysians, Indians, and Chinese.” he said.

“No Indonesians?” I asked, this time from a research perspective. “No”, he said, “it’s too much trouble getting work permits for them.”

At this stage I sought to terminate this conversation, and ease myself out gracefully. “Sorry,” I said, “I am only interested in Indonesian girls” which, as far as this research project was concerned, was of course
true. Then suddenly, the Indonesian girl said “Well, you can have me if you like,” and I was so astonished that I said nothing, and taking my silence to be a signal of acquiescence, she continued “which times suit you best, night times or week ends?” Then I realised why she was there. She was the bait. It was a honey trap, just like the ones I had used, except that this one was intended for me. But she also might have been a good source of information, maybe over lunch. So, “Lunch times,” I replied. “Okay, she said, “I’ll call you next week.” Meanwhile, her companion still wanted to pursue inquiries about staying in Australia. “What about if I get married?” he asked, “I could get one of my girls to marry me.”

“Well,” I said, “marriage to an Australian resident or citizen is an avenue to permanent residence in Australia, provided that the marriage is genuine.”

“That’s good,” he said, “I will arrange for a genuine marriage,” and the interview was over. And as they were leaving, he gave me his card. “Call me, if you need anything.” he said. I looked at the name on the card. It was “Johnny Evil”. (not the real name)

“It’s my Australian name,” he said.

The Department’s Code of Conduct required us to declare any offers of inducement. So I told my supervisor who was even more astonished than I, that I had been propositioned in the interview room. However, given the unusual approach, and the apparent occupation of Johnny Evil, and the possibility of continuing disclosure of immigration malpractice, it was agreed that some cautious attempt should be made to obtain further information from the girl. And, true to her word, the following week, she called again to advise me that she was available for lunch the next day. I suggested we meet outside the Immigration office at 12.30, which we did. She was dressed beautifully, and made up beautifully, and she reminded me of the high class call girls I had seen in Surabaya. I invited her to lunch at a nearby coffee shop but she declined saying, “No, wait for the car.” But before I could ask what car, a brand new Commodore drew up to the curb. She opened the rear door for me, and followed me in, and as I stepped into the car, I had a good look at the
affluent end of Australia’s immigration underworld.

The plush interior of the car was gaudy and garish and opulent, and like nothing I had ever seen before. The upholstery was made from a beautiful, soft, light coloured leather, and attached to the back of the front seats, facing the back seat passengers, was a compact well stocked mini bar. The car also contained a two way radio, and two mobile phones, one for the front seats and another for the back, and I was surprised to see that sitting on the other side of me in the back seat, was another beautiful Indonesian girl, and not only that, there was yet another girl in the front passenger seat. And the driver was none other than Johnny Evil. I almost couldn’t believe it. It was like something out of a James Bond movie. “We’ll go to my place,” said Johnny Evil, “and the girls will entertain you there.” But it was so obviously a set up, that I decided to bail out. “No” I said, “I don’t have time for that, I only have a half hour lunch. Pull over at that Japanese restaurant.” But there was nowhere to park, so ‘my’ girl and I got out and found a table at the restaurant, while the others parked the car nearby. “I wanted to have lunch with you alone,” I said, then I asked her, “why did you bring them?”

“Because I work for Johnny Evil,” she said, “I do what he tells me.” Nevertheless, we all had a pleasant lunch, but there was no mention of anything immigration. We spoke mostly about the situation in Indonesia, the Rupiah and President Suharto. And when it was all over, they drove me back to the office, and I haven’t seen any of them since. So I had to report total failure to recruit the girl as an informant, but even so, I assumed that I had not yet heard the last of Johnny Evil, and I was right, because, a few weeks after this event, I received another phone call, this time from a regular informant. She was reporting the opening of a new Indonesian restaurant in Sydney. So what was so surprising about a new Indonesian restaurant in Sydney? Well, she said, it’s sort of a businessman’s special luncheon restaurant, where, if a businessman likes a waitress, he gets to take her to one of the bedrooms at the back. A dessert of a special kind, not found in other Indonesian restaurants in Sydney. “Who owns this place?” I asked. She gave a perfect description of
the owner, then hesitatingly she added “But he has a funny sounding name, like Weevil, or Evil, or something like that. Maybe I got the name wrong.”

“No you didn’t” I said, “I know exactly who you mean.”

So Johnny Evil’s business empire was expanding. Not bad for an illegal immigrant who began his business in Australia with a $30 fee for a groundless asylum application, fortified by the bridging visa regime, strengthened with a forthcoming bogus marriage, prolonged by an endless review and appeal process, and all enabling him to stay in Australia for as long as he wants to stay, and he is not alone. In 1997-98, the Federal Court dismissed 423 appeals to it from foreigners whose applications to stay in Australia were rejected either by the Immigration Review Tribunal, or the Refugee Review Tribunal. Commenting on this, Immigration Minister Philip Ruddock said:

It is clear that many people who receive negative immigration related decisions from the Department of Immigration or independent tribunals, take legal action simply to prolong their stay in Australia. The false nature of many of these claims is obvious (McKinnon 1998).

It is not only obvious, it is abundantly obvious, as we shall see, when we take a look at some of these claims.

The Indonesian safe house, and Johnny Evil’s enterprise are just two of my observations of how illegal immigration from Indonesia operated. But in order to see the problem in its true perspective, it was necessary to survey a wider sample of illegal immigrants in Australia. For this purpose, I conducted two surveys in Australia during the course of this research.

(4) Surveys

Of the two surveys conducted in Australia as part of my research, the first involved questioning a sample of Indonesian illegal immigrants in
custody, and the second was an examination of a sample of refused applications for asylum lodged by Indonesians in Australia. The purpose of the first survey was to ascertain how Indonesians were bypassing our border controls to enter Australia and to remain in Australia illegally, and the purpose of the second survey was to establish what kinds of claims the Indonesian asylum seekers were making in their applications, given that their rejection rate was so high.

Whilst the first survey was easy to administer, it began as a bureaucratic nightmare. To begin with, the University was insisting that I obtain signed consent forms from each informant before questions relating to this survey were asked. On the other hand, the Department was insistence that no illegal immigrant questioned in custody for the purposes of this research project was to be identified. Since signing a consent form would automatically identify an informant as an illegal immigrant questioned for this project, there was a bureaucratic impasse.

The informants themselves were of the same view as the Department. That is, they were willing to cooperate by answering questions, but they refused to sign anything. In the end, I had to appear before the University Ethics Committee to hammer out a compromise. The major breakthrough occurred when the Committee agreed that no informant was to be identified, and that although the informants’ consent still had to be obtained, it could be sought and given verbally. All questions were to be asked verbally, and recorded statistically afterwards. This methodology suited me, because it matched the Department’s ‘contemporaneous notes’ procedure. The Department required all events of significance to be recorded, by taking contemporaneous notes. But it was often not practicable to record such events at the time they occurred. For example, if during an immigration raid, an illegal immigrant jumped out of a window and ran down the street, we did not stop to record the event while it was happening, otherwise we would never have caught him. On the contrary, pursuit was instantaneous, and the matter was recorded afterwards. In this context, ‘contemporaneous notes’ were not actually
made contemporaneously with the events they described, but as soon as practicable thereafter. In order to record all relevant information accurately after the event, officers had to remember everything said or done during the event, because the matter could have ended up in court months later. Prerequisites for this job included long memories of important events and conversations. That is how I remembered the events and conversations recorded in this thesis. It was all part of the training. So, in relation to the questionnaire, even though the recording was done after the interview, I could remember the answers easily. And although the Ethics Committee approved the format of the Questionnaire, and this method of recording the answers, they objected to one of the response options. This was optional answer 67, to the question “When unemployed, how have you survived in Australia?” Answer 67 was “stealing”. It had been inserted because I knew from experience that with no unemployment benefits to support them, many Indonesian illegal immigrants in Australia when unemployed, resorted to shoplifting in order to survive. In fact, that is how some of them came into our custody. They were caught shoplifting, then they were arrested by the police, who contacted us for a status check. When the shoplifter was found to be an illegal immigrant, the police as a matter of practice then passed that person into immigration custody for deportation, as a more effective option than prosecution for shoplifting. However, the Committee objected to this particular optional answer on the basis of the remote possibility that such an answer might have implicated the informant in matters unrelated to this research. When this objection was conveyed to the Department, the Department agreed with the Committee. Therefore, if such an answer was ever given in response to this question, this answer was not recorded on the questionnaire.

The questionnaire used for this survey is included in this thesis as Appendix 1. And although this questionnaire looks formal, it was actually administered in a very informal manner by talking informally with each informant, and recording nothing at the time. Immediately afterwards, in accordance with our contemporaneous note taking procedure, I would
complete the questionnaire myself in the absence of the informant, from answers which I remembered had been given to me during the interview. A separate questionnaire form was used for each informant’s answers, and the forms were numbered consecutively for statistical purposes. However, the informants never saw the questionnaire, and were never identified with any answer given nor with any form used.

Fifty illegal immigrants in immigration custody took part in this survey, which was conducted over several years. The size of the sample is representative of the number of Indonesians in the Department’s custody during any one year. For example, during 1993-1994, Australia wide, 105 Indonesian illegal immigrants were deported from custody, and 331 others made supervised departures. However, as I have already explained, interviewing illegal immigrants in custody for a research project is a tricky business, and I never even attempted to interview for survey purposes anyone in custody unless there was already in existence, a good rapport between us, and informed consent had been obtained.

Of course, the first prerequisite of this survey was to have Indonesian illegal immigrants in custody. So if there were none in custody at any particular time, then this survey could not then continue and it had to wait until the next Indonesian illegal immigrant was arrested. Such delays were unavoidable, because although this survey was by definition limited to Indonesians in custody, the Department’s Compliance program was not. The Department’s arrest target was non discriminatory, and was aimed at all illegal immigrants wherever found, irrespective of nationality. Thus, sometimes there were Indonesians in custody and sometimes there were not. The sample was further limited by interview opportunity. That is, some Indonesians who might have consented to be part of this research project, often departed Australia before I had an opportunity to interview them in the manner I have already described. This could also happen for example, if they had been arrested by officers other than myself late one night, and departed for Indonesia the following day, before I could get out to the Detention Centre to interview them.
This survey therefore of necessity proceeded in stops and starts, and only when the opportunity offered. In reality, it was limited to those Indonesians who were of sufficiently friendly disposition to talk with me, about matters related to this research. However, although the sample was for these reasons somewhat selective, the information obtained from those who were interviewed confirmed what our regular informants were telling us. The second survey was an analysis of Departmental records of refused applications for refugee status, lodged by Indonesians after their arrival in Australia. The reason for this analysis was that from observations I had made during routine visits to Indonesian safe houses, and doss houses, and from conversations with Indonesian incidental informants from time to time, it became obvious that of all the Indonesians we found or met, and who had lodged asylum applications, not one of them seemed to be a genuine refugee. In fact, as I have already explained, when questioned about their reasons for being in Australia most Indonesians stated emphatically that they were not asylum seekers, they were job seekers.

So the answer to the question of why the rejection rate was so high for Indonesian asylum seekers was simply because they were not genuine refugees. This was confirmed by the nature of the claims they were making in their asylum applications, as we shall see. To the uninitiated it would seem pointless for people to apply for asylum, if they were not genuine asylum seekers, but it soon transpired that the high rejection rate was not deterring Indonesian asylum applicants, because they did not care if they were rejected or not. What was attracting them to Australia was the work opportunity offered while their asylum applications were being processed, and the processing time usually took several years. So both from my own observations and also from the survey I had conducted it was clear that Australia’s onshore protection program was being used as a scam for Indonesians to work in Australia contrary to the intentions of the Migration Act. Even the Minister for Immigration acknowledged this was happening when in an address to the National Press Club in Canberra on 18 March 1998 he referred to
the current abuse of the Protection Visa system, whereby people apply for a protection visa solely to gain access to work rights and Medicare (Ruddock 1998, p.6).

In other words, the program had been hijacked for ‘work permit’ purposes.

The aim of this survey, then, was to find threads and patterns in the refugee applications which might indicate who was perpetrating this ‘work permit’ scam and how it was done. Now the reason that a process of asylum is available in Australia is because our onshore protection program is part of Australia’s international obligations as a signatory to the United Nations Convention and Protocol relating to the Status of Refugees. According to this Convention and Protocol, a refugee is any person who:

*owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it* (RRT 1996, p.2).

The sort of people envisaged by this definition were Bosnian Muslims fleeing ethnic cleansing by the Serbs, or Iraqi minorities fleeing the wrath of Sadam Hussein and so on. Even from Indonesia, genuine refugees might have been expected to flow into Australia from government atrocities committed in the provinces of West Irian, Aceh or East Timor. Therefore, it might have been expected that in their applications for asylum, genuine refugees from Indonesia would be making specific claims of atrocities committed against them, in terms of the United Nations Convention definition (hereinafter referred to as the “Convention”).

With a rejection rate of 99.5% it was of interest to know what kind of claims the Indonesian asylum applicants were making. To discover this, I analysed the claims made in the sample of rejected Indonesian asylum
applications which were used in this survey, and as part of this analysis, I devised what I refer to as a “persecution scale”. This scale was divided into ten distinct categories into which claims were distributed according to the gravity of the persecution alleged by the applicant. It was a sliding scale persecution index, designed to accommodate every asylum claim possible, from the most minor to the worst atrocity imaginable. In this sliding scale, Category 1 was intended for applications which listed no claims at all relating to persecution of the applicant in terms of the Convention, and Category 10 was intended for the most serious claims such as repeated rape, prolonged torture, unbearable trauma, persistent property damage, and similar atrocities associated with the persecution of people because of their race, religion or political beliefs. From Category 1 to Category 10, the intermediate categories allowed for graduated claims of incremental severity, so that all possible claims of persecution under the Convention could be accommodated within this scale.

For the purposes of this survey, I examined 200 rejected applications for refugee status. A separate work sheet was used for each application and the claims contained in each application were distributed into the persecution scale listed in each work sheet. This scale appears on each work sheet under the heading “Grounds of Application”. The same work sheet recorded other matters of statistical interest, such as the applicant’s year of arrival in Australia and the year the asylum application was lodged. The work sheet also recorded the duration of the application and other matters associated with this analysis of these refused refugee applications. Data collated from these work sheets is presented in Table 1, and an analysis of this data will follow later in this thesis.

(5) Locating illegal immigrants

The methodology used for locating Indonesian illegal immigrants for the purposes of this research project was the same as that used to locate all illegal immigrants for the Department, and it was contemporaneous. When the Department found an illegal immigrant, this event was said in
the jargon, to be a ‘location’. There were two kinds of locations. There was the ‘soft’ location when illegal immigrants for whatever reason approached the Department and surrendered themselves voluntarily, and there was the ‘hard’ location when premises were surrounded, entry was forced and an arrest was made under duress. There were of course less dramatic circumstances of a ‘hard’ location when the illegal immigrant when found did not resist and was involuntarily taken into immigration custody without any physical force being used. The distinction in the official reports was politely made like this: “Officers located 12,679 overstayers, including 3,703 who approached the Department for assistance” (DIMA 1998a, p.45). These 3,703 were ‘soft’ locations.

During the course of my research, some Indonesian illegal immigrants surrendered themselves voluntarily to the Department to obtain a free ride home, and others were delivered to me by an informant for the same reason, in the manner I have described. However, most illegal immigrants were not so desperate to return to Indonesia, and had no intention of being arrested or deported, or surrendering voluntarily. As a result, the Department’s Compliance Officers had to be proactive in finding people who did not want to be found. Australia is a big country. How to find someone in it, who does not want to be found?

It’s not so hard really, especially if the person sought is Indonesian, because as I have already mentioned, relative to other ethnic groups, there are not so many of them in Australia. Also, people are easily tracked by their habits. An Indonesian illegal, seeking anonymity from the Immigration Department, is unlikely to live where he is conspicuous. He would tend to live amongst other Indonesians, and as I have already mentioned, not among Indonesians living lawfully in Australia lest he be reported, but amongst other illegal Indonesians who are less likely to disclose his whereabouts, lest they jeopardise their own. This narrows the search field considerably. In Sydney for example, Indonesian illegals tended to live in certain parts of certain suburbs, all of which were already known to the Department. Then, seeking obscurity amongst Indonesians
of their own status, they tended to cluster into safe houses or doss houses, as I have already described. This meant that in small areas, they were big targets. But even though a target is big, it still has to be found. Illegals do not normally wait around to be arrested. They often bolt in panic at the slightest suspicion that the Department is operating in their neighbourhood, just like Ratih’s friend did when she ran down the street naked because she saw immigration vehicles through her bathroom window parking in the street outside. So not only did we need to know their real place of living or working, we also had to know when to find them there, because the immediate result of an untimely arrival at the right address might be failure of that search for that illegal for months if not for years until we found their new address unless of course he or she was silly enough to return to that same address again. So, our information on where and when to find a particular illegal, had to be precise in terms of the exact place and the exact time.

We therefore relied on a system of information management which former United States Defence Secretary Art Money (2002) refers to as “Vision 20-20 - getting the right information on the right person at the right place at the right time.” It had previously been known as the Admiralty System, although under different names it is used by most intelligence and law enforcement agencies, the whole world over. Basically it is a method for processing information from an amorphous mass to a definite target. By this method, information of whatever kind, is processed through four discrete stages. These are collection, evaluation, collation and assessment. The method is universally versatile, and can be used to find an enemy submarine, an escaped convict, or in our case, an illegal immigrant. The methodology has to be adjusted for the particular use to which it is put, and in Figure 1 I show how it was adjusted to find illegal immigrants. The methodology was the same for all occasions involving the search and location of all illegal immigrants, and in relation to any one particular illegal immigrant, the time frame from collection of information to arrest might take anything from ten minutes to two years. Against some illegals, it does not work very well.
For example, Rini would have been hard to locate by this method because she left little trace to follow. In Australia she had no bank account, no address, no tax return, no pay slip, and no bills to pay. In fact she was caught by accident during a routine brothel raid, and this shows the value of such raids. On the other hand most illegals like Diwi, were located by the 20-20 method. In her case she and her boyfriend were working (illegally) at an established factory which had a computerised payroll system. They had pay slips, tax returns, credit cards, electricity and telephone bills, rent receipts and mail deliveries in a paper trail which was relatively easy for the system to follow. Figure 1 shows the blending of my own research methodology with that of the Department. In fact, up to the location stage, it occurred simultaneously. But the Department of course, had first claim on arrested illegals and it was not until some time after they had been arrested that I was able, if at all, to interview them for the purposes of this thesis. Figure 1 shows that in the sifting of information concerning the whereabouts of illegal immigrants in Australia, the intelligence system accommodates a variety of information sources, a scale of information validity, and a range of source reliability. There is never any point in responding to improbable reports from unreliable sources, so information of this grading always remained at the evaluation stage, until overtaken by more reliable information. In practice, I never responded to any information until it had been confirmed by another independent and reliable source. I could explain how the various threads of information are cross tabulated to reveal the final details required at the target stage, but this information is classified. Suffice it to say that it is not rocket science. All that is required is perseverance and common sense, the basic tools of the ordinary immigration detective.

Summary of Methodology

The methodology for this project was based on real time illegal immigration at the front line. This whole project was like an anthropological excursion into the field of Australia’s illegal immigration
industry, and the illegal immigrants who made this research happen were not a distant blur of faces in the street. They were people I had got to know well, and even though they were illegals, some of them became my close friends. It is for this reason that I have spiced this section on methodology with anecdotes and dialogue, because although statistics can count the numbers of illegals in Australia, only anecdotes like these can tell their story.
PART A: THE POLICY CONTEXT

Introduction

Considine (1994, p.3) has noted that: “Everything in the policy world is really just process, the movement of people and programs around common problems such as education, transport or employment. None of the initiatives in these fields stays fixed for very long because the problems themselves keep moving and changing.” The same can be said about immigration policy, when we examine the implementation of immigration policy relating to the control of illegal immigration. As we shall see when we examine the marriage racket, problems encountered in immigration policy enforcement kept changing as some problems were solved while others popped up elsewhere down the immigration policy track.

One reason for the constantly changing problems was that the Department was using the wrong performance measuring technique. In his analysis of the Hawke Labor Government’s Financial Management Improvement Plan, Considine mentions the establishment of the Commonwealth’s Senior Executive Service (SES), which is still in place today. It was intended to be a management tool and it included procedures for rewarding and punishing senior staff according to specific output (Considine 1994, p.242). “The success of the SES officer” he says, “was now to be a matter of measuring output,” and the scheme used bonus payments to reward ‘productive’ managers. No doubt this kind of management tool works well in a factory environment, but in an Immigration Department, where duties included the discovery of and rejection of fraudulent applications for visas, how was ‘output’ to be measured? Perhaps by the number of fraudulent marriages detected? No. The measurement tool employed was the number of cases ‘finalised’. There were only two ways to finalise an application. It was either approved
or rejected. So in relation to applications for permanent residence based on marriage, it was much quicker to approve an application than it was to reject it since rejection involved extensive investigation to show that the marriage had been contrived. So when staff were constantly being badgered by management to increase ‘output’ most applications involving fraudulent marriages were approved instead of being rejected, and this is the reason why the marriage racket flourished. Neither the Hawke and Keating Labor Governments nor the succeeding Howard Liberal Government ever addressed the real issue involved, which was how to measure the ‘output’ of the Department’s Residence Section.

Even when some effort was made to investigate the fraud involved in these marriages of convenience, the effort itself was misdirected. Sheehan (1998, p. 214) claims that the marriage racket was the greatest immigration scam of all time yet there was no effective policy in place to test the basic component of the spouse visa, which is cohabitation. All that was required to test this component was a knock on the door to see who lived there. Door knocking is a common practice in Australia. The Salvation Army and other well known charities door knock seeking financial contributions, electoral officials door knock periodically seeking record confirmation, politicians door knock seeking electoral support, but not the Immigration Department seeking the truth in spouse visa applications. It is true that door knocking would not have disclosed the fraud in the more elaborate marriage scams which will be examined later in this thesis because in these particular scams it was axiomatic that the ‘married couples’ lived together. But in the vast majority of contrived marriages where the Australian ‘spouse’ was supplied by people-smugglers in the manner which will be described later, door knocking would have revealed that there was no cohabitation. Instead, in all applications for spouse visas the applicants were asked to supply ‘documentary evidence’ of cohabitation which, as we shall see, was easily fabricated. In all these cases, failure to detect the fraud and reject the applications was a direct example of what Consadine (1994, p.246) refers to as “major obstacles in simple forms of performance management.”
According to Peter John (1998, p.2) each element of a political system contains its share of interest groups, bureaucrats, elected politicians, and the general public, all operating within a complex institutional structure of voting systems, legislatures, courts, bureaucracies and public agencies. Thus it was with that element of our political system which concerned the development and implementation of Australia’s immigration policy. John’s analysis will unfold to show the various roles played by the immigration interest groups, the immigration bureaucrats, the politicians and the general public, the legislation, the courts and the other public agencies which in their own way were involved in the development of immigration policy. In the context in which this thesis is cast, the immigration interest groups include the lawyers who specialised in immigration matters and also the migration agents. The people-smugglers and the illegal immigrants who were the focus of this research were also ‘interest groups’ in this context as were the ethnic communities to which these illegal immigrants belonged. The bureaucrats involved in immigration policy implementation were immigration officers like myself, and the elected politicians involved were the Minister for Immigration, and the Shadow Minister, and in a lesser role the Members of the Australian Parliament collectively. The members of the Australian public among whom the illegal immigrants lived and worked included those who voted in the Federal elections which occurred during the period covered by this thesis and who collectively, (in the majority), changed the government in 1996, and were thus instrumental in bringing about the immigration policy increments which followed this election.

The impact the Federal Parliament, the courts and the other public agencies like the Immigration Department, the Refugee Review Tribunal, and the Immigration detention centres variously had on the development of immigration policy will be explained. I will also show how this complex institutional structure conglomerated to develop the methodology for dealing with the abuse and misuse of Australia’s visa system and in particular, within the larger framework of Australia’s immigration policy, the methodology for dealing with the abuse of the onshore protection program.
Policy changes, according to John (1998, p.26), emerge from a pre-existing set of public decisions and regulations, and policy change generally, is limited to minor variations in a pattern of continuity. There is no beginning and no end to public policy he says. For the most part he says, there is only the middle, and that is the position taken in this thesis. The middle period covered by this thesis begins in 1984 with Australia’s immigration policy already well in place, and it ends in 2004 with Australia’s immigration policy still well in place.

During this period, this middle section of Australia’s immigration policy continuum saw some significant events in the evolving pattern of enforcement of Australia’s immigration policy. For example, 1986 saw the Australian Citizenship Act amended to abolish the organised creeping immigration practice of ‘baby dumping’ which is explained in Chapter 1 of this thesis under the sub-heading of the same name. In 1989 Australia’s immigration policy was codified into the Migration Regulations, a mammoth undertaking which changed policy which the courts would not enforce, into law which then bound them to comply. In this instance it was not the policy which changed but the disposition of the courts towards it. That same year saw the Tiananmen Square Massacre, following which thousands of Chinese illegal immigrants were eventually granted permanent residence in Australia. These events also saw the emergence of the Triad as a major interest group in the further development of our immigration policy. During that year, in an effort to preclude the rash of contrived marriages by which illegal immigrants were obtaining permanent residence in Australia, the first of the two-step spouse visas was introduced. Henceforth foreign spouses applying onshore for a spouse visa were only given a temporary visa, to be converted two years later into a permanent spouse visa if the marriage was then still considered to be genuine and continuing. By 1994 with illegal immigration now out of control, a comprehensive set of amendments to the Migration Act 1958 introduced mandatory detention for all illegal immigrants and a bridging visa regime designed to keep immigration under better control.
The 1994 amendments introduced such a dramatic incremental change to the enforcement of the immigration policy that they could be considered to be an entirely new replacement Act. However, in its wisdom Parliament decided to give the new Act the same name that it had prior to the 1994 amendments, that is, The Migration Act 1958, even though some policy implementation after the amendments was radically different to what it had been before. So in order to distinguish the Act after the 1994 amendments from what it was before these amendments, it is referred to in this thesis as the “new Act” and the Act as in force before these amendments is referred to as the “old Act” as explained in the definition of “The Act.”

But by far the most significant increment to the development of immigration law enforcement policy came with the change of government in 1996. Significant policy changes could have occurred prior to the change but during the thirteen years of the previous Labor administration, there were four changes to the ministry, and as Wanna (1997,p. 62) has pointed out, new Ministers often know very little about their new department. Few have managed anything before they became a Minister and many have never worked in large complex organisations. They are not well prepared for the job of administering a department and certainly they are not selected for their administrative qualities. They were originally selected because their parties thought they could win local seats, and few would ever have tried to administer a policy. On the other hand, Philip Ruddock who for thirteen years during the previous Labor Government had been shadow Immigration Minister was appointed Immigration Minister in the new Howard Liberal Government. He arrived in office with a well developed policy vision which he proceeded to implement without delay, and much of this thesis is devoted to explaining the implementation of these policy changes which collectively were henceforth to be known as “the Ruddock reforms.” The effects of these policy reforms are explained in detail during the consideration of the various immigration scams, and the policy changes which were taken to combat these scams. In fairness to the Labor Immigration Ministers it should also be mentioned that the
same degree of Ministerial inexperience was later to plague the Liberals, following the elevation of Philip Ruddock to the position of Attorney-General. The two Liberal Immigration Ministers who followed him did not have his cultivated grasp of immigration issues, and a series of deportation and detention debacles were later to contribute to the demise of the Howard Liberal Government in 2007.

The Ruddock Reforms were nevertheless still part of John’s (1998) “pattern of continuity” in the development of Australia’s immigration policy and Parkin and Hardcastle (1999, p. 498) have pointed out that most of the time in Australia’s national history a strong bipartisan consensus about immigration and ethnic affairs has prevailed among political leaders. Examples of the bipartisan consensus can be seen during the parliamentary debates which preceded the implementation of each policy increment. For example, during the introduction of the 1994 amendments to the Act (i.e. those which converted the “old Act” into the “new Act,”) Philip Ruddock, then shadow Immigration Minister, told Parliament:

Let me say at the first instance that the Migration Legislation Amendment Bill which makes changes to the Migration Act as amended by the Migration Reform Act will have the support of the opposition in this place as it had in the Senate.

(Hansard, House of Reps. 24 March 1994, p. 2169)
[My emphasis]

This bipartisan consensus is also seen in other important initiatives which the Labor Government introduced into its immigration policy, and which the succeeding Liberal Government treated as if these initiatives were its own. For example, the Liberal Government could have repealed the 1986 amendment to the Citizenship Act which changed the Australian born birthright overnight, but instead the incoming government adopted it. The Liberals might even have found good cause to abolish Labor’s ‘Ten Year Rule’ which was part of this amendment, and which as explained later in this thesis, was later to cause significant problems in enforcement
policy implementation. But instead, the Liberals accepted this rule and it remained in force even under succeeding Liberal governments. The Liberals could also have abolished the two step spouse visa for onshore applications, on the grounds that it was unfair to genuine marriages. But not only did they accept this policy development, they also extended it to include offshore spouse applications, as we shall see (Ruddock 1996b). In fact the Liberals cracked down even more harshly on contrived marriages by introducing the increment of the ‘twice in a lifetime rule’ (DIMA Fact Sheet 30, 2003). The Liberals might also have been tempted to repeal the controversial Labor Government’s initiative of mandatory detention for unlawful arrivees, but they extended this also, to include detention of unlawful arrivees, even before they arrive. That is, their boats were stopped and boarded at sea before they could land in Australia (Marr & Wilkinson 2003). But the Labor Party, when in opposition, balked at the next increment in this policy development designed to deter unlawful boat arrivals. This increment involved the excision of Australian islands from the Migration zone, and the transporting of asylum seekers who were stopped at sea or who landed on the excised islands to nearby foreign countries where their refugee applications were processed. It is true that there was bipartisan agreement on the excision of Christmas Island, the Cocos Islands, and Ashmore Reef, but that happened under the duress of an impending election, as we shall see, and there has been no further bipartisan agreement to what has now become known as ‘The Pacific Solution’ to illegal arrivals by sea.

Apart from this most recent hiccup in the bipartisan policy arrangements it has to be acknowledged that generally speaking there is a continuum of evolution in Immigration policy which transcends political party affiliation into a continual display of bipartisanship in what John (1998) has referred to as “a pattern of continuity” in policy development. With this pattern of continuity in mind, I will now examine how immigration policy implementation developed to meet some of the more notorious immigration scams designed to circumvent Australia’s Immigration laws.
CHAPTER ONE
People-smugglers

Introduction

Although one focus of this thesis is on illegal immigration from Indonesia, a single focus on Indonesia alone would be in danger of conveying a perception that Indonesia is the only source of illegal immigration into Australia. At first glance, such a perception would seem to be entirely reasonable, given that Indonesia is impoverished, overpopulated, and perpetually at the mercy of natural disasters, famine, and internal outbreaks of ethnic violence. So, in the same way that people overflow into Thailand from Burma, or into other countries of contiguous sanctuary from other notorious trouble spots around the world, reason would suggest a continuing overflow of people from Indonesia into Australia. Because Australia is geographically isolated from the rest of the world except for Indonesia, and because of continual media reports of Indonesian fishing vessels poaching in Australian territorial waters, and because Indonesia is Australia's largest near neighbour, it would seem logical that Indonesia would loom large as the source of most of the illegal immigration into Australia.

But this is not so. For although it is indeed one source of illegal immigrants, Indonesia is not the only source country. In fact in the period covered by this thesis most of the illegal immigrants who came to Australia originated from countries other than Indonesia. For example, in 1995 the total number of illegal immigrants in Australia was 51,330 of which only 2,400 were Indonesian (DIMA Fact Sheet 6). In 1996 the total number was 45,100 of which only 2,292 were Indonesian (DIMA Fact Sheet 80), and by 2001 the total number had risen to 60,102 but only 3,555 were Indonesian (DIMA 2002c). In fact although the number of illegals in Australia varied marginally year by year during this period, the
proportion of Indonesian illegals remained more or less the same and was never more than 6% of the total. So, just as the sounds of an orchestra are sourced from many different instruments, so the orchestrated flow of illegal immigrants into Australia was also sourced from many different countries. It is therefore important to view illegal immigration from Indonesia in the context in which it occurred, that is, as a small tributary in a wider flow of illegal immigrants from a kaleidoscope of different nationalities using a matrix of many different methods to enter and remain in Australia. To see how illegal immigration from Indonesia fits into this total picture of illegal immigration in Australia, it is necessary to show that the failure of policy to deal with Indonesian illegal immigrants in Australia was only one immigration policy failure amongst many other immigration policy failures. In fact as an example of policy failure it pales into insignificance when compared with the failure to deal with the Chinese immigration rackets or the contrived marriage rackets which I will examine later in this chapter. On the other hand, when dealing with other forms of illegal immigration there have been some brilliant policy successes, notably the successful policy which terminated the intergenerational racket of creeping migration known in the jargon as ‘baby dumping’ and the successful policy which stopped illegal immigration by small boat across Australia’s northern approaches.

To be seen against the broader picture of illegal immigration in Australia it is also necessary to compare the different methods used by Indonesian illegal immigrants to stay in Australia with some of the methods used by other illegal immigrants from other countries. Whilst it is true that many of the methods used for illegal immigration into Australia could have been used by people of any nationality, in reality it transpired that as people smugglers of different countries became specialists in different methods of illegal immigration, some methods were favoured more by people of some nationalities than by people of other nationalities. In fact, as we shall see, over the years that illegal immigration into Australia was flourishing, some methods of illegal entry almost became ethnic specific, and in Part B of this thesis I describe those methods of illegal entry into
Australia which were favoured by Indonesians. In the meantime, to set the context into which illegal immigration from Indonesia occurred, I will describe some of the other methods favoured by people of other countries. For example, in Chapter One I will describe the methods used in the biggest people-smuggling operations during this period which brought into Australia thousands of illegal immigrants from China, and later in this chapter I will describe the different methods used in the marriage racket. Later, in PART B of this thesis I will describe the methods used by Indonesians. Put together, both PART A and PART B will then describe illegal immigration in the context in which it occurred during the period covered by this thesis. I will begin by addressing the most visible and most controversial form of illegal entry into Australia and one which also brought about a dramatic change in immigration policy. This was the organised illegal entry by small boat through Australia’s northern approaches.

The Tampa Precedent

The 29th August 2001 was an auspicious date for people smugglers. On that day, units of Australia’s Special Air Service Regiment (SAS) boarded the Norwegian container ship MS Tampa off the Australian Territory of Christmas Island, to prevent 438 intending illegal immigrants from landing on Australian soil (Marr 2001). It was the first time in Australia’s immigration history that any Australian government had acted decisively to stop people-smuggling in its tracks, literally. This date saw a new Australian policy on people-smuggling. It was to become known as ‘The Pacific Solution’, and the action which culminated in the preventing of people landing from the container vessel Tampa, was to be known as ‘The Tampa Precedent’.

Events which led to the Tampa Precedent and the subsequent development of the Pacific Solution are analysed in great detail by Marr
and Wilkinson (2003). Basically, the principle of the Pacific Solution was to physically deny entry on to the Australian mainland of people arriving in an unauthorised manner by boat. Vessels carrying such people were to be intercepted on the high seas, and the people aboard the vessels conveyed to processing centres outside Australia’s migration zone. An interim arrangement was hastily made with the governments of Nauru (Niesche & Garran 2001) and Papua New Guinea (O’Brien et al 2001) for processing centres to be set up in those countries, until a permanent processing centre could be established on Christmas Island (Saunders & O’Brien 2002).

Traditionally, people smugglers had generally been directing their vessels from Indonesia to the Australian landfalls close to Indonesia. These landfalls were in the Australian offshore Territories of Christmas Island, Cocos Islands and Ashmore Reef, and from these Territories, clients of people smugglers were traditionally conveyed by Australian authorities from these Australian territories to the Australian mainland for the processing of their claims to remain in Australia.

However, for the purposes of the Pacific Solution, these offshore Territories were by Act of the Australian Parliament, excluded from Australia’s Migration Zone (DIMA Fact Sheet 71). This exclusion from the Migration Zone created some interesting legal fictions. People who arrived on these excluded Territories without authorisation, that is, without a visa, were by Act of Parliament not really there, although everyone else there was. Because these people were legally not on Australian soil, they were not able to lodge an on shore protection visa application, since technically, they had not yet arrived onshore.

The Tampa Precedent had also seen new jargon entering the Immigration lexicon. The people coming in the boats organised by the people-smugglers were officially referred to as ‘suspected unlawful non citizens.’ The jargon soon reduced this mouthful to its acronym SUNCs, to be pronounced as ‘sun-sees.’ Similarly, a boat which carried ‘sun sees’
was officially designated as a ‘suspected illegal entry vessel’ also more conveniently reduced by the jargon to its acronym SIEV and pronounced as “sieve”. These vessels were also further identified individually by numbers in the sequence in which they had been found in or approaching Australian waters. Thus; the suspected unlawful non citizens found aboard the fifth suspected illegal entry vessel since the Tampa Precedent became known in the jargon as ‘SUNCs on SIEV5’ (pronounced as “sun sees on sieve five”).

Boat people had been arriving illegally on Australia’s northern landfalls via Indonesia, since the end of the Vietnam War, and intermittently thereafter throughout the last quarter of the 20th century. Throughout this period the Department was sufficiently geared up to receive this influx of boat people in newly created detention centres established at Port Hedland in Western Australia, and Woomera in South Australia, and had been doing so, all that time. So what caused this sudden reversal of policy? It is true that both Labor and Liberal Australian governments had consistently been threatening to take action against people smuggling with every intermittent surge in unlawful arrivals. For example, as far back as 1992 the previous Labor government had declared a policy to stop boat people arrivals (Crouch 1992). However, lacking sufficient momentum to continue such a policy in operation whenever the flow of unlawful arrivals subsided, whatever Ministerial initiatives at this time that were directed against people smuggling never made it through the intricacies of the Missouri Syndrome. What had happened was that each of these unlawful boat arrivals had generated its own ‘issue attention cycle’ (Davis et al 1990, p.120) quoting Downs (1972, p. 38) in which “a problem suddenly leaps into prominence, remains there for a short time, and then – though still largely unresolved – gradually fades from the centre of public attention.” Thus, over the years, each unlawful boat arrival caused a flurry of media activity and Ministerial statements, then as time dragged on during the processing of asylum applications public concern waned, the media lost interest, and the continuing ‘boat-people’ problem remained unresolved. It is true however
that the then Labor Government did introduce the policy of mandatory
detention for unauthorised arrivals, but as we shall soon see, that policy
did not deter the people-smugglers from sending more illegals into
Australia.

Thus, despite the declared policy of deterrence, unauthorised boat
arrivals increased dramatically, every year, from only one boat in 1989, to
nineteen in 1996, and 86 in 1999, and not only did the number of boats
increase, but the number of passengers per boat also increased. For
example, during the three years 1989, 1990 and 1991 only nine
unauthorised vessels arrived, but they brought a total of no less than 437
Illegals. On the other hand, before the Tampa Precedent cut off the flow
of unauthorised boat arrivals in August 2001, the last nine boats to arrive
in Australia all within the last two and a half months before that cut off
carried a total of 1,786 illegal immigrants (DIMA 2002 Fact Sheet 74a).
So from 1989 until the Tampa precedent in 2001, people smugglers had
succeeded in sending to northern Australia a total of 259 boats, containing
in total, 13,475 illegal immigrants, (DIMA 2002, Fact Sheet 74a) and
comparing the first nine boats with the last nine boats, it can be seen that
the flow of illegal immigrants into Australia by boat had increased during
this period from twelve per month to 714 per month. The alarm bells
ringing in Canberra could be heard all over Australia and it was clear that
unless there was to be a more decisive policy to stop the flow of boat
people, then the same kind of non-stop ferry service which Guinness
(1990, p. 119) describes people-smugglers as operating from Indonesia
into Malaysia, would soon be operating from Indonesia to Australia.

It is true that ever since the Howard Liberal Government came to
office in 1996 its immigration policy was continually at odds with both the
Federal Court and a hostile Senate. Proposed changes to the Migration
Act which might have seen a tighter policy against people-smuggling but
with less dramatic impact, had been log jammed in the Senate for years,
until finally passed on its last sitting day of 2001. It happened so
suddenly, it almost seemed that the policy of the Labor Party, then in
opposition, had suddenly been reversed. Because, after opposing the more dramatic of the Coalition’s immigration policies for so long, the Labor Party suddenly accepted them, and what had precipitated this unexpected meeting of disparate legislative minds to accommodate such dramatic policy changes as the Tampa Precedent and the Pacific Solution? An election.

Until the Tampa Precedent, the Liberal Government was facing certain defeat at the polls. A Newspoll pathway analysis which compared voting intentions over the time span beginning immediately prior to the Tampa precedent until the 2001 Federal elections shows that immediately prior to the Tampa Precedent, the Coalition was trailing the Labor opposition by 40:42. Four days after the SAS boarded the Tampa, and one day after the Prime Minister announced the Pacific Solution policy, the polls showed the Coalition ahead by 45:39. As the Tampa precedent trailed off into the Pacific Solution, and the SUNCs from the Tampa and subsequent SIEVS were transported to Nauru and Manus Island, the Coalition maintained its lead in the polls up to the election of 10 November that year (The Weekend Australian 2002, 11-12 May, p.25). At that election, the Coalition won its third term in office, with its Pacific Solution policy firmly entrenched. Meanwhile with such a reversal in voting intention to guide it prior to the election the Labor opposition saw no option but to help to pass the enabling legislation on which the policy of the Pacific Solution was based.

Part of this legislation included the excision of Christmas Island, the Cocos Islands, and Ashmore Reef from the Australian Migration Zone. However, nine months after the election, when the Coalition Government sought to extend the exclusions to include all the Australian northern offshore islands, including those in the Torres Strait, the Labor opposition with a majority in the Senate, blocked the enabling legislation again (Millett 2002), just as it had done before, prior to the Tampa precedent. So whilst there was bipartisan support in the Senate for the exclusion of Christmas Island, Cocos Island and Ashmore reef (the so called Ocean
Territories of the Commonwealth) from the Migration Zone, there was no further bipartisan support for the Government’s exclusion policy in relation to all the other islands closer to Australia. Nevertheless, the Pacific Solution remained firm government policy, together with the policy of mandatory detention for unlawful arrivals.

The policy contrast between the treatment of fraudulent asylum seekers who arrived unlawfully, with the treatment of those who arrived lawfully (that is, with a visa, however obtained) could not be more different. For notwithstanding the drama and hyperbole surrounding the Tampa incident and the Pacific Solution, the actual unlawful arrivals by sea have only ever been a minority of the greater flow of illegal immigrants into Australia. This is because the vast majority of asylum seekers come by air. In this context, Steketee (2002) quoting Departmental figures noted that in the financial year ending 30 June 2001, 3,933 people arrived by boat without visas, and sought Asylum in Australia. That same year, 8,586 people who arrived by air with visas, also applied for asylum in Australia. That means that the asylum seeker air arrivees outnumbered the asylum seeker boat arrivees by more than two to one, and the anomaly goes further. The success rate amongst boat arrivees was higher than that of the air arrives, so why were the boat arrivees treated more harshly?

What differentiated the treatment of the two different types of asylum seeker arrivals was mandatory detention. Those who arrived by sea without a visa faced mandatory detention upon arrival, whilst those who arrived by air with a visa did not. The air arrivees received a bridging visa upon lodgement of their asylum applications and were thereafter released into the Australian community, however fraudulent their applications may have been. The release continued until the final appeal processes was over, however fraudulent those appeals may have been, and although the policy reason for treating the two different categories of arrivees differently was clear, the basis for this differential treatment was not. This is because as Steketee (2002) has pointed out, asylum seekers who arrived by air with a visa were just as illegal, as asylum
seekers who arrived by sea *without* a visa. The reason for this is that the air arrivees obtained their visas by falsely representing themselves to be bona fide entrants in whatever visa category they obtained. In other words, the policy was to recognise air arrivees as having arrived ‘legally’ because they had visas, even if those visas were obtained by false representation, and this recognition was the reason for the differential treatment of asylum seekers after arrival. Here again we are back to the problem of definition of who is or who is not, an ‘illegal immigrant.’ For as Salt and Stein (1997, p.470) have already stated, immigration status is often confused because migrants may change from a legal to an illegal position, and traffickers clearly exploit legal as well as illegal methods of entry. But by definition stated earlier in this thesis, asylum seekers who arrived by air with fraudulently obtained visas were of equal immigration status as the boat people. That is, both these categories of arrivees were, by definition, ‘illegal immigrants.’ This is the common sense view as stated by Steketee (2002). So, whilst this thesis saw no status difference for asylum seekers, between visaed air arrival and non-visaed boat arrival the Government’s established policy did.

The explanation of this policy was to be found in the Department’s publication “Unauthorised Arrivals and Detention” (DIMA 2002a). The policy was in existence years before the current Liberal Government came into office. But it was this extraordinary policy dichotomy which has been responsible for some of the most blatant villainy and intrigue ever perpetrated in Australia within the realm of what is collectively referred to as ‘immigration malpractice.’ It is within this realm that illegal immigration from Indonesia is perpetrated, in the manner which will be described in some detail later. To show that in manipulating Australia’s immigration policies to their advantage Indonesian people-smugglers were not alone, I will describe how the biggest people-smuggling scam ever committed in Australia was conducted under our very eyes, and within the full protection of the law and the policy at the time. It was typical of Salt and Stein’s observation (1997) that people-traffickers clearly exploit legal as well as illegal methods of entry.
The Chinese People-Smuggling Racket

The scam I refer to here involves the trafficking of thousands of Chinese people into Australia, and considering it occurred under our ‘controlled’ immigration policy it was a racket so bold and so blatant that if I had not been there to watch it happening, I never would have believed that it ever could have happened. In 1986, there were rumours of ‘Asian sweat shops’ mushrooming in Sydney. These sweat shops, according to the rumours, were factories where Chinese coolie labourers were imported and employed at wages and conditions far below the legal minimum standards in New South Wales. It was also rumoured, that the sweat shop owners were making huge profits from this exploitation of foreign Asian labour in Australia. But given Australia’s controlled immigration policy, such rumours would seem to have been unfounded. Nevertheless, the rumours persisted, but at the time I did not have any Chinese informants from whom I could ask information in confidence, and I am certain none of the other officers had any either. Then, by chance, one of our officers had a friend whose daughter had inherited a small clothing factory in Sydney’s inner west. The daughter complained that she could not compete against two other factories which had recently opened nearby, because their prices were undercutting her own. These two factories she said, employed only Chinese women. We became suspicious. Careful surveillance of these factories indicated appalling working conditions inside.

We raided the factories one afternoon, and found on the premises, a total of 140 Chinese women. I only visited one of these factories where I found inside sixty Chinese women working shoulder to shoulder, in cramped conditions, all operating old style treadle sewing machines, and producing all manner of womens’ clothing for some very well known Australian fashion labels. The building was crammed full of bolts of material and racks of finished clothing, and there was hardly any room to move about inside. The womens’ passports, were held in the office safe, by their employer, an Australian citizen of Chinese origin. The passports
indicated that the Chinese women held student visas. In ordinary circumstances, except when on holidays from their learning institution, foreign students were restricted to twenty hours work per week. However, documents on the premises indicated these women worked in the factory full time, and were therefore in clear breach of their visa conditions. So, a decision was made to cancel the visas and take the Chinese women into custody. The employer objected strenuously, and said he would report us to Canberra, which, we were later to learn, he did.

In the meantime, as our own prison van was too small to convey all the women together, we hired two buses and took the women to our City office. On the way in to our City office, I sat next to one of the Chinese who spoke a smattering of English. From her I learned that all the women worked ten hours each day for five days each week and did not receive any pay in the form of cash in hand. She said that they earned good money, being “more than they could earn in China” but that at the moment, all their earnings went to pay off their contracts. At that stage I did not know what their ‘contracts’ were, and her English was not good enough for me to pursue the matter then and there. She said they travelled by bus each way from their dormitory somewhere in Sydney where they lived, to the factory where they worked, then back to the dormitory again afterwards. She did not know the address of the dormitory, but it was owned by her employer she said, and all the women lived there. On Saturdays, she said, they were taken for bus rides to different places. She said she had been to Taronga Zoo, Manly beach, Canberra, the Blue Mountains and so on, so they had seen a fair bit of tourist Australia, with all expenses paid, but always in a group. She said they had no money for shopping, but that all their necessities were supplied free by the employer. On Sundays, she said, they rested in the dormitory, did their laundry, wrote letters home and so on, but they were not allowed out. The girl was describing what we were later to understand was the typical sweat shop employment system used in large scale people-smuggling organizations, not only in Australia, but in other countries also, for example, in the United States (Burgess 1993).
particular instance, because there were so many Chinese to process, our visa cancelling task stretched well into the night, and it was nearly midnight when we received a telephone call from Canberra. The call came from an irate senior Immigration executive, who had been woken up, especially to tell us to stop cancelling the visas, and to release the women and their passports back into the custody of their employer. When we explained that we had stumbled upon a sweat shop with student visa holders working illegally at below award conditions and so on in an obvious immigration scam, we were told simply that the factories we had raided were “part of a Foreign Affairs initiative, in agreement with the Chinese Government.” We didn’t believe it, but we now had no authority to continue to hold the women in custody, so we released them as instructed.

I had intended to make further inquiries about this matter, so on the pretext of visiting the factory for another reason, I returned to the site a few days later. If this enterprise had all been legitimate, then the factory might have been expected to have continued to operate at the same location. But as I walked into the building, I was amazed to find that it was empty. Everything we had seen inside the building during our previous visit had been removed. The floors were swept clean. There was not a single thread of cotton to be seen, and the building was an empty shell. The entire business had vanished, like Brigadoon. It had relocated elsewhere, where we would never find it again. So much for this legitimate ‘Foreign Affairs initiative.’ We did not realise it at that time, but we had discovered one aspect of the biggest people-smuggling scam ever perpetrated in Australia.

This scam we were soon to learn, was not confined to these two clothing factories, because soon after this factory raid, and while engaged in a different Immigration Compliance operation, we happened to pass by a Chinese market garden in what is now part of one of the newer western suburbs of Sydney. The garden is no longer there, having been overtaken by Sydney’s western suburban sprawl. But on this occasion, it was a mosaic of what looked like terraced paddy fields, with workers in conical
hats. They were spreading what we later discovered was human fertiliser from watering cans suspended one on each side of poles carried on their shoulders.

It was a post card picture of old China, except that the paddy fields were not growing rice in China, but vegetables in Australia. Curious, we stopped to investigate. In the middle of the garden there was a tin shed, and as we walked across the headlands of the paddy fields to approach this shed, the Chinese peasants took no notice of us. The shed, we discovered, was where the garden workers lived, in squalid conditions, sleeping on the dirt floor, and collecting their own waste in drums as fertilizer for the gardens. The food the gardeners had prepared looked wholesome enough. It was rice and dried fish and vegetables they grew in their fields. But there were no amenities: No showers, no toilets apart from the drums they used, no electricity (they used hurricane lamps) and no heating facilities apart from a fire on the dirt floor. The cooking facilities consisted of a double-burner kerosene pump-up primus. Their beds were sleeping mats on the dirt floor, and a pile of dirty blankets. The workers’ living conditions were so primitive that it was hard to believe we were still in Australia.

The workers were middle-aged, thin, wizened and illiterate and none of them could speak English. But with an interpreter speaking over our two-way portable radio, we were able to communicate with the Chinese gardeners and to conduct a visa check which indicated how these illiterate peasants had got through our controlled immigration program. They were all ‘students’ with current student visas, and they had been enrolled in an English language school which they knew nothing about because they said they had never attended any school since arriving in Australia. They too, we were to learn, were also part of the ‘Foreign Affairs initiative’ which was itself part of a well intentioned program begun in 1986 as the “English Language Intensive Course for Overseas Students.” This program became know in the Department’s jargon and to journalists who would later criticize it by its acronym
“ELICOS”. It was an attempt to make a thriving export education industry by bringing overseas students into Australia, and it certainly did thrive, although not for reasons which its planners had originally intended. In those days, because there was no adequate regulatory student visa framework in existence, ELICOS was an open invitation to people smugglers. Ramsey (1990) explained it this way:

All the Government insisted on was that students pay their tuition fees up front. What this meant was that even for a six month English language course, foreign students had to pay $5,000 to $6000 in advance. The money came with their applications. When the application was accepted, the students got the necessary visa. And that is all we asked for; the money and the application. We didn’t even monitor whether or not the students actually took their courses. Australia became what the bureaucrats in Immigration had always thought: a soft touch for illegal immigrants. The ELICOS program was the conduit.

Ramsay was right, because in those days anyone could apply to come to Australia as a ‘student’, and as a result, thousands of Chinese did. To cope with this sudden surge of ‘students,’ English language schools sprang up all over Sydney. Some of them were genuine, and it has to be admitted, that some of the students were also genuine. But during another Compliance operation unrelated to students I had occasion to visit some of these language schools, and most of these ‘schools’ if they could be called that, were dingy little one room enterprises, with one or two teachers, a black board, and a few dictionaries, and no more than a dozen or so genuine students in attendance, and it was no wonder there were so few, because they did not seem to be learning much.

In fact, I discovered that the majority of ELICOS students had never attended, and even if they had, the single classroom would have been too small to have accommodated all of the enrolled students, all at the same time. Many of these schools made huge profits from the fees of non-attending ‘students’ and there was no mechanism in those days to enforce attendance. I had wondered at the time how these Chinese non-attending
students whom we had found as factory workers and peasant labourers could ever have afforded the fares to come to Australia, and also how they could have afforded the school enrolment fees and all the other ancillary costs involved in temporary migration to Australia. If the majority of these people were not genuine students and did not know anything about ELICOS, how had they come to Australia? They seemed to have been insufficiently educated to have done it all by themselves alone so there was obviously an organisation of some kind which had brought them here, and it was my regular informant Mariko who discovered it. It was about this time that our acquaintance began, when Mariko was then at the height of her prostitution career with incredible affluence and earnings. Her clientele were the wealthy businessmen of the Sydney Eastern Suburbs, and although she guarded them jealously from other predators, her only interest in me was as a conduit for getting rid of her competitors.

As I mentioned earlier, Mariko would report to me any prostitutes whom she thought were illegal immigrants and whom she considered to be threatening her income by enticing her clients away from her. Of course Mariko had no control over Australian women, or foreign-born prostitutes who had Australian residency. But as the sex industry in Sydney was heavily populated with women who were illegal immigrants Mariko set about reducing her competition whenever she could and she did this with exaggerated zeal. She was particularly interested in getting rid of those illegal immigrants, whom she thought might be enticing away her regular and favourite customers who paid enormous fees for her services. Despite the aura of glamour and excitement which surrounds the image of high class prostitution in Australia, for the girls actually involved in it, it is a nasty cut-throat business. Mariko was part of this nasty cut-throat business, and she would have willingly cut throats, figuratively speaking that is, in order to maintain her status in this nasty business. It should be mentioned here that Mariko was not into high production ratios or hurried sexual sales. On the contrary, she was the very modern version of the traditional Japanese geisha. She gave her clients an exotic escape from their stressful corporate lives, or their
nagging corporate wives, and in return they were extraordinarily generous to her. But the high fees Mariko charged eliminated all but the wealthiest suitors, most of whom knew each other, because it was from each other that they had come to know her. Of course Mariko’s circle of suitors changed over time, as some came and others left, but because they were such a restricted clientele and her fees were so high, it only took one or two of her regular visitors to suddenly stray away, for Mariko’s income to plummet. It was for this reason that Mariko guarded her circle of suitors from any possible poachers, with intense jealousy.

At first Mariko took no interest in the influx of Chinese into Sydney because at first they did not seem to be a threat to her. Then one by one, some of her regular suitors became less regular, and with her senses ever tuned to the nuances of her profession Mariko heard that an exclusive Chinese brothel had just opened for business in Sydney’s Chinatown. It was exclusive in several senses. First, only beautiful Chinese girls worked there, and secondly, its fees were so high, that only wealthy businessmen could afford a visit; the same sort of wealthy men who visited Mariko, and she was quick to realise where some of her clients were straying.

Mariko learned about most information which interested her, like the best real estate to buy or the best stocks on the market, from the wealthy businessmen who visited her, and, quizzing these same clients in the same way that she quizzed them about stocks and shares, Mariko learned more about the Chinese brothel. Now, in the normal course of events, this brothel would have been outside of what Mariko considered to be her Eastern Suburbs territory, and ordinarily, she would have taken no interest in it at all. But because the clients who had told her about it, also began to stray into it, Mariko began to wonder how to get rid of it.

I knew nothing about this brothel until one day Mariko mentioned it to me when we were having coffee together. Mariko said that according to the information she had been able to glean from her wayward clients,
the women in this brothel came from the Peoples Republic of China (PRC). This was extraordinary news to me. I knew that there were many ethnic Chinese prostitutes in Sydney, but those I knew about came from Hong Kong, Singapore or Malaysia, and this was the first brothel I had heard of with prostitutes exclusively from mainland China. Not surprisingly, when I returned to the office, this news created a flurry of interest, and in particular an interest in how the PRC prostitutes got here, and what sort of visas they had.

A few days later, Mariko telephoned me. She was fuming about this brothel, begging me to do something to stop the Chinese girls in it from poaching her clients. But I had to tell her that there was no way I could help her at this stage, because we in the Department did not know where this brothel was, nor the immigration status of its women. We needed more information before we could act, and I suggested that as she was closer to the action than we were she could help by trying to find the location of this brothel from those of her clients who had been there. I said that she should then go and meet some of the women who worked there, and talk to them in a friendly manner. After all, the friendly approach was part of her modus operandi for sleuthing out the immigration status of her competitors.

Amongst her other talents, Mariko was fluent in Cantonese, but we knew that there would be an ethnicity problem of course, in that she was Japanese and they were Chinese. This meant that from the beginning of any contact with them, Mariko would be confronting a traditional inter-ethnic wall of reticence. But her ethnicity had never hindered her inquiries before, and after much coaxing from me, Mariko finally did it. It took time but Mariko was successful in obtaining the information she sought and although her inquiries had been discrete, she was furious to learn that all the Chinese women in this brothel were legally in Australia. They all had student visas. Mariko was even more furious when I told her that as far as the Department was concerned, the women were untouchable, at least until we had sufficient information to justify the cancellation of their visas.
By now we in the Compliance Branch of the Department were beginning to see how extensively the ELICOS scheme was being abused. But we still could not understand how so many Chinese ‘students’ had become involved in such a widespread system of visa abuse. Apart from the common issue of Australian student visas in our Embassy in China before departure, there seemed to be no obvious connection between the Chinese who worked in the clothing factories with those who worked in the market gardens and those who worked in the brothel and all the other places which we were now finding a Chinese workforce in Sydney. Was there some system other than ELICOS behind the students? Who was organising their travel, and their employment and accommodation in Australia? How could we unravel this mystery? The Chinese brothel seemed to be the logical place to start, and from information supplied to me by Mariko, I now knew its location. But my application for a search warrant to enter the brothel was refused, on the grounds that since our only information was that all the Chinese working there had current student visas, there were therefore no grounds for supposing that there were any illegal immigrants on the premises.

Some of my colleagues in the Department suggested that if I could not enter the brothel officially, I should do so privately, that is, as a client, and once inside, they said, my suspicions might be legally aroused sufficiently to ground a search warrant for a subsequent official visit. But there were problems with this suggestion. First, Mariko had told me that because of the exclusive nature of this brothel, it did not operate like most brothels in Sydney where clients could walk in, look around, and select a girl of their choice, or if they did not like any there, they could walk out again without charge. This one had an entrance fee of $1000, which covered all the exotic pleasures to be found inside. Satisfaction was guaranteed she said, but security arrangements were in place so as to admit only those who first paid the fee. Secondly, as a humble public servant, I did not fit the corporate image of the wealthy Sydney businessmen who frequented these premises and who could afford to pay the $1000. Mariko of course offered to pay for me, but I would have been
on dangerous ethical grounds if I had accepted. Thirdly, even if I had managed to gain entry I would have been on my own, with no official backup. Thus, if the true nature of the visit ever became known to the brothel management, I could have been in serious personal trouble, not only from them but also from my own Department, and if the whole story were ever leaked to the press, the political consequences would have been horrendous. The answer was therefore clear; no search warrant, no entry. We tried to obtain search warrants for other less sensitive premises where we now knew other Chinese ‘students’ were being employed but the answer was the same as that we had been given for the brothel. That is, no suspicion of illegal immigrants on the premises; no warrant.

Persistent requests by other Compliance officers in Sydney to investigate the origins and extent of visa abuse with the aim of canceling the visas of bogus ‘students’ always received the same reply. At first, the explanations were always verbal, passed down one level to the next in the Departmental chain of command until they verbally reached me. But in a Department constantly flooded by circular instructions, policy statements, procedural directives and regulations of one kind or another, verbal instructions seemed to be very much out of place. Finally, our requests were met by a missive from Canberra, which might have come directly from the producers of that famous television series “Yes Minister” (Lynn & Jay, 1984). In this instruction we were told to “refer all Compliance matters relating to students to Canberra,” where of course our referrals would lie in bureaucratic limbo awaiting a response which would never come.

The basis of these instructions, we were further told, was that “the ELICOS program was under review” and that because ELICOS was a tripartite arrangement between The Departments of Foreign Affairs, The Department of Education Employment and Training, and our own Immigration Department, there was to be no Compliance action without prior consultation with our counterparts in the other departments. It was
all gobbledygook of course, officialese doublespeak designed to cover up the real reason for the student visa scams, and the real reason was the monumental failure to give ELICOS any adequate form of regulatory procedures. As a result of this policy failure, immigration malpractice had been attracted on a scale so huge that we had not yet even begun to understand its full extent. Could it have been that, whether by design or accident, the abuse of ELICOS was being protected? That is to say, whilst ELICOS was the established Government policy, was there also a parallel policy which protected the abuse of ELICOS? On the other hand, was the Department’s administration of foreign students so ensnared by conflicting policy directives that it was trapped into inertia by the Missouri Syndrome?

Whatever the reason, the instruction was clear enough: Unless specifically directed to the contrary, bogus students were off limits to us. The reason why these bogus students were off limits to us was because ELICOS had been promoted by the Hawke Labor Government as a great new export industry, and visa issuance for it was not the responsibility of the Immigration Department, but had been given to the Commonwealth Education Department. This Department had no experience in dealing with immigration fraud and therefore its lack of rigorous bona fide checks for students and its failure to investigate the mushrooming private colleges offering ELICOS courses was largely responsible for the ELICOS debacle. Fenna (2004, p. 194) has said that executive dominance in policy formation to the exclusion of other stakeholders can result in blind emphasis on the short term, and that (p.4) even the best intended policies can fail miserably and have entirely perverse consequences. ELICOS was a classic example of this. As a result, the Commonwealth Government welcomed ELICOS students regardless of their bona fides. So, within the first three years since the inception of ELICOS, our Department made no effort to stop the flow of bogus Chinese students into Australia, and officially, I was never allowed to investigate how this flow was happening. But I did learn about it unofficially, because undeterred by our Department’s inaction against the bogus students, and spurred on by the
desire to learn more about the Chinese brothel and the girls in it who were competing against her, Mariko went off on a frolic of her own.

So, while concentrating on maintaining a competitive professional edge over the Chinese prostitutes, Mariko began to spend more time being friendly with them. During this excursion of hers, Mariko maintained a bitter sweet relationship both with her straying clients and also with the girls who were poaching them. It was an invidious situation for her to be in, but she persevered despite the odds, and from time to time she passed on to me snippets of information about her adventures. At first Mariko was puzzled at the rapid turnover of girls in the brothel, so that no sooner had she become good friends with some girls, than these girls would disappear from the scene to be replaced by others. I suggested that this was the nature of the industry and that even her own clientele changed over time and that elsewhere in Sydney, sex industry workers frequently switched between different brothels, or went freelance, whenever they saw an advantage in going elsewhere. Mariko, of course knew this, but she insisted that the turnover amongst the Chinese prostitutes was faster than is usual in this industry. It was in her pursuit of the reason for this rapid turnover, that gave us the first clue to the way the Chinese student smuggling racket was operated. Because she was a frequent visitor to the brothel, Mariko got to know the Chinese managers well, and through them, other Chinese organisers involved in other aspects of what was to become the biggest people-smuggling racket ever to operate inside Australia.

How Mariko gained the confidence of the organisers sufficiently to learn the details of their people-smuggling racket need not concern us here, but it was from this beginning that the full story of this Chinese people-smuggling racket later emerged. At first, I only received snippets of this story second hand; a filtered version, being Mariko’s account of what the Chinese organisers had told her, augmented by her own observations and also by her own discussions with the brothel girls. However, as time went by, I was able to corroborate her account by
intermittent observations of my own, and as the excesses of the racket became ever more obvious, more pieces of this sociological puzzle fell into place. Finally, when the people-smuggling operations all became so blatant that they began to excite the interests of the media, Sydney based journalists started to report different aspects of the racket, as these different aspects emerged (Bottom 1989) and (Rees 1991). So, it was, of course, no surprise to learn that the girls in the Chinese brothel which began Mariko’s quest, had been supplied by the same organisation which had supplied factory workers to the sweat shops, and farm labourers to the market gardens which I had previously visited.

It was a surprise, however, to learn that there were hundreds of different enterprises like these all over metropolitan Sydney ranging from small Chinese restaurants to big multinational factories whose labour force had been supplied by the same organisation. It was a further surprise to learn that the same organization supplied prostitutes to ten other brothels scattered across Sydney. They were all part of the same people-smuggling racket. The Chinese organisers knew that some brothel girls could attract higher fees than others, and in order to obtain a greater income more quickly from a selected clientele, the prettiest girls were assigned to the Chinatown brothel. It was here where they began to attract Mariko’s clients, and also her subsequent wrath. This in turn, for reasons already explained, sparked off her interest in this people-smuggling racket.

The Chinese people-smuggling racket is mentioned here first because it demonstrates the extent to which policy can easily fail in what would appear to be the simple implementation of an ordinary immigration program. Secondly, this racket clearly demonstrates Salt and Stein’s view (1997) that immigration status is often confused because migrants may change from a legal to an illegal status, and that traffickers clearly exploit legal as well as illegal methods of entry. Thirdly, it demonstrates Lee’s (1969, p. 292) hypothesis of how migration pathways are created which “pass over intervening obstacles as elevated highways pass over
the country side” for as we shall see, the apparently formidable obstacles of Australia’s controlled immigration policy, were passed over by the Chinese people-smugglers, as though those obstacles did not exist. Finally, this racket is mentioned because it has important parallels with the Indonesian people-smugglers and the Indonesian illegal immigrants whose experiences in Australia form the main focus of this thesis.

In his study of Chinese Triads, O’Callaghan (1978, p. 53) noted that the coolie trade, at its worst, was almost akin to the African slave trade. It was therefore no surprise to learn that the Chinese brothel girls whom Mariko had befriended were sex slaves. That is, they had been assigned temporarily to work in the brothels whether they liked it or not, and were in no position to object because of the nature of the ‘contract’ under which they had been smuggled into Australia. Fortunately, for those who did not like being prostitutes, and most of them did not, they were released from the brothel as soon as their ‘contracts’ had expired, and it was this early release and rapid turnover of girls in this brothel which had first attracted Mariko’s attention.

The organisers of this Chinese people-smuggling racket were associated with a notorious Triad, known as 14K, but I never learned the extent of their association with this Triad. Investigations into the operations of this people-smuggling racket were complicated by the fact that its organisers carried on at the same time, a legitimate import and export business, together with a legitimate immigration business, under the auspices of a network of legitimate Australian registered companies. The people-smuggling business therefore operated in the shadows of several legitimate front companies. As these legitimate organisations are now in a reincarnation of different company names, current and ‘respected’ clients of the Department, I cannot name them, and as this thesis is concerned only with that part of the organisation which was associated with the Triad, that part of the organisation which operated the Chinese people-smuggling racket will hereinafter be referred to simply as “the Triad.”
The forte of the Triad was malpractice in relation to two separate Immigration programs. The first was ELICOS, which I have already mentioned and the other was the Business Migration Program, known in the jargon by its initials, BMP. Of course, to the Department, these programs were the inspiration of two separate policies, relating in theory, to different sets of skills being the basis for migration to Australia. But to the triad, skills were irrelevant. They were running a business of transporting people from China to Australia, and they weren’t interested in anyone’s skills. To them, it didn’t much matter who had which skills, or who had none at all, or who went into one program, or who went into the other, so long as the Triad made money in the process, and make money they did.

From the policy aspect there was a significant difference between the ELICOS and the BMP programs. ELICOS was intended as a temporary migration of students for the duration of 3 month or 6 month English language courses after which they would return home, while BMP was intended for the permanent settlement in Australia of business migrants. However, as far as the people-smuggling operation was concerned, the only difference between the two was that BMP migrants had a bigger resettlement debt to repay to the Triad. The basis of both streams of Triad organised Chinese people-smuggling into Australia was “go now, pay later” and for the Triad’s Chinese clients, the choice was simple: after arrival, they could pay more for immediate permanent residence status in Australia, or pay less and remain in Australia with illegal status until legal permanent residence status could be obtained for them. Like ELICOS, BMP began as a noble concept. The theory was that the economic quality of Australia’s population, and its interface with the booming markets of Asia would be enhanced by attracting successful Asian businessmen to resettle in Australia. All that was required was proof of transfer of investment capital to Australia, in accordance with an age grade minimum benchmark. For example, applicants under the age of forty were required to pay a minimum of $350,000 together with a settlement amount of $150,000 and the benchmark was higher for older
migrants (Lee & Aubin 1989). So for a migrant claiming to be under 40, all that was required was a total of $500,000. To wealthy Asian businessmen, the offer was certainly attractive.

It was even more attractive to the Triad, although it took the Triad some time to realise how open BMP was for profitable exploration, and it was not until after the Tienanmen Square massacre in 1989 that the Triad saw the real value of BMP as a companion to ELICOS in its people-smuggling operations. Like its exploitation of ELICOS, the Triad’s exploitation of BMP was simplicity itself. It simply recycled multiple capital investment allotments of $500,000 through successive BMP applicants, and it did this easily, because, like the lack of follow up with ELICOS (Ramsay 1990), there was never any immediate follow up by the Department or any other Commonwealth agency as to whether or not the BMP money was ever actually invested in legitimate business enterprises in Australia.

The Triad’s BMP operation worked this way: the time which elapsed from lodgement of a BMP application overseas until the time the ‘business migrant’ arrived in Australia, was roughly three months. So a Triad client opting to be smuggled into Australia under BMP would only need $500,000 for three months. For each of its BMP clients, the Triad would deposit that amount into an Australian bank in the name of the client prior to application lodgement, and this deposit together with some suitably contrived business documents would satisfy the immigration requirements for a BMP permanent visa. Then, after arrival in Australia, the client would return the amount to the Triad, and close the account. The Triad would then use the same funds in another account to smuggle in another ‘business migrant.’ Meanwhile, the first mentioned ‘business migrant’ would be supplied with another identity and would disappear from official sight, but not from the Triad’s sight. He would be accommodated in a Triad doss house and set to work to repay his resettlement fee. This fee would consist of three month’s interest on $500,000 together with ancillary costs associated with the application
and other charges imposed by the Triad and would amount to something like $40,000. But even when employed as a factory worker, a farm labourer, or a kitchen hand in multiple jobs assigned under the Triad’s slave labour or sweat shop conditions, the ‘business migrant’ could pay out his contract with the Triad in little more than a year. For a poverty stricken uneducated Chinese peasant who could not possibly meet the criteria for business migration to Australia, it was an extraordinary opportunity to bypass all normal immigration controls and to resettle in Australia.

As with ELICOS, the Triad’s abuse of BMP was so blatant, that its exploits were soon noted in the media. In 1989, Lee and Aubin reported “widespread concern that the Business Migration Program was being abused” and the following year Hills (1990) reported that a survey commissioned by the Department found that of the 2,403 principal ‘business migrants’ who had come to Australia on BMP visas only 103 were actually running a business. In that same year, Richardson and Robertson (1990) reported that a Federal Joint Parliamentary Accounts Committee inquiry was advised by Australian Federal Police that they believed that

some people were arriving in Australia on the Business Migration Program using funds collected from organised crime and that funds were recycled to help other migrants come to Australia.

(my emphasis)

and that “about 10,000 people of a migrant intake of 126,000 will arrive in Australia under the program this financial year.”

In the following year (1991) at another hearing of the Joint Parliamentary Committee on Public Accounts, the Department publicly admitted for the first time, that “recycling of investment money by more than one business migrant does occur” (Taylor 1991). That same report noted that “The Minister for Immigration, Gerry Hand, will take to cabinet next month proposals for a substantial reform of the program” and as we
shall see, there were more dramatic results, because the Business Migration Program was not reformed, it was abolished, later that same year.

Meanwhile, a member of the Public Accounts committee was reported as saying that “it appeared that a significant proportion of business migrants - estimates varied between 50 and 90 per cent- had not gone into business at all” and the Department was reported to be investigating allegations in the BMP of “forged papers and bogus bank accounts.” (Jones 1991). The Committee’s report concluded that the Department’s monitoring of BMP had been “woefully inadequate” (Cooper 1991). But even if the Department’s administration of BMP was woefully inadequate, and as we have seen, its administration of ELICOS was no better, it has to be acknowledged from the very beginning that in its people-smuggling operation, the Triad displayed extraordinary organisational genius. It possessed an amazing ability to bypass the well established immigration controls that in ordinary circumstances never would have qualified its thousands of Chinese clients for migration to Australia.

The Triad made its money from doing its clients the favour of bringing them to Australia. In return, it expected them to honour their ‘contracts’ and because of its ferocious reputation, the Triad was able to maintain absolute control over its clients, even though the terms of these ‘contracts’ were to ordinary Australians, unjust, cruel and inhumane. On arrival in Australia, the clients generally found that their work and living conditions were appalling. But as these conditions were temporary, lasting only until the ‘contract’ was fulfilled, no client of the triad to my knowledge, ever complained. Why would they, since for them the end result was successful resettlement in Australia.

The most surprising feature of the Chinese people-smuggling racket was that it was based, as I have already mentioned, on the ‘come now, pay later’ principle. The Triad paid all fees, all expenses, and made
all the arrangements in advance, free to the applicants in the first instance, but on condition that all expenses would be refunded with interest by the applicants after arrival in Australia. This meant that any ordinary poverty stricken peasant of no formal education could use this avenue of illegal migration to come to Australia either as a ‘business migrant’ or as a ‘student.’ I use the word “applicant” here deliberately, because the people-smugglers’ clients began their journey to Australia as applicants for genuine Australian visas, issued by the Australian embassy in China. Even though their identities may have been fake, and their applications false, they arrived in Australia prima facie as holders of genuine Australian visas.

The second most surprising feature of this racket was that although the Triad had tentacles which reached deeply into China, its principal operators were Australian businessmen of Chinese descent, using Australian capital, earning huge profits for themselves, here in Australia. Another surprising feature of this racket was that the Triad promised its ELICOS ‘students’ permanent settlement in Australia, notwithstanding that these ‘students’ at the time of their arrival would never have qualified for permanent residence under Australia’s controlled migration program. But as we shall see, the rules were subsequently changed to accommodate them.

Finally, there was the ‘contract’. The ‘contract’ was that the Triad would bring the applicant to Australia, free of charge until after arrival. On arrival in Australia, the Triad found employment for the client, but on condition that the resettlement costs be paid back immediately by instalments from the client’s wages. Usually, the Triad supplied free accommodation, but took the entire weekly wage until the resettlement costs had been paid off in full. Thereafter, the client was released from the ‘contract’, free at last. In the meantime it was understood that the employment would be harsh and tedious, and the accommodation would be basic. I have already described the crowded working conditions I saw in the clothing factory and the very basic accommodation conditions I saw
in the vegetable gardens, and on several occasions, I had the opportunity to see how some of the others lived.

The first occasion was unofficial, in the sense that I was not engaged in a Compliance operation. Mariko, and I were in Chinatown and she said she had something of interest to show me. She took me into one of Chinatown’s high rise buildings. It was an ordinary commercial building, one floor upon another, each more or less identical to the others, with lifts and toilets at one end and office or commercial space in rooms each side of a central corridor. Open to the public, the building was noisy and teeming with workers and customers, most of whom were Asian. Being Japanese, Mariko blended into the crowded corridors perfectly, while I and the few other Caucasians in the building looked somewhat out of place, as it often happens in Australia when Caucasians venture inside an established ethnic enclave. On one floor, between a small dressmaking shop and an ironmonger’s shop was another covered shopfront with a closed door.

Without knocking, Mariko opened the door and walked inside. I followed, astonished. In a cluttered space, no bigger than the adjoining small shops were sixteen bunks, in tiers of four, flush against each wall. Four of the bunks were in use, the occupiers asleep. From the other bunks the personal effects of their absent occupiers spilled over onto the floor wherever there was space available. The room stank of unwashed clothing, and of soy sauce and dried fish. It was a Triad doss house. So, sixteen Chinese illegals lived here. But there were thousands more in Sydney, and where did they live? Everywhere Mariko said, in similar rooms like this, above street level Chinese restaurants, warehouses and shops all around Chinatown and in some adjoining suburbs, deliberately scattered thus, to avoid attracting official attention. Certainly, if Mariko had not shown me, I would never have found this one. But now that I knew where to look, from time to time thereafter, during subsequent Compliance assignments unrelated to students, we often found other Triad doss houses. But we could never take action against any ‘students’
found on the premises, for reasons already explained.

In order to be repaid the resettlement costs as quickly as possible, the Triad often assigned an applicant to more than one job, for example, as a kitchen hand in one restaurant Monday to Friday, as a cleaner to a building supervisor week nights, and as a waiter in another restaurant during week ends. If the assignment was to a factory, the Triad might arrange for the applicant to work overtime or in double shifts. The Triad was a hard taskmaster, and it did not care if its clients were overworked, unhappy or exhausted. It was running a people-smuggling business for profit, and the more money its clients made, the faster they were able to pay their resettlement debts to the Triad. During the life of the ‘contract’, the Triad’s clients had no say where they would be employed. Thus pretty girls were liable to be assigned against their will to any brothel, and the prettiest to the Chinatown brothel. The only saving grace in distasteful assignments such as these, was that although the resettlement fees were high, the Triad always credited its clients with the full amount of their earnings, but in all cases, the Triad would keep all wages earned until the ‘contract’ was paid out. Until then it accommodated and fed its clients but paid them nothing. For the girls who hated working in brothels, or for anyone else dissatisfied with their assignment, the Triad had only one answer. This was, that the aberrations of their employment were only a passing nightmare, and that the sooner they paid off the resettlement fee, the faster they would be released from the ‘contract’, free to settle in mainstream Australia. Thus, if for an ELICOS ‘student’, the resettlement fee was $10,000, a girl assigned to a brothel could earn that amount within a month and would then be released from her ‘contract’. Once the ‘contract’ was paid out, the Triad had no further immediate interest in the client. However, the Triad always retained a residual interest and for a fee, would further assist the client in subsequent resettlement matters, such as finding a better job or repatriating wages to the family back in China and so on. For, as O’Callaghan (1978, p. 42) found, in strange surroundings, a triad was often the only link the Chinese had with their families back in the homeland, and their only protection in an alien society.
As we shall see, this protection function was activated in Australia, whenever it was needed. However harsh its repayment policy was, the Triad always honoured its resettlement commitments and this is why it could always attract a continuous stream of clients into its people-smuggling racket. Of course the Triad’s clients also had to honour their resettlement commitments, and these were to repay their resettlement ‘fees’ as quickly as possible. Thus their commitment was to work the double shifts, overtime, or multiple jobs assigned by the Triad. The student visa and the BMP visa were simply mechanisms for the Triad to settle its clients in Australia, and within its forced labour regime, there was no room for genuine BMP migrants or genuine students within the life of the contract. In fact, in the course of my dealings with the Triad’s clients, I never met one who was a genuine business migrant or a genuine student.

This continuous stream of smuggled Chinese was harboured in Sydney by a revolving door employment system which operated in this way: as soon as a client had repaid the resettlement fee, that client’s accommodation and job were then available for reassignment to a new incoming client. As Mariko had discovered, girls assigned to brothels did not stay there long and were quickly replaced by other girls who could, in the same way, quickly pay out their ‘contracts’. Similar, although not so rapid, turnover of workers in other jobs controlled by the Triad was also easily achieved where the Triad had some influence on management, for example in a Chinese owned enterprise. Thus, where the Triad was supplying kitchen hands to a particular Chinese restaurant, exactly who washed the plates or who scoured the pots did not much matter to the Chinese owner, so long as the work was done. The Triad could therefore replace a paid-out client in that kitchen at any time with an incoming newly arrived client without disrupting the tempo of the restaurant. The Triad still collected the pay, whichever of its clients was working there. But where the Triad had no influence over the management of the enterprise, for example in the factory of a multinational company, it was still able to achieve a turnover of clients by a method which can only be described as simple genius. The Triad rotated successive clients through the same
identity. *Revolving door identity* was not possible in an enterprise which only had few employees and where the management knew them all personally. So, of course, the Triad did not operate in such places. It operated in big factories which employed more than 500 people, and where most of the workers were Asian.

Any visitor to the big factories in Sydney’s western suburbs in those days would have seen the factory floor populated by Australia’s newest migrants, who were for the most part, of Asian, Pacific Island or Middle Eastern origin. Of these, the Asians predominated, and amongst the Asians, the Chinese soon predominated. Many employers told me that they preferred an Asian work force, since Asians worked hard, rarely took sickies, never complained, and never went on strike. Unknown to management, workers supplied by the Triad were of course an even better workforce, since they were under the total control of the Triad. So, provided that the work quality was good and the quotas were met, and there were no complaints, managers told me they were loath to interfere on the factory floor. In many factories, recruitment of new workers was often left to the foremen who could be trusted to fill job vacancies with compliant new workers. Meanwhile, isolated in their air conditioned offices above the factory floor were the managers and staff; not always Australian, sometimes American or European, but generally not Asian. Between management and workers there was often a communication problem which was generally resolved by appointing foremen of the same ethnic origin as the workers. Foremen who spoke good English and who could train new workers and communicate with them in their own language were very useful to any management team employing a non-English speaking work force. A foreman, innocently recruited by management, but in reality salted into the factory by the Triad, was also very useful to the Triad. Of course, even if the thought had ever crossed their minds, the managers never would have known if any of the foremen were members of the Triad.

Where a foreman was a member of the Triad it was a simple
matter for the Triad to rotate clients through the same identity. This was especially so in the bigger factories where despite the much vaunted government policy of multiculturalism, there was no cultural assimilation on the factory floor. In the lunch rooms and in the factory canteens, where each ethnic group congregated separately from the others, a new face amongst the 100-odd Chinese workers there went entirely unnoticed in the other ethnic groups. The other Chinese workers, ever mindful of the shadowy presence of the Triad, who did notice, knew better than to ask. To the human resources staffers who had little contact with the factory floor, the individual workers were only a file, a name on a pay slip, or a computer entry. In the early days when pay packets were distributed, and workers filed past the pay desk to sign the pay roll, a signature in the form of a Chinese character, to a Caucasian pay clerk, was just another squiggle amongst all the other squiggles, and unless there was a complaint or a pay roll dispute, there was no reason to check that the face matched the signature. Of course, amongst the Chinese workers, there never was a complaint or a pay roll dispute if there was a Triad presence on the factory floor. More recently, when pays were transferred directly into workers’ bank accounts, there was even less personal contact between payroll staffers and workers. So with the employer’s pay responsibility complete upon paying the worker’s pay into his bank account, the Triad simply held the worker’s ATM card and withdrew the worker’s pay from the bank account at its leisure.

Another factor which made revolving door identity easy in the larger multinationals was that because of promotions, transfers, resignations or retirements, the pay roll staff was constantly changing over time. This meant that no one would know that the worker currently being paid as (not his real name) Mr Wing Wang Wong, was not that same man who was recruited under that name several years previously. Even when workers across Australia became individually identified by the ‘fail safe’ method of the personal tax file number, Mr Wing Wang Wong’s tax file number was passed on from one Triad client to the next and assumed by whoever was currently reincarnated as that employee under that name, in
that factory. Even more amazing, was the identity card check. Those factories which required workers to hold identity cards and to display them when entering the premises also posed no problems for the Triad. To the bored Caucasian or Middle Eastern security guards at the gates, an ID card for a Chinese worker looked much the same as any other ID card for any other Chinese worker, provided that the photo on the card bore some resemblance to the face of the worker. That is, black hair, sallow skin, Asian eyes, inscrutable expression etc, for a one-photo-fits-all kind of assessment. In any case, as far as the guards were concerned, there was never any reason to scrutinise each card closely so long as every worker had one, and the Triad made sure that they did. Thus, after repayment of the resettlement debt and subsequent release from his contract, (using the same fictitious name for the purposes of this thesis), the identity card of Mr Wing Wong was passed from one Triad client to the next, together with his tax file number and any other identity which would establish him as a long-serving company employee. In this way, many Triad clients in turn served their time in the same factory under the same name. So, while paying off their resettlement debts to the Triad, thousands of Chinese illegal immigrants all over Sydney were slotted into the established workforce in this way, passing through the same recycled identities which had been secreted into many different factories.

The Chinese ELICOS ‘students’ having overstayed their student visas in the process, had to be content with their illegal status until the Triad could arrange permanent residence in Australia for them. The situation was somewhat different for the BMP migrants who had already arrived as permanent residents. They were in some danger of having their permanent visas cancelled because of the fraudulent manner in which these visas had been obtained. However, cancellation was unlikely because after arrival, the Triad had already arranged for them to ‘disappear’ with false identities. So, unless discovered accidentally, they would live safely in Australia under their fraudulently obtained permanent residence status. As far as the Triad was concerned, the main difference between ELICOS and BMP was that the BMP migrants had a
bigger resettlement debt to repay.

The temporary illegal status of the ELICOS ‘students’ and the precarious ‘legal’ status of the BMP migrants did them no harm for as long as the Department was gripped by inertia over this whole Chinese people-smuggling problem, which, within two years, was totally out of control. By 1991, the number of BMP migrants together with their dependants in Australia totalled 45,000 (Jones 1991). The ELICOS contingent as we shall see, then totalled 40,000. In this context, the Triad’s people-smuggling racket was so huge that under the existing procedures and policies and resources available to the Department at that time, the Government was powerless to prevent it. The Triad leaders had displayed absolute genius. They had created safety in their own numbers for themselves and their clients, and their system was foolproof: for the Chinese, that is.

Like the BMP scam, the ELICOS scam had been just as blatant, and in the same way, the media began to comment on it. For example, Bob Bottom (1989), a well known Sydney crime reporter at the time wrote:

> A blossoming avenue for entry for illegals, is Australia’s overseas student assistance scheme. Thousands of so called students have become illegal immigrants after entering Australia using temporary student visas ostensibly to learn to speak English. Mostly from China and Korea, they sign up for short term English language courses with a network of private colleges. More than 6,500 students are recorded as having entered Australia and not returned home.

Meanwhile, that same year (1989), I had submitted a report to the Department’s Investigations Section in Canberra detailing all the information I had gathered so far on the Chinese people-smuggling racket. I had after all, particularly in its relation to ELICOS, extraordinary access to information about this racket which was unavailable to anyone else in the Department. Although we had been told that the ‘students’ of ELICOS were off limits for Compliance action, I felt duty bound to advise
the Department of what I knew of the extent of the Triad’s involvement in this program. But I was unprepared for the official response.

At that time I was temporarily assigned to the Citizenship Section and the official reaction to my report could have come straight from another episode of “Yes Minister” (Lynn & Jay 1984). I received a visit from two detectives from our Internal Investigations Section in Canberra. They did not deny the truth of the information in the report, but they said they had been told to tell me that I was to “stop receiving information incompatible with my Citizenship duties.” I was also instructed to tell Mariko that if she had any further information about people-smuggling, she should pass it directly to another officer in the Investigations Section. Of course, regular informants do not pass on information on a continuing basis “to another officer” in such a casual manner. It often takes years of bonding before sufficient trust is established between a regular informant like Mariko, and an officer in the Department like me, and as the Department does not pay its informants, continuing information will only flow between informant and officer via some kind of reciprocal arrangement such as an exchange of favours in the way I have already explained. So the instruction for Mariko to pass her information to another officer was official doublespeak designed to cut off the flow of her information entirely. It was a case of shooting the messenger, so that the Department would no longer hear the message.

My colleagues in the Compliance Section were incredulous. The only explanation they could think of was that the information in my report was too sensitive for the Department to act on, because to do so would have constituted an official admission of monumental policy failure. After all, scuttlebutt and rumours can be parried, cast aside, brushed off or denied, but it is not so easy to brush off precise information in an official report. However, whether it was because of, in spite of, or incidental to my report, the Immigration Minister two years later announced that the Business Migration Program would be terminated, and it ceased to operate on 2 August 1991. The official explanation for doing so referred to
the Joint Public Accounts Committee Report mentioned earlier in this thesis (DIMA 1991, p. 37). So this policy change did eventually pass through the Missouri Syndrome.

Meanwhile, the Triad was still operating, and there was still ELICOS to consider. As Mariko had always been such a reliable and welcome informant in relation to illegal immigrant prostitutes in Australia, there was no instruction to me to break off all contact with her completely. So we continued to meet as we had always done, occasionally for lunch or after work drinks. The difference now was that I was now instructed not to record officially any further information about the Triad or its people-smuggling activities which she might tell me, or which I might otherwise discover. Of course, I could never stop Mariko from prattling on about these matters so in reality I was continuing to receive such information unofficially. It was an invidious situation to be in, because the more I learned about the Chinese people-smuggling scam, the more the Department (officially) did not want to know about it, and the more I learned about it, the more I wondered how Mariko ever became privy to such information, given the secret nature of Triad culture. I never knew exactly how much Mariko knew, or what she was concealing from me. After all, she moved so comfortably on both sides of the law, that I could never really tell at any given time, which side of the law she was on.

Although I had been instructed not to report officially on the activities of the Triad, I was still passing on to my colleagues unofficially whatever Triad information came my way, and I soon learned that this information by a process of scuttlebutt osmosis continued to make its way into the upper echelons of the Department. So the Department was still listening, albeit ‘unofficially,’ and of one other fact I was certain. The reason why Mariko was continuing to pass information on the Triad to me was that the Triad had wanted the Government to know certain details about its people-smuggling scam. First, it wanted us to know the impracticability of enforcing the law against its clients. These clients now constituted a pressure group of such magnitude that its interests could not
be ignored when the Government decided, and it would have had to decide sooner or later, on what to do about the thousands of illegal Chinese then in Australia. Secondly, the Triad wanted us to know that it still had unfinished business with its ELICOS clients. That is, its promise to get them permanent residence in Australia. Of course, the real information which any government would have wanted to know, that is the identities of the perpetrators of the Triad’s people-smuggling scam, or where their records were kept, was never disclosed to me.

So the Government was in the grip of a dilemma. It had no evidence on which to prosecute the Triad, even if it could locate its organisers, and it had too many illegal Chinese to deport. At that time there was no detention centre at Baxter or Christmas Island, and those at Port Hedland and Woomera and Villawood had not been developed to their present day capacity. There was nowhere to put the Chinese illegals, even if we could find them all, and the Government of the day did not have the kind of resolve which the succeeding Government later displayed during the Tampa Precedent. In those days, the policy for dealing with insurmountable illegal immigration problems was simply to grant an amnesty. The Government had done so during previous influxes of visitors who refused to go home to Sri Lanka, Lebanon and Fiji. They were all granted permanent residence in Australia, but on the basis of political unrest in their homelands, or persecution, real or imagined, if they were forced to depart Australia. But in relation to the Chinese illegals, the Government’s problem at first was that it had no substantive reason to grant them residence. To have granted residence only on the grounds that there were too many of them to deport could hardly have been a policy welcomed by the electorate. On the other hand, to continue to prevaricate would invite the wrath of the Triad, which was assumed to have the capability to stir up trouble amongst the very large Chinese community now in Australia.

Desperately, the Government searched for a trigger which would provide an excuse to grant residence, and it came from an unexpected
source. On 4 June 1989, an event occurred in China, which was forever after to be known as the Tiananmen Square Massacre. On that day, the whole world looked at the television coverage with horror, as PLA tanks were deployed to literally crush a persistent but unlawful pro-democracy demonstration in Beijing. Amidst the emotional repercussions from this massacre which reverberated right across every civilised country in the world, the then prime minister, Bob Hawke, announced publicly that no Chinese nationals then in Australia would be forced to return to China. This momentous decision by the prime minister was later to be implemented by what came to be known in the jargon, for obvious reasons, as the ‘Bob Hawke Visa.’ It took some time to implement, and in the first instance consisted of a temporary visa, renewed several times before the final permanent visa was introduced in 1994. For the first time since the Triad’s people-smuggling enterprise had begun, both the Triad and the Government found themselves allied in a single common purpose. So, as the Triad’s ELICOS clients once again became the Department’s clients, the final element of the Triad’s contract with them was about to be realised: permanent residence in Australia.

Immediately the first temporary visa became available, our Immigration offices in Sydney were swamped by the swarm of Chinese illegals keen to switch to their new found legal status. We were dealing with huge numbers. Rees (1991) reported that within three years of the ELICOS scheme being introduced in 1986, about 30,000 illegal immigrants, 20,000 of them from China had entered the country under the slack regulations then in force (my emphasis). In our Chatswood office, for example, which was then on the seventh floor, Immigration Compliance officers were deployed as traffic wardens to facilitate the queue of impatient illegal Chinese seeking their first ‘Bob Hawke’ temporary visa. This queue snaked around the waiting room to the lift well, then continued on the ground floor of the building, then out the front door and along the footpath beside the Pacific Highway. As soon as the seventh floor waiting room was queued to capacity the lifts were stopped, while on the ground floor, officers held the queue at bay until a
descending lift had discharged its passengers. More Chinese were then relayed up to the waiting room, one lift load going up in exchange for one lift load coming down. Towards the end of the working day the lifts were locked against further arrivals but continued to descend passengers whose visas had been processed, until the waiting room was emptied. It was an amazing sight and it continued for three days.

With its clients now holding temporary visas, the Triad had no reason to continue to hide them from the Department and in accordance with the original contract, the Triad set about transplanting its clients permanently in Australia. For this purpose, the Triad geared up its Australian lawyers to lodge all manner of applications for permanent residence for its clients, in order to make their permanent resettlement more certain. One avenue was refugee status, and the other was marriage to an Australian citizen. Both avenues were based on fiction. None of the Chinese qualified for refugee status since none had been present in China when the massacre occurred, because they were then illegally in Australia. They had therefore not suffered persecution in China prior to departure, and were never likely to suffer persecution on return. Similarly, for the purposes of obtaining permanent residence for its clients by way of marriage, the Triad was offering $20,000 to any Australian citizen who would marry one. The offer was irresistible to street prostitutes, the homeless, drug addicts, and anyone else who would take the money for this purpose, and the Department was visited by the strangest array of Australian marriage partners imaginable, now seeking permanent residence visas for their new found Chinese spouses.

Of course, for those who could find their own spouses without having to repay another large settlement fee to the Triad, that is, the $20,000 plus interest for a Triad organised Australian spouse, the Sydney Hilton hotel on a Friday night became the favourite hunting ground for pretty Chinese girls seeking Australian husbands. I went there with Mariko a few times, just to observe the courting rituals. For these girls, the Triad’s agents in the beauty industry supplied for a more modest fee, a
total makeover. This changed plain ordinary factory girls into glamorous Chinese beauties who could not fail to attract the attention of ordinary Australian men on a Friday night binge at the Hilton Hotel. Of course, the inevitable happened.

It has to be admitted that some of these marriages, however they began, often turned out in the long run to be genuine. But for those which were not, a convenient divorce could follow two years later once permanent residence had been obtained. In this context Sheehan (1998, p. 216) reported that the number of Chinese born persons involved in divorce in Australia rose from 533 in 1990 to 1,390 in 1993. What this meant was that once divorced from their Australian spouses, these Chinese now legally and permanently settled in Australia were then free to bring to Australia under its family reunion policy, their real Chinese spouses from China. The Triad’s agents in China of course, for the usual resettlement fee, would make all the necessary arrangements with our Embassy there.

Meanwhile, ever alert to the advantages which Bob Hawke’s decision had on offer, the Triad shifted into high gear. Within a few weeks after the Tiananmen Square massacre, 25,000 applications for ELICOS visas were lodged with our Embassy in China (Kennedy 1991). Realising this situation too late, the Government was finally goaded into taking some action. It imposed stricter rules of entry, and the function of issuance of student visas was transferred to the Immigration Department, and, as it did for any other visas, this Department applied the normal bona fide testing for student visas. This resulted in a dramatic drop in student visa issue in China. For example, ELICOS visas dropped from 21,538 in 1989/90 to only 671 in 1990/91 (DIMA 1991, p.75).

We now had 40,000 Chinese to process, and for those who were not in a position or who were unable or unwilling to arrange fraudulent refugee applications or bodgie marriages, this meant recurring temporary visas while the then Labor Government now led by Paul Keating, faced the
1993 elections, expecting certain defeat. The Chinese problem would then have been bequeathed to the incoming Liberal Government. By the strangest quirk of Australia’s political history, the Liberals’ ‘unlosable’ 1993 elections, were lost and the Labor government now returned, had to finalise the Chinese problem which it had created by its own ineptitude. Finally honouring Bob Hawke’s promise to allow the Chinese to stay in Australia, the Bob Hawke (permanent) visa was introduced in 1994.

It took the form of a special visa, officially designated in the Migration Regulations as the Class 815 visa, and it was such a Triad’s dream come true, that it almost seemed as though it had been drafted by the Triad’s Grand Dragon himself. Its criteria were so unbelievable, that they are reproduced here:

815.72 Criteria to be satisfied at the time of application
815.721 (1) The applicant meets the requirements of subclause (2) (3) or (4) [and subclause (3) reads:]

(3) An applicant meets the requirements of this subclause if
(a) the applicant is a citizen of PRC and
(b) the applicant is shown by records kept by Immigration to have entered Australia on or before 20 June 1989; and
(c) on 20 June 1989 the applicant either was in Australia or was the holder of a return visa.

The only other criteria of significance was that an application for this visa had to be made on or before 30 June 1994 (815.512) but by then most of the illegal Chinese referred to above were already in Australia in any case.

For those who missed out applying before 30 June, there was another category of visa (Class 816) which closed off on 2 August that year to which PRC citizens could have applied if they had applied for refugee status before 1 November 1993, and many had already done so. Their refugee claims need not have been genuine. Of course, if their claims had been genuine, they would have already been granted refugee
status. So this visa was designed for those who had been rejected. It gave them the special criteria established at Clause 816.721 (4) which stated that the applicant met the requirements for this visa if the applicant had applied (before 1 November 1993) for a determination:

that the applicant was a refugee (whether or not the application has been withdrawn, and whether or not the application if not withdrawn, has been decided, and whether or not the decision, if made, was adverse to the applicant)

What Sub-clause (4) meant was that permanent residence would be granted on the basis of any refugee application, even those which contained claims which were exaggerated, dishonest, or fabricated. Even a blank refugee application form, with nothing written on it other than the applicant’s name and other personal identification details, or an application rejected because of it contained fraudulent claims, was sufficient for grant of permanent residence under this visa. All the applicants needed to have done, was to have made an application for refugee status before 1 November 1993. For all the others, the Class 815 application was available, and the first feature of significance to be noticed in the criteria for this class was that specified at Clause (815.721(1)(c):

the applicant is shown by records kept by Immigration to have entered Australia on or before 20 June 1989.

“Records kept by Immigration” meant any kind or record in the Department which would ‘show’ that that applicant had entered Australia before 20 June 1989. Often the passport which a client had used to enter Australia was collected by the Triad after arrival, to be recycled into another identity for someone else. So, for the purposes of applying for residence, the original passport of arrival was often not available. In ordinary circumstances, foreigners applying for an Australian visa and who claim their passports have been lost or stolen or otherwise no longer in their possession are asked to approach their own government for another passport. In Australia, this approach is made to the appropriate Embassy,
and in ordinary circumstances, especially with friendly governments like those of the United Kingdom, the United States, or those of the European Union, a new passport is issued within days. These days, China is also a friendly government, and unavailable passports are replaced in the same way. But in those days, when the Australian Government was joining in the torrent of world criticism against the Chinese Government because of the Tiananmen Square massacre, the circumstances were not ordinary.

The Chinese Embassy in Canberra was not responsive to routine requests for replacement passports, and, understandably, definitely not responsive to the replacement of thousands of passports. So we had to make other arrangements. Hence the "records kept by Immigration" provision of Migration Regulation 815.721 (3) (b). So in the absence of the usual kind of documents on which genuine migrants ordinarily prove their citizenship and their arrival date, i.e., genuine entry stamp on a genuine visa in a genuine passport indicating a genuine identity, all manner of creative documents were spawned and submitted to the Department in lieu of a genuine passport. Thus the Triad's lawyers were want to lodge applications for the Class 815 visa, which read like this:

We represent Mr Wing Wang Wong, a citizen of the Peoples Republic of China, in his application for a Class 815 visa. We are instructed that Mr Wing was born in Shanghai on 23 July 1950 and he arrived in Australia on 20 December 1988. We are also instructed that Mr Wing does not know under what name his passport was issued or what kind of visa he was granted, because he cannot read, and all his travel arrangements were handled by an agent, whose name he cannot remember. We are further instructed that some time after arrival, Mr Wing lost his passport but was too frightened to report the loss to the police, lest he be arrested as an illegal immigrant. Therefore the police have no record of his passport details. We are instructed that Mr Wing can remember his arrival date but cannot produce his passport for the reasons mentioned.

Since the Department had no way of refuting this information, it was accepted, and placed together with the application on a file which was then given a reference number. This file then contained records of the
applicant’s full name, nationality, date of birth, place of birth, and date of arrival in Australia, together with his current address (care of his lawyer); all the identity details necessary to accept the application. Thus, because the Department then had a ‘record’ of Mr Wing Wang Wong’s arrival he then became an applicant “shown by records kept by Immigration to have entered Australia on or before 20 June 1989” in accordance with Clause 815.721(3) of the criteria to be satisfied at the time of application for the Class 815 visa.

This was the method intended to accommodate within the system, those ‘genuine’ Chinese applicants who had no other way of identifying themselves to the Department for the purposes of this visa. But the Triad was never known to miss an opportunity, and it was of course quick to exploit the loopholes in this provision of Clause 815. So, provided that the application was lodged before 30 June 1994, for all practical purposes, it no longer mattered to the Triad when a Triad client arrived in Australia. This meant that even those who arrived in Australia two years after the massacre could still successfully (although unlawfully) obtain this visa by way of the “records kept by Immigration” method. In fact, as far as the Triad was concerned, the applicants did not even need to be citizens of the PRC, since under this provision there was no practicable way for the Department to check their nationalities, or their criminal histories. Rees (1991) reported that during the early days of ELICOS, at least 150 international drug couriers (mostly Chinese) had used this scheme to enter Australia. By 1993, 85 to 90 per cent of heroin imports into Australia were controlled by Australian-based Chinese, and it was this Chinese migration which provided the liaison and cover to allow the flow of narcotics into Australia without any need for any large scale world-wide organisation (King 1993).

To this day, the major heroin dealers in Sydney are located in Chinatown (Sheehan 1998, p.178), laundering their drug money the same way the people-smuggling money had been handled, and that is by concealing it in “corporate labyrinths created solely for the purposes of
frustrating policing and regulatory examination of the origins of the monies involved” (Fitzsimons 1990). By using the “records kept by Immigration” method, the Triad was able to gain Australian residence for those of its members or agents who served it as forgers, drug dealers, hit men, and enforcers who had come to Australia with visitors or student visas from Indonesia, Malaysia, Singapore, Taiwan or anywhere else, provided that they were in Australia to lodge their application before 30 June 1994, looked Chinese, and spoke a Chinese dialect. Whoever they were and whatever their nationality, all they had to do was to take up new identities under the “records kept by Immigration” method. Of course, documentation of sorts was required, in order to ‘authenticate’ their new PRC identities, but this posed no problem for the Triad. They printed their own. A printing press in Sydney’s Chinatown churned out whatever ‘Chinese’ documents were required. But unable to read these Chinese language documents, the average Immigration residence assessor had to rely on the Department’s translators, and the translators were not experts in document fraud. The Department did have document fraud experts but they could not read Chinese either, and because of an unresponsive Chinese Embassy there was no way to check the authenticity of any of these documents and the Department had no option but to accept them, provided that they looked ‘genuine’ and the Triad made certain that they always did. For the Triad, it had all been so easy.

There was more to come. Once the Chinese referred to so far were granted permanent residence in Australia, what then followed is what demographer’s call ‘chain migration’. This refers to later migrations linked by kin or affinal ties to an earlier migration. In Australia it has operated extensively with Filipino families when one marries an Australian citizen, and the ten or more siblings with their spouses and children follow as part of Australia’s family reunion program. It was not so extensive with the Chinese because of China’s one child policy. Nevertheless, 40,000 Chinese migrants have 80,000 parents and they have 40,000 spouses who have their own 80,000 parents. So, the Chain migration which followed the grant of residence associated with the Tienanmen Square
massacre, that is the 815 and 816 visas, together with associated spouse and business visas spawned a new industry in Sydney. Former stately homes in the inner west of Sydney’s suburbs which had survived their bygone splendours only to have evolved more recently into backpackers hostels or boarding houses, were bought up and converted into retirement homes for aged Chinese migrants. All the nurses and the doctors and all the other staff who worked in these places were also Chinese. These enterprises were funded by Australia’s Social Security System and Medicare, and it worked this way: as the aged Chinese parents of Chinese residents in Australia arrived from China, they were met at the airport by a private ambulance driven by Chinese medics, and taken immediately to a Social Security office where they registered for the old age pension, and then to a Medicare office, where they received their Medicare cards. The old age pension from Social Security paid for their accommodation in the retirement home, and Medicare paid the doctors: This industry offered free retirement in Australia for the aged parents of Chinese migrants, all paid for by the Australian taxpayer. It was all perfectly legal of course, once residence status had been granted to the original Chinese immigrants.

Of course, the Triad was not about to miss this opportunity either, so where parents had already died in China, new ‘parents’ were supplied by the Triad to accommodate the increasing demand amongst the rising Chinese elite in China, to off load the care of their in-laws onto the Australian Social Security system. The Triad simply matched new ‘parents’ to those of its parentless clients who had already been granted residence in Australia, and with a few forged documents and a kickback to the new ‘children’, the Immigration Department did the rest. The real children could visit their parents in Australia a few times each year, as visitors, knowing that in their absence the parents would receive the very best of care in Australia, courtesy of Medicare. It was the culmination of a wave of Chinese immigration into Australia which had begun as a people smuggling operation, the largest Australia had ever experienced, and it was all founded on a monumental policy failure.
The extent of this wave of Chinese immigration was put simply by Sheehan (1998, p.69) thus: In 1989, prior to the Tienanmen Square Massacre in China, there were 14,750 Chinese resident in Australia. By 1995 there were in excess of 300,000. Incidentally, the 1996 Australian Census lists Chinese born residents of Australia to be 111,009, with 616,840 respondents who did not declare a country of birth (ABS Catalogue No. 2020.0). Given that the Triad may well have informed its clients not to respond to the country of birth question in the census so as to disguise the real number of Chinese in Australia, and given that their living patterns would have made it easy for them to evade the census entirely, I am more inclined to accept Sheehan’s figure. Furthermore, I am sure that most visitors to the Chinese enclaves in Sydney would also.

The wave of Chinese migration into Australia during this period had been a classic example of successful people-smuggling conducted in accordance with the established migration methods long ago documented in the literature. For example, it had conformed with Lee’s (1969, p.292) explanation that migration involves an origin, a destination, and an intervening set of obstacles, and that “the overcoming of the intervening obstacles by early migrants lessens the difficulty of the passage of later migrants and in effect, pathways are created which pass over intervening obstacles as elevated highways pass over the countryside.” Under Australia’s controlled immigration policy, “the intervening set of obstacles” designed to prevent illiterate, uneducated Chinese peasants from ever settling in Australia as educated business migrants would at first reading of the Migration Act and its Regulations appear to be so immense, as to be impassable. Yet, as we have seen, the Triad had made it so easy for them, by creating “the pathways which pass over the intervening obstacles.” Indeed, figuratively speaking, they came through on “the elevated highways.” Furthermore, the Chinese people-smuggling migration also conformed with the explanation by Salt and Stein (1997, p.470) that there are considerable problems in separating legal from illegal forms of migration because at various stages migrants may drift in and out of a legal status. This is exactly what
happened with this Chinese people smuggling racket. These Chinese people did not arrive illegally by boat like those of the Tampa Precedent, they came through the established immigration entry ports with Australian visas which at least made their entry into Australia prima facie legal. Then those with temporary visas (i.e. ELICOS ‘students’) overstayed their visas which made their status illegal. Then after the Tienanmen Square massacre they were granted temporary visas which made them legal again, and later they were granted permanent visas which kept them legal. However, included amongst those who obtained permanent residence in this way were those who did not qualify at all because their residence was based on false identities created by forged documents which of course in terms of the definition used in this thesis made them illegal.

One feature of the Chinese scam which I never understood, was how the Triad was able to keep track of its own clients. It had thousands of clients, all with false identities, some of which changed frequently, others more slowly over time. Even modern governments with all the detection apparatus available to them have trouble tracking down different identities to the same person. For example, During his Royal Commission into drug trafficking, Mr Justice Stewart (1983, p. 459) found that Australian drug couriers were able to avoid detection by the use of forged identity documents. One example which Justice Stewart cited was that of Terrence John Clark, who had ten different passports, each in a different name, each representing a separately established identity. But hard as it must have been to track Clark down it must have been even harder for the Triad to keep tabs on its own clients because the Triad operated in an even more convoluted dimension. Not only did it recycle its people through different identities, it also recycled the same identity through different people. These days modern computer technology can follow such identity changes. But when this all started, that is, back in 1986, apart from corporate mainframes, computers were not widely in use. So amongst its thousands of clients in Australia, how the Triad was able to unravel who was really whom at any given time, always remained a Chinese puzzle to me. Another feature of the Chinese people smuggling
scam which I also never discovered was exactly where it was based. The Triad was operating a multi-million dollar enterprise, yet its whereabouts always remained a mystery to me. How it could operate such a huge organisation without any visible or at least identifiable control centre, completely baffled me.

Fitzsimons (1990) describes Chinese drug syndicate finances as being “concealed in corporate labyrinths” and I conclude that the Triad’s physical resources and assets were similarly divided into small components, and scattered through a maze of different locations, each, to the untrained eye, innocent and invisible from the others. I had for example seen many isolated examples of the Triad’s sinister presence in Sydney: I had seen the bogus English Language schools, the doss houses, the sweat shops, the factories with their Chinese workers, the market gardens, the Chinese retirement homes, the forged documents, and the many other manifestations of its enterprise. But to anyone who wanted to know exactly where its control centre was, just like I did, the Triad presented itself as an amorphous, indefinable and elusive phantom, never to be found.

It is because of its corporate invisibility, in my view, that the Triad leaders tolerated my investigations, and probably with some amusement. This is because they would have known that at my level in the Department, I was too small a cog in such a big machine, to have had any significant influence over any policy initiative against them, and in any case as we have already seen, the Department in those days was not ‘officially’ interested. Generally, the Triad allowed me to learn most of what I wanted to know about its people-smuggling business, but they were always careful to ensure that I never knew too much. They were particularly careful to prevent me from knowing the identities of those who were operating its huge network and where its control centre was based. Even today, I shudder to think what might have happened to me, if I had accidentally discovered the identity of its leaders, or where they lived, or where they operated their vast illegal empire. But these people smugglers
were no amateurs, and they were too well concealed to be discovered. It must be stated however, that much of what I did learn about the Triad’s activity was already common knowledge amongst some of the lawyers, agents, immigration officers and others in Sydney involved in the migration industry.

Whilst I was later to have a close and friendly contact with Indonesian illegals during my study of their people-smuggling rackets, I cannot claim that I had the same degree of intimacy with the Chinese. My observations of their people-smuggling racket were undertaken at some distance, as if I were able to see what was happening inside the Triad by looking through a window from the outside, but unable to hear what was happening inside, except for a running commentary supplied by Mariko. Some Sydney-based journalists did have their own independent Chinese sources from whom they were able to gain some inside knowledge of the Triad’s people-smuggling activities as we have seen, and now and again I was also able to gain from them some valuable and corroborative information about these activities. It was through these journalistic connections that I was able to corroborate from time to time some of the information about the Triad which Mariko was passing on to me.

Mariko’s connection with the Triad still remains a mystery to me. It began, as we recall, with an irate attempt by her to stop the Chinatown brothel from poaching her clients. But after Mariko had made friendly contact with the girls in that brothel, and their managers, and also with other people connected with the Triad, her anger waned and she stopped complaining about them. It was about this time that she began to pass on to me information about the Triad’s people-smuggling activities, and she continued to do so all through those bizarre years of that Chinese immigration wave. It is clear that Mariko and the Triad had come to some kind of understanding, but what it was I will never know. She never told me and I never asked her, because although our relationship was close and friendly, there were certain matters which we never discussed, and if I ever strayed too closely to one of these, she would give me an “it’s better
that you don’t know” kind of answer. She was such a valuable informant in all other respects that I needed to keep her on side, so I never pressed her on matters she did not want to discuss. Her connection with the Triad was one of these matters which she would not discuss.

And what became of Mariko? When I first met her in 1985, she was a slim, trim and beautiful thirty something, poised at the height of her career in the fiercely competitive high class extremity of Sydney’s prostitution industry. But, like many other glamorous occupations, life at the top of this industry might be lucrative, but it is short. By 1995 Mariko was still slim and trim, and it has to be admitted, she was still beautiful. But at forty something, she had lost the competitive edge, at least at the high class end of the industry. Time was running out for her and if she were to stay in this industry, she would have had nowhere else to go but down. Time was also impinging upon her regular clientele. They were all a lot older than her, of course, and by 1995, old age, prostate problems, failing health, family inheritance dramas and retirement options were creeping up on them and slowly diminishing their numbers. Furthermore, when prostitution was decriminalised in New South Wales, a tide of part-time newcomers swept into the industry, making the high class end of the prostitution spectrum, even more fiercely competitive than it ever had been before. During our routine brothel raids in search of illegal immigrants working in the industry, we were amazed at what we were finding. The brothel night shifts were frequently being staffed by beautiful and articulate young university students working their way through their degrees. At the same time, the new breed of young business executives who might have replaced Mariko’s waning clientele, preferred instead the fast track through to Sydney’s yuppy new call girls, and as the demand for her services diminished, Mariko was left behind.

Mariko survived the transition quite comfortably. She had always invested her earnings wisely, guided by those of her clients who were numbered amongst Sydney’s most successful financiers and businessmen, and she could have lived comfortably off her investments
if she had had to. But as her clientele slowly faded away, there was one amongst them who was particularly fond of her, and as I have mentioned previously he gave her a generous endowment and in return she became exclusively, his alone. It was about this time that my research project began, and as I have also mentioned previously, in her new role as executive girl friend, Mariko soon became bored during the daytime, and longing for the kind of excitement she had known in her previous profession, she volunteered to continue to be a regular informant for my research project, and as this project blossomed and progressed, Mariko continued to be for me, a window into Sydney’s immigration underworld.

Finally, the question that must be asked is how did it all happen? How could a controlled immigration policy of the kind we have in Australia become so easily circumvented and made so dysfunctional? How could a modern Australian government tolerate such a long wave of blatant people-smuggling from China? This wave could have been stopped in its tracks, Tampa style, in this case not at sea but at our airports, or it could have been stopped even more easily by refusing to issue BMP or ELICOS visas in China. As we have seen, it was eventually stopped this way in China in 1991 (DIMA 1991, p. 75) when the then Government did show some moral fibre. But why was it not stopped in the very beginning, when the scam was first detected in 1986? Incompetence or ineptitude amongst the higher echelons of the Department is one explanation. High level corruption is another. But a far more sinister explanation is that it was allowed to happen deliberately, for political gain, by the then Labor government with the aim of building up a long term political constituency among Chinese immigrants (Sheehan 1998, p. 112, quoting Barry Jones the then Labor Party President). Either way, both the electorate and the incoming Liberal government had seen enough, and immediately following the defeat of the Labor government in the 1996 elections, the incoming Liberal government took no chances. Even before the first working day following the elections, the head of the Immigration Department had been replaced (see p. 27 of this thesis). And so ended the Chinese people smuggling racket, at least as far as I had been involved in observing it.
But, twelve years after Bob Bottom (1989) wrote of ELICOS being “the blossoming avenue for the entry of illegals,” and two years after I had retired from the Department, Contractor and Noonan (2002) reported that:

more than 6000 overseas students have been expelled from Australia over the past year for visa irregularities, and 100 English language schools closed amid new concerns about the education sector as a conduit for people smuggling. Applications for student visas made overseas have ballooned to 71,306, says the Immigration Department and a senior government bureaucrat admits that unscrupulous colleges have emerged as a major concern in the crackdown on illegal immigration.

My heart sank when I read this, because I had seen it all before. It had been the biggest people-smuggling fraud ever committed in Australia, and I had lived through it all, and I had watched it all happen. Again, the current Government, just like its predecessor, was goaded into taking some action to combat the kind of people-smuggling problem, which is giving the perception that it will never go away. Having seen how clever the Triad has been in overcoming any obstacles which the Department has placed in its way, I do not think we have seen the last of the Chinese people-smuggling racket. I have described in some detail the methodology used by this people-smuggling racket, as a basis for comparison with the Indonesian people-smuggling rackets, which will be analysed later. In the meantime, it is also useful to compare other people-smuggling rackets which have occurred in Australia during recent years, and I will now examine some of these.
Baby dumping

‘Baby dumping’ should not be confused with baby migration. Baby migration refers to the adoption by an Australian family of a baby born of foreign parents in a foreign country. Migrating this baby into Australia involved a complicated administrative exchange between the bureaucracies of Australia and the country of birth, but the end result was that the adopted child was issued with an Australian birth certificate and after much bureaucratic processing so became an Australian citizen. On the other hand, ‘baby dumping’ refers to a child born in Australia to parents who were illegal immigrants, and the birth of that child was later used as a method to chain migrate the baby’s family into Australia. After our Citizenship Act was amended in 1986, a child born in Australia of parents who were illegal immigrants was not born an Australian citizen. At birth this child took the immigration status of its parents, and was thus born an illegal immigrant. So the birth in Australia of a baby born to illegal immigrant parents added one more statistic to the population of illegal immigrants in Australia. Nevertheless, as we shall see, such a birth could also become an avenue for chain migration into Australia. This method of chain migration had no official name. But in the jargon of the Department is was known as ‘baby dumping’ and in the absence of any other suitable name for this method, I will use that expression here.

Baby dumping is mentioned in this thesis for three reasons. First it is a good example of the proposition by Salt and Stein (1997, p. 470) that there are considerable problems in separating legal from illegal forms of migration because at various stages migrants may drift in and out of a legal status. Such a change of immigration status occurred when a child which was born an illegal immigrant was later included in an application made by its parents for further stay in Australia, for example, an application for asylum. The bridging visa which then issued then gave the child legal status in Australia until the asylum application was decided. If this application failed, and more than 90% of all such applications made by Indonesians in Australia did fail, the child reverted to being an illegal
immigrant again. But if the family was successful in evading deportation and the child continued to remain in Australia as an illegal immigrant, then on its tenth birthday the child became an Australian citizen. This converted the child’s immigration status back to legal again, and it remained legal from then on. I will explain how this happened shortly. The second reason for mentioning baby dumping here is that it gives a good example of how a successful immigration enforcement policy was developed and implemented, in order to terminate one particular form of clandestine immigration. In this case it was done by simply legislating the problem out of existence. Finally, baby dumping is mentioned here because it was one of the methods used by Indonesian illegal immigrants to remain in Australia and in this context it contributed to part of the flow of illegal immigration from Indonesia, which is one focus of this thesis. It is therefore necessary at this stage to trace the history and development of this form of illegal immigration.

Baby dumping accords with the thesis definition of “illegal immigration” because the baby in this equation was from the moment of its birth, an illegal immigrant. However, baby dumping at its most basic stage, that is, the birth of a child in Australia, was perfectly legal, in that there was of course no law against having babies in Australia. Chain migration in accordance with the Migration Act, was also lawful. But it was the manipulation of Australia’s laws to bring about outcomes never intended by our Citizenship and Migration Acts which made baby dumping such an insidious and pernicious form of illegal immigration.

There were three major features of baby dumping which distinguished it from all other forms of illegal immigration. The first is that it was a long term project which did not begin to take effect until some years after the baby was born. For example, some babies ‘dumped’ during the 1980s are only now, generating the chain migration connected to their birth in Australia. This chain migration would occur when the parents and siblings of the ‘dumped’ baby claimed Australian residency under Australia’s family reunion program. The second feature of baby dumping
is that it was immeasurable. This was because despite our all embracing bureaucracy in Australia, for the extent to which giving birth in Australia was used as a contrived form of migration into Australia there were no statistics. There were of course, associated statistics. For example, the Department had an accurate data base showing the arrivals and departures of people coming into and leaving Australia, together with their visa and citizenship details. In addition, the State operated registries of Births, Deaths and Marriages, also had a collective and accurate data base with details of babies born in Australia. The Australian Bureau of Statistics had a more or less accurate Census data base showing who lived where in Australia at certain periods of time. This data base also showed countries of birth. In addition, the Commonwealth’s Social Security data base had accurate details of children for whom family allowance and other benefits were paid, and the State Education Departments had accurate details of children attending school in Australia. But none of these data bases came together to show details of babies whose birth in Australia had been used for the purposes of manipulating our migration and Citizenship laws to enable chain migration into Australia. Yet we know it happened, because we saw it happening.

The third feature of baby dumping which distinguished it from all other forms of people-smuggling is that it was so evasive and amorphous. It was a form of creeping immigration; people smuggling by stealth. It did not arrive in boatloads off our northern approaches like the more audacious forms of people smuggling; it was not stoppable by gun toting SAS troopers as in the Tampa precedent, nor by Immigration officers scrutinising arrivees at our airports. It occurred outside of our controlled visa issuing regime, and at least in its early stages it was generally beyond the range of our Immigration screening system. The reason for its initial Immigration invisibility was that it did not occur at our frontiers, but in the maternity wards of our hospitals.

Baby dumping in its raw state was often a family affair occurring in secrecy. A typical situation was one in which a baby was born of parents
who were illegally in Australia, and who decided to leave the baby with relatives who were Australian citizens. For example, an arrangement might have been made between an illegal mother and her legal sister, that the baby would grow up as part of the legal family. This was easily accomplished among migrants with extended family cultures, such as those of Pacific Island or Asian origins. In these circumstances, when the parents were arrested by Immigration officers, no mention was made of the baby. If the arrest was based on overstayed visa details, the baby, having been born after the parents’ arrival, would not have been included in these details. In fact, unless privy to some other source of information, the Department would have no record of the birth. So, if there was no baby on the premises at the time of the arrest, the chances were that the arresting officers would never know about the baby.

Then in accordance with the normal course of events which would then follow, the parents would have been deported, and the baby would have stayed in Australia with the mother’s sister. And what happened to the baby? Provided the infant was not discovered beforehand, and had since birth continued to be ordinarily resident in Australia, the infant would become an Australian citizen by birth, on his or her tenth birthday, courtesy of Section 10 (2)(b) of the Australian Citizenship Act 1948. In this particular scenario, years later, after a series of applications made under Australia’s family reunion program, the family could all be reunited in Australia again, as Australian permanent residents, and later as Australian citizens, by virtue of that birth in Australia many years previously.

It is worth reproducing Section 10 of that Citizenship Act here, as it was amended in 1986, as it will be mentioned again later. The subject matter was,

**Citizenship by birth:**

10. (1) Subject to this section, a person born in Australia after the commencement of this Act, shall be an Australian citizen.

(2) Subject to subsection (3),
a person born in Australia after the commencement of the Australian Citizen Amendment Act 1986 shall be an Australian citizen by virtue of that birth if and only if:

(a) a parent of the person was, at the time of the person’s birth an Australian citizen or a permanent resident; or

(b) the person has, throughout the period of 10 years commencing on the day on which the person was born, been ordinarily resident in Australia.

“My emphasis"

“Ordinarily resident” in Section 10 (2) (b) does not have the same Immigration meaning as “permanent resident” has in 10 (2) (a), so that in the context of 10 (2) (b) a person could be “ordinarily resident” in Australia, even if that person (in this case, a child) was an illegal immigrant. What this means is that all children born in Australia of illegal immigrant parents, became Australian citizens on their tenth birthday, provided they had been ordinarily resident in Australia since birth. That is, even if their parents were still in Australia as illegal immigrants, these children would be Australian citizens. In this context, a situation in which one or more members of the same family were Australian citizens, while all the other family members were illegal immigrants, could lead to a policy minefield.

Actually, the law was quite clear on this issue. The illegal family members were liable to be deported, while the Australian citizen members were free to stay in Australia. Sometimes they did. That is, they stayed in Australia with relatives, while the remainder of the family went home. Sometimes the entire family went home. That is, if the parents were deported, the Australian citizen children accompanied them voluntarily. If they did this, the Australian citizen children could always return, and sometimes they did, for example, when old enough to live apart from their parents they could return to Australia to take advantage of Australia’s free high school education system, or our subsidised university system. Their siblings, who were not Australian citizens, would of course have
needed student visas to return and would have had to pay full fees.

So even where departure from Australia by Australian citizen children was voluntary, eventual reunion of the family in Australia could still have occurred years later in the manner already described for those Australian citizen children whose birth was originally concealed from immigration authorities. Voluntary departure of Australian citizen children together with their deported families assumed that their Australian birth had not been concealed from or was subsequently revealed to the Department. Indeed, knowing that these children were Australian citizens and could not be deported, the Department still paid their fares back to the homes of their ancestors. This was done ostensibly as a humanitarian gesture just to keep the family together. But in reality, to do otherwise would have caused a policy disaster of monumental proportions. No Australian government could withstand the media frenzy which would follow an incident of a ten year-old Australian citizen child left crying at the airport while his or her family was being deported. So the child got a free ride home also, even though as an Australian citizen there was no obligation for the child to depart Australia.

In the normal course of events, voluntary departure of Australian citizen children in the manner described, caused no major policy problems. But the policy nightmare began with a vengeance when an illegal family who had declared that they had Australian born children who were not yet Australian citizens (because they were not yet ten years old), deliberately tried to delay the entire family’s departure from Australia until the eldest Australian-born child reached his or her tenth birthday. In these situations, the declaration was made during the course of an application for further stay in Australia, for example, in an application for asylum. In this, or in any other application for a visa, the applicant would have been asked the name and country of birth of any dependants who were included in the application. If any children born in Australia were included, this inclusion immediately alerted Immigration assessing officers that there could be trouble ahead, and to make matters more difficult for the
Department, the family may have lodged cross applications. That is, in one application the husband may have been the primary applicant naming his wife and their children as dependants, while in the other, the wife may have been the primary applicant, with the husband and their children named as her dependants. Then there may have been separate cross applications for different classes of visa, which, on the advice of some smart Australian lawyer, may have been lodged at different Immigration offices in different cities in Australia. For example, one might have been lodged in person in Sydney, while another might have been mailed to our office in Darwin and another mailed to our office in Adelaide.

Most if not all of these applications, being spurious, were of course doomed to failure. But it took time to sort them all out. In the meantime, the race was then on, with the Department on the one hand trying to finalise all the family’s outstanding applications to remain in Australia and then to organise deportation of that family before that child’s tenth birthday; while on the other hand the family, on the advice of its Australian lawyer, used all manner of delaying tactics to stay in Australia until that child’s tenth birthday.

As we shall see later when we examine some of the fraudulent applications which were lodged by Indonesian illegal immigrants, the initial application process, followed by the appeal process, firstly to the Refugee Review Tribunal thence to the Federal Court, and thence to the Minister, in total took years to finalise. So, if the Australian-born child was already five years old when the illegal family was first discovered by Immigration officers, by the time the whole appeal process was finalised five years later, that child would by then be an Australian citizen. It did not matter how fraudulent the original application was, or how spurious the appeals were. In this scenario, the birth in Australia of that child gave that family a trigger for chain migration into Australia. Sometimes, the chain began at the final appeal stage when for compassionate reasons, under Section 417 of the Migration Act, the Minister may have decided to allow the family to remain in Australia for the sake of its Australian citizen
children. On the other hand as I have explained, the chain migration might not begin until many years after the family had departed Australia.

In all the examples I have given so far, baby dumping has been portrayed more or less as a family affair, in which the illegal family acted on its own volition, or on the advice of friends or of Australian lawyers. As a family affair, some organisation of course was necessary, but in the normal course of events it did not include anyone else other than the family and its immediate advisers. In fact the true intention of applications as delaying tactics for the purpose of awaiting a child’s tenth birthday might never have been broadcast outside of the immediate family and its advisers, and notwithstanding that there may have been many families involved in baby dumping simultaneously all over Australia, these families were not part of any large-scale organised people-smuggling racket of the kind conducted by the Triad, or by the boat people-smugglers prior to the Tampa precedent.

But it wasn’t always so, and despite the loophole in Section 10 (2)(b) which allowed baby dumping to continue, the extent to which it occurred subsequently was nothing compared to what it was like before the Citizenship Act was amended in 1986. Before this amendment anyone born in Australia automatically became an Australian citizen by birth. “Australian by birth” or “Australian born” carried an exalting unfettered claim to be part of this great land, irrespective of ancestry or attribute. To visitors, tourists, and even illegal immigrants, Australian citizenship was bestowed graciously and generously without any preconditions, upon all their children born in Australia. It was a noble concept, and in the very beginning when Australian citizenship was first proclaimed in 1948 it caused little problem. But as the years rolled by, some clever entrepreneurs began to realise that a good business could be made by organising for babies to be born in Australia for the purposes of obtaining Australian citizenship for foreign families. This kind of business reached a crescendo in the early 1980s when the realisation spread through Hong Kong that that fabled British Crown Colony would
soon revert to China. No one then knew what life thirteen years into the future would be like in Hong Kong under the Chinese Communist Government, and into this climate of uncertainty, the Hong Kong baby dumping racket was born.

I use the term “racket” here with reservations since at the time, there was nothing illegal about it. What brought about the policy change to put a stop to this racket when that policy change did eventually occur was that the organisers of this racket were using Section 10 of the Citizenship Act for purposes for which it was never intended.

How long the Hong Kong baby dumping racket had been operating before I noticed it, I will never know. But in 1984 it came to my notice when I was an investigating officer in the Sydney Passports Office. The position I then occupied in that office had been created as a result of the report of Royal Commission of Inquiry into Drug Trafficking which had been conducted by Mr Justice Stewart. Of particular relevance to the Passport Office was the second interim report of that Royal Commission, entitled Passports. (Stewart 1982). In that Interim Report Justice Stewart noted (at page 87) that “Prior to the end of 1981 no independent check was made by the Passport Office, on any information supplied by an applicant.” This was hard to believe, but it was true, as I was soon to learn. Justice Stewart also noted (p. 88) that “passport abuse is serious and continuing. The root of the abuse is the absence of proper identification checks.” As a result of this absence of checking, the drug trade flourished in Australia as couriers and traffickers alike travelled in and out of Australia on multiple false passports. The notorious Terrence John Clark, for example, was found to have simultaneously held ten separate and concurrent Australian passports, each in a different name and differently established identity (Stewart 1983, p. 459).

So there I was in the Sydney Passports Office, investigating passport abuse, primarily for the purpose of preventing drug couriers from travelling on multiple concurrent passports. But in the course of these
investigations, I came across all manner of different passport irregularities. For example, I found young girls forging their parents’ consent on passport applications so they could go overseas with their boy friends; fathers trying to abduct their children overseas by forging the mother’s consent; criminals trying to skip bail by supplying false names on their passport applications ……and so on, and interspersed through the piles of passport applications I was investigating each day were those submitted on behalf of babies of Hong Kong Chinese parentage, newly born in Australia.

In those days as I have mentioned, all babies born in Australia before the 1986 amendment were Australian citizens at birth. But in those days when a baby was born to parents visiting Australia, it was common practice to include the new born child in the mother’s passport. This was done to give the baby sufficient travel documentation to enable the baby to return home with its parents when they departed Australia. The inclusion was made in the mother’s foreign passport, by the appropriate Consulate in Sydney, and the Sydney Passport Office would in no way be involved in this process. So it came as some surprise to me to see an increasing number of applications for Australian passports lodged on behalf of Hong Kong Chinese babies born in Australia. Why were these babies not included in their mothers’ Hong Kong passports? Could it be because the babies were born Australian citizens? But then so were all the other babies born in Australia to all the other visitors in Australia. Their parents could have applied for Australian passports for their children also, but they didn’t. So what was prompting visitors from Hong Kong to make an early claim on the Australian citizenship of their babies?

The matter might never have come to my attention if these applications for the Hong Kong babies had come in, in dribs and drabs. I would probably have passed them off as some kind of Chinese quirk. Considering that these applications all seemed to be perfectly legal, they would hardly have attracted my interest. I might have thought that I would have been better occupied worrying about the real passport fraud which I was finding in other passport applications. But the lodgement frequency of
Hong Kong baby passport applications began to increase, and there seemed to be something peculiar about them. So one day, after all the passports in the office had been issued, I collected all those applications relating to Hong Kong babies, and took them to my desk. There were 26 in all, and as I spread them out across my desk, what struck me immediately was their incredible sameness. The handwriting on all applications was the same, and the passport photographs appeared to be the same also. The only obvious difference between them was the names.

These days, passport photos are scanned and digitally impregnated into the inside of the passport’s cover. But in those days the applicant was asked to supply four identical photographs. Of these, one stayed with the application, one was laminated into the passport, and the other two were spares in case the lamination did not set properly or there was some other problem with the passport which required an immediate replacement before issue. If there was no problem then there were always two spare photographs with the application. So I took from each application, one of the spare passport photos, and pasted them together on a single sheet of paper with the passport number written beneath each photo, and I was amazed at what I saw. They were all so much alike that I could not tell if each photograph of each baby had been taken separately, or if they had all been reproduced from the same negative. They were after all, all photographs of newly born Chinese babies, all with chubby little cheeks, all with tiny Asian eyes, all with a wisp of black hair on their heads, all wrapped in white cotton blankets, and to me, all looking exactly the same, and not only that, but according to the applications, all the babies and all their mothers were living in Sydney at the same address. In addition, the certifier who authenticated the identity on each application for each baby, was the same for all babies; a Chinese doctor, also living at the same address. With so many similarities between them, it was obvious that there was an extensive organization behind these applications for Australian passports. It might have all been legal, but it all looked strange to me. So the following Saturday morning I went to the address. I was surprised to find that it was a motel, in quiet, tree shaded surroundings off
the Pacific Highway, in one of Sydney’s leafy northern suburbs.

The motel is not there now, because it has long since been redeveloped into high rise apartments, but when I visited this place back then in 1984 it certainly held some surprises for me. I had no particular plan in mind, other than to pursue the mystery of these similar passport applications, and not knowing what to expect, I walked through the motel’s front door with some trepidation. I had no search warrant, no back up, and no authority to be there, and I was intent on investigating people who had committed no crime that I knew of. So if the situation had turned bad, I would have found myself in a nasty legal minefield. Therefore, I decided to keep a low profile and watch and wait and see what happened. The two Chinese girls at the reception desk glanced briefly at me but as I did not approach the desk closely, they took no further notice of me. On one side of the reception desk was a dining room, and on the other side, a lounge room. I looked around briefly then walked into the lounge room nonchalantly as if I was expecting to meet someone there. I saw two pregnant Chinese ladies quietly playing some kind of Chinese board game together, and they also looked at me but took no further notice of me. The room was comfortably furnished with a big television set at one end and magazine stands here and there, containing both Chinese and English language publications. I picked up a copy of yesterday’s *South China Morning Post*, sat in a chair, opened the paper, and hid behind it.

I sat there for three hours, and what I learned in that time amazed me. I saw no other Caucasian on the premises. Everyone there was Chinese, guests and staff alike, and the guests were mostly either women in an advanced stage of pregnancy, or with babes in arms or in strollers. I saw about thirty mothers, and some obviously mothers-to-be. There were also a few men amongst the guests who looked like they were husbands of some of the female guests, and generally the place looked like a maternity ward, and I was later to learn that it was. Apart from the receptionists, the other uniformed staff looked like nurses, all Chinese of course.
I had obviously found the source of the Hong Kong baby passport applications, but I needed to know more about the scheme and how it operated. I planned to question some of the guests in a discrete manner, and while I sat there pretending to read the newspaper, several pregnant ladies came and sat near me, chattering away in what I presumed was Cantonese. I tried to start up a conversation with them, but they didn’t speak English. Finally, when they got up and left, two pregnant Chinese girls came and sat in the same seats near me. These girls acted as though they were bored being pregnant and they were easy to talk to. They spoke perfect English, and as I had been to Hong Kong several times in the past, I was able to ask the right questions, and they willingly updated me on different Hong Kong places and events, and gradually, I steered the conversation around so that I had them talking about themselves, and from this conversation I learned the details of the Hong Kong baby dumping scheme. The girls spoke freely about this scheme, and why not, because they had committed no offences in relation to it, and therefore they had nothing to hide. Their story was that they had not met each other until they found themselves seated together on the plane to Australia, but prior to that, back in Hong Kong they had separately, together with their husbands, seen advertisements in the Hong Kong Chinese language press offering Australian citizenship for sale. They said that the advertisements plainly stated that for the price of ten thousand Australian dollars, pregnant Hong Kong wives could go to Australia and have their babies delivered there. The babies would be Australian citizens at birth, and because of Australia’s family migration program, this citizenship would become a safety net for the entire family if things went bad after Hong Kong was returned to Chinese sovereignty in 1997, then thirteen years into the future. It was a package deal they said, which included the cost of obtaining a Hong Kong passport for the mother, her visa to visit Australia, airfares to and from Australia, and motel accommodation in Australia. Ordinary antenatal care was also part of the package and was available in the motel from in-house medical staff. The accommodation was for six weeks prior to the birth and for two weeks afterwards, and included in the package were confinement expenses in a
private hospital near the motel, and an Australian passport for the baby.

From what I could gather, the scheme was well organised. My new found informants told me that in Hong Kong the scheme had been advertised under the name of the motel they were now staying in, and although they knew the names of the doctors and nurses who attended them, they did not know who owned the motel or who organised the scheme. They did say however, that they understood that “hundreds” of Hong Kong babies had been born this way, all with Australian citizenship. We talked until it was lunch time, then both ladies left politely to have their midday meal in the motel’s dining room, and I walked out of the motel and went home. On my way out of the lounge, I saw several pregnant Chinese ladies, some more ponderously burdened than others, all making their way into the dining room. I had learned all I wanted to know about the Hong Kong baby dumping racket, except who the organisers were.

Looking back with twenty years of hindsight, however, I can say with confidence that it had all the hallmarks of a Triad enterprise. But all this happened two years before I first learned of the Triad’s people-smuggling operations in Sydney, and when I later did have a reliable informant on the Triad’s activities, I never thought to ask her if it was the Triad which had organised the Hong Kong baby dumping racket. Meanwhile, back at the office the following Monday, I agonised over what to do about this racket. Since its operations were all perfectly legal, it seemed that nothing could be done. Yet it irked me to see our Citizenship Act being abused in this manner. So, using my one page portrait gallery of 26 passport size baby photos as a basis, I compiled a report on what I had learned of this racket, and sent this report off to Canberra.

I never received a reply. But two years later in 1986, which was about as long as it would normally take for a new policy to thread its way through the Missouri Syndrome, Section 10 of the Citizenship Act was amended as shown here on page 178. This amendment changed our hallowed Australian birth right forever.
In his second reading speech in Parliament on the Migration Amendment Bill 1986, the then Minister for Immigration and Ethnic Affairs, the Hon C. J. Hurford explained the changes this way:

The amendments contained in this Bill (i.e. the Migration Amendment Bill 1986 [my note]) are consequent upon the Australian Citizenship Amendment Bill 1986. The Citizenship Bill which was passed by the House on 13 March 1986 proposed amongst other things that children born in Australia to visitors, temporary residents and illegal immigrants would no longer automatically acquire citizenship by birth unless they would otherwise be stateless…….. This Bill will insert a new section 6AAA into the Migration Act which will determine the status of children born in Australia who once the Australian Citizenship Amendment Act 1986 commences will not be Australian citizens because neither of their parents is an Australian citizen or permanent resident. Under the amendment, these children will be deemed to be included in the entry permit, or to have the same immigration status as their parents.

(Hurford 1986)

The Australian Citizenship Amendment Bill 1986 came into operation on 20 August 1986. (Government Gazette S 401 15 August 1986) So, children born in Australia of illegal immigrant parents up to midnight on 19 August 1986 were born Australian citizens, and any born from that moment onwards, were born as illegal immigrants, just like their parents. Similarly, Hong Kong babies born in Australia before midnight on 19 August 1986 were born Australian citizens, but from that moment onwards, they were born as visitors from Hong Kong, just like their parents. Thus the Hong Kong baby dumping racket was stopped in its tracks, on 20 August 1986 by Act of the Australian Parliament.

Hong Kong parents could still have their babies in Australia if they wanted to, but their babies would no longer be born Australian citizens. For this reason the whole raison d’etre of the Hong Kong baby dumping racket disappeared at the stroke of midnight on 19 August 1986. The effect of this 1986 amendment upon baby dumpers, was almost as profound as the Tampa precedent was to boat people-smugglers. In fact the 1986 legislative changes could have eliminated baby dumping entirely,
just as the Tampa precedent stopped the boat people smuggling racket entirely. But in its wisdom, Parliament decided to allow the 10 year “ordinarily resident” rule of Section 10 (2)(b), so that it was still possible for an Australian born child of illegal parents to become an Australian citizen on the child’s tenth birthday. Thus, baby dumping still continued, and how many children have gained citizenship by this rule since the 1986 amendment we will never know. But one Indonesian girl was released from Immigration detention in November 2003 on her tenth birthday, when she acquired Australian citizenship under this rule while awaiting deportation. At the time of her release, her parents who had been illegally in Australia for 15 years remained in custody while awaiting their deportation (Lamont 2003). In this context, as at 30 June 2002 the number of unlocated overstayers in Australia was 60,000. Of these 16,400 had overstayed their visas by more than ten years (DIMA 2002b Fact Sheet 86). If some of these 16,400 illegals have been living normal married lives in Australia, we can assume that children would have been born to them during this period. Some of these children would by now already have become Australian citizens on their tenth birthday as in the case I have just mentioned, and as the years roll by, their siblings will also become Australian citizens on their tenth birthday for as long as their parents remain undetected, or unless they depart Australia beforehand. And as the original 16,400 have remained undetected for more than ten years, the chances are that some of them will still be undetected during the next ten years. By then there could be a second generation of children descendant from illegal immigrant grandparents. This second generation, would of course all be born Australian citizens, having been born of parents who themselves became Australian citizens on their tenth birthdays. By this stage their Immigration antecedents will have faded into obscurity.

Organised baby dumping was defeated by the 1986 amendment, but its effects are yet to be fully felt in Australia. Some of those babies whose passport applications I investigated in 1984, would now be attending University, possibly here in Sydney, the city of their birth. How
many hundreds more born here under the same scheme are already here now we do not know. They would not be included in visa arrival statistics from Hong Kong because being Australian citizens, they do not need visas, and their Australian passports will show they were born in Australia. How many thousands of relatives will eventually join them in Australia through the chain migration of the family reunion program is also not yet certain. What is certain however, is that together with the Triad’s ELICOS, and BMP rackets and their associated chain migrations, Australia’s demographics have been significantly altered by the Hong Kong baby dumping scheme.

Baby dumping is an insidious long-term form of illegal immigration, which creeps uncounted across generations of migrants, until it merges surreptitiously into the broader spectrum of Australia’s multicultural population. Baby dumping is however not the only form of insidious long term people-smuggling. There is another which has persisted for years with similar impunity, as we shall see, when we examine the marriage racket.
The marriage racket

Just as the innocence of birth has been used as a vehicle for chain migration into Australia via the practice of baby dumping, so also the sanctity of matrimony has become a major source of illegal immigration into Australia by way of the marriage racket.

Whilst the Chinese people smuggling racket was the largest single ethnic immigration scam ever to be perpetrated upon Australia, it was the phoney marriage swindle which according to Sheehan (1998, p.214) was the biggest immigration scheme of all time. It jumped ethnic and nationality borders and, as we shall see, it took many different forms. Like baby dumping, it can occur at different levels of organisation. For example, it can occur with one person only acting alone, if one party to the marriage is unaware of the other’s real intentions. Alternatively, it can involve members of a single family only, or it can occur at a far wider level with organised recruitment of ‘spouses’ by introduction agencies, acting undercover in a clandestine people-smuggling enterprise. Described variously in the literature as “contrived,” “fraudulent,” “phony,” “illegal,” “artificial,” “sham,” “pretend marriage”, “immigration marriage” or “marriage of convenience,” it is collectively known in the jargon as the “bodgie marriage,” and I shall use all of these terms in this thesis, interchangeably. But by whatever name it is known, the purpose of the bodgie marriage is exactly the same. It is to contrive for a foreigner, or a foreign family, and sometimes as we shall see, a whole lineage of foreign families, permanent residence in Australia by faking a marriage to an Australian citizen or Australian permanent resident. Marriages of convenience to subvert Australian immigration controls are easily arranged. One partner can dupe the other into believing that the marriage is genuine, or, both parties to the marriage can cooperate in its fabrication. However, as easy as it may be to fake a marriage, it was also just as easy to detect most faked marriages. The reason why the Department did not detect most faked marriages is explained in the Introduction to Part A, and later in this thesis. The Department’s failure to detect most fake marriages, was one reason
why fake marriage was a popular method of illegal immigration into Australia. Another reason why the fake marriages were so attractive to illegal immigrants was that no technical skills or educational qualifications are required. Apart from health and security criteria which must be met, the foreign spouse can be totally illiterate, with no knowledge of English, and still qualify for a spouse visa. The bodgie marriage is therefore an immigration saviour for unskilled intending migrants who would not otherwise qualify for a visa under Australia’s ‘controlled’ immigration program. In fact, even to this day, for most unqualified intending migrants who do not have the advantage of taking part in other fraudulent entry methods, such as the Triad’s ELICOS and BMP scams, the contrived marriage is still their best option for overcoming Australia’s immigration barriers. However, the marriage must at least appear to conform with the Marriage Act 1961, and as far as the Department is concerned, it must also be “genuine and continuing” (Mig.Reg. 1. 15A (1)). Provided that it appears to be so, then a visa will, in due course, automatically be granted, and what is faked, in the faked marriage, is this “genuine and continuing” criterion, and the way this criterion is faked, will be explained in some detail later.

In an attempt to stem the proliferation of contrived marriages, various policy changes were introduced over the last twenty years, but as we shall see, they have had only limited success. And the reason for all these policy changes and all the administrative effort which accompanied them is because of the flow-on effect, generated by each fraudulent marriage. In this context, as we shall see, the fraudulent spouses themselves are only part of the marriage racket. Like baby dumping, the real impact from the marriage racket comes not from the spouses alone, but from the chain migrations which follow them. It may well be for this reason that Sheehan (1998, p.214) claims that the marriage racket is “the biggest immigration scheme of all.” As I mentioned at the beginning of this thesis (at page 6), a flow of illegal immigrants into Australia is like any other flow; it does not stop at its source just because it is blocked somewhere downstream; it simply flows on in a different direction. Thus it
has been the finding of different directions after other directions have been blocked which has been the reason for the continuation of the marriage racket in Australia, and in due course I will explore the way in which these different directions were found.

Like baby dumping, the main feature of fraudulent immigration marriages is that they are immeasurable. Nobody knows exactly how many bodgie marriages have not been detected, but the anecdotal evidence that they exist is considerable, and this evidence gives some insight into the size of the fraudulent marriage racket. For example, in 1990, Hardy (1990) quoting the Immigration Departmental Secretary, reported that “fake de facto relationships and sham marriages may constitute 70% of applications for residency in Australia” and that the Department was investigating more than 2000 cases of suspected fraud involving bogus marriages used as grounds for obtaining permanent residency. Birrell (1995, p.14) has suggested that the size of the marriage racket is reflected in the divorce rate for foreign spouses who obtained their residence status in Australia by marriage to Australian citizens or permanent residents. No doubt there is some correlation here, since these marriages of convenience last only so long as they are convenient, and soon thereafter come to a predetermined end. Using as an example, marriage and divorce between Australians and Chinese migrants, Birrell reported that there were 937 marriages between PRC migrants and Australian residents and citizens in 1989-90 and about 500 per year thereafter. But the number of divorces amongst these migrants rose from 533 in 1990 to 1,390 in 1993. This he says “implies that many of those who changed their status through marriage, have since ended the relationship,” and we have already seen how the Triad was involved in this process.

Furthermore, in 1996 a Departmental report compiled to assist a Parliamentary inquiry into contrived marriages stated that contrived marriages constituted 66% of the Department’s visa cancellation case load (DIMA 1996c) and that same year Luff (1996) reported that there
were “about 10,000 fabricated marriages formed each year to beat Australia’s immigration laws.” Thus, although we do not have accurate data on the number of immigration marriages contrived each year, there is no denying that fraudulent marriage plays a significant role in Australia’s overall annual illegal migration intake. As we shall see, much of the marriage racket is organised but if we knew the problem has existed for years, why was the organised marriage racket not stopped in its tracks, like organised baby dumping was stopped in its tracks by the 1996 amendment?

Attempts were made to put a stop to the marriage racket, but for a variety of reasons which I shall now examine, these attempts were not very successful. Mary Crock (1998, pp.69-79) has very neatly summarised the policy changes which have been adopted over the years to place obstacles in the way of immigration marriages. What I propose to do here is to mirror Crock’s summary, with an examination of the corresponding ruses which were used to overcome each of these obstacles. After all, the marriage racket is just another manifestation of Lee’s (1969, p.292) theory of “passing over intervening obstacles, as elevated highways pass over the countryside.” Whilst it is relatively difficult to pass over the bureaucratic obstacles placed in the way of fraudulent immigration marriages these days, back in the 1980s, there were very few obstacles for a fake marriage to pass over.

While the Triad was busily smuggling Chinese illegal immigrants into Australia via its BMP and ELICOS scams, other illegals were making good use of Australia’s lax immigration laws in relation to marriage. The extent to which marriages could be contrived, dissolved and converted into migration chains seems unbelievable these days, but in those days, because of an almost complete lack of immigration controls relating to marriage with foreigners, it was easy, and what made it easy was the combination of the then one-stage grant of immediate permanent residence, the recognition of defacto relationships, the interference of the Courts, the quick divorce, the continuing fraud of serial sponsorship, and
the Department’s slack administration of the Migration Act.

Among the most notorious of the Marriage Racket scams were those known in the jargon as

(1) *the brother sister exchange*,
(2) *the Indian rope trick*,
(3) *the double banger*, and
(4) *the mail order bride*.

I shall examine each of these scams in due course. In the meantime, it is useful to look at the policy which was used to assess the bona fides of a marriage for immigration purposes.

The method used to assess a marriage has basically remained unchanged for 20 years. Now enshrined in the Regulations, its original format is to be found in the Department’s publication “Grant of Residence Status Handbook” (DIMA 1987), known in the jargon by its acronym as GORSH. It was a policy document, and it came into being because at the time when it was published, there were no Regulations to the old Migration Act which would give a legal basis to the manner in which the bona fides of a marriage could be tested for immigration purposes. In this context, the Old Act simply stated at Section 6A(1) that an entry permit shall not be granted to a non-citizen after his entry into Australia except under certain conditions, one of which at paragraph (b) was that he is the spouse of an Australian citizen or holder of an entry permit.

GORSH stated in its paragraph 2.8.1 that

an applicant satisfies the precondition in (Section of the Act) 6A(1)(b) solely by having a legal marriage to an Australian citizen or permanent resident. *There are no other legal pre-conditions.*

(My emphasis).

However, in its paragraph 2.8.6. GORSH further stated that
The decision maker is not precluded from deciding to reject an application for permanent residence made on the basis of marriage to an Australian citizen or permanent resident. The important issue is that such a decision...can be shown to have been based on a proper consideration of the merits and that factors both for and against the grant of residence status have been considered.

One of the factors to be considered against the grant of permanent residence was evidence that

the marriage may have been contrived for the purpose of obtaining permanent residence in Australia without a genuine intention of maintaining that relationship beyond migration considerations.

(GORSH 2.8.9)

The Government’s intentions to prevent foreign spouses from obtaining residence in Australia by way of a bodgie marriage were certainly cemented into GORSH. The Courts, however, did not like it. Because GORSH was a policy document and not a legal document, the Courts took little notice of it, and Crock (1998, p.71) quotes Burchett J as deciding that the only pre-requisite to the operation of Section 6A(1)(b) was “the existence of a legally valid marriage between the applicant and an Australian party” (Chumbairux 1986 74 ALR 480). For intending migrants who did not meet any other requirements of our ‘controlled’ migration policy, all they had to do in reality, was to marry an Australian citizen or permanent resident.

For a newly arrived visitor to Australia, intent on getting married for the sole purpose of obtaining permanent resident status in Australia and to do so before the temporary entry permit expired, it was often a daunting task. For example, where to find a suitable marriage partner at such short notice? A certain amount of organisation was required even for a simple no frills marriage ceremony. For example there needed to be at least two independent ‘witnesses’ to sign the marriage certificate,
and of course, photographs were also needed. These were not to record the event for posterity as in a real marriage, but to convince the Immigration Department that it was all genuine, even though it wasn’t. For pretty girls, it wasn’t such a problem, for as we have seen with Chinese girls seeking Australian husbands, (page 160) it was often just a matter of hanging out in the right bars at the right times, looking attractive and available. For them, the Australian man, who, more often than not, was an innocent party to this kind of contrived marriage, could then be relied on to pay all expenses and to take care of all the other arrangements. In this kind of relationship, in order to convince her unsuspecting husband that the marriage was ‘genuine’, the bride would have to play the complete role of doting fiancée and loving wife, at least up to the time when permanent residence was granted, and this could be anything up to a year after the application was lodged. Then, the bride could simply abandon that marriage the very same day that she received the permanent residence stamp in her passport.

It was only at this point that the Australian husband realised that he had been duped into a “marriage of convenience.” There were often heartbreaking results to such marriages, which Birrell (1995, p.14) stated “often came to light through the anguish of the Australian resident partner when he or she discovers that the migrant partner never intended to enter into a serious marriage.” What always amazed me in such cases was how the migrant partner could maintain the deception for so long.

Maintaining the deception was not a problem when the other party to the contrived marriage was a co-conspirator. The problem in these cases was to find a co-conspirator. But enterprising entrepreneurs, for the right price, would supply a package deal which included a marriage ceremony, witnesses, photographs, and, of course, a spouse. For such services, foreigners needed only to look in the Sydney newspapers for advertisements with captions like “Australian girls seek foreign husbands” or “Women seek men” or “Ace introduction services. We need foreign men,” and so on, and a thriving business was done.
It was not always successful however, because while seeking a wife for a contrived marriage, the prospective foreign husband was often tricked into paying hundreds of dollars to such dishonest agencies for 'registration costs,' 'initial fees,' 'consultations,' 'preliminary interviews' and so on, none of which produced a bride. Even when they knew they had been duped, these foreigners were in no position to complain to the authorities because to do so would be an admission of their own conspiracy to defraud the Department. Unfortunately for them, like other forms of illegal immigration, exploitation is rife, even in the bodgie marriage market.

Nevertheless, some of these shady entrepreneurs were quite 'genuine,' in an underworld sense of the word, and produced brides, witnesses, marriage ceremonies, 'official' marriage photographs, genuine marriage certificates, honeymoon hideaways, and all the other necessary marriage arrangements on demand, for a price. One such entrepreneur whom I had occasion to investigate was the perfect example of a successful marriage racketeer, but he came under suspicion because of the photographs he supplied to the newly wed husbands, for inclusion in their Immigration applications for permanent residence. In one such application, a sharp eyed Immigration assessor in our Residence Section saw a photograph which he thought he had seen before in another application from another husband. He searched methodically back through the files and found it. It wasn’t the same photograph, but it was suspiciously similar. In each photograph there was a small marriage party, consisting of a very smart white car, passenger’s side view only, so we couldn’t trace it from its number plates, and in front of it, a liveried chauffeur standing beside the bridesmaid. The bride was clutching her bouquet; and beside her was a very foreign looking husband. In each photograph, the husbands were different, but the bride and bridesmaid were interchanged. That is, the bride in one photograph in one application was the bridesmaid in the photograph for the other application, and vice versa. Taken by itself alone there was nothing strange about this, because girl friends often reciprocate by being each other’s bridesmaids.
But our records showed that both brides had been married before, to husbands in other permanent residence applications both of whom following an early divorce had since married other wives of their own nationalities.

We searched further, and uncovered similar photographs, each with the same car and liveried chauffeur and each with different interchangeable brides and bridesmaids. Each of these women we discovered, had been included in earlier applications for husbands now divorced and remarried to their own countrywomen. An obvious pattern was beginning to emerge with the liveried chauffeur as a common denominator, but I could not prove that this was a marriage racket, until we knew how it was operated. I had to figure out how the brides were recruited.

We had heard rumours that marriage racketeers in Sydney were using prostitutes as serial brides. One of my regular informants, Mariko, herself a prostitute (previously mentioned in this thesis), had heard the rumours but did not know of any prostitutes involved. Nevertheless, I needed information about those who were involved in the racket, and my plan was to do a quick survey of street prostitutes in Kings Cross until I found some who could give me the kind of information we needed. Of course, I could have attempted to conduct this survey myself, simply by approaching some of the street prostitutes there, and asking them questions, but the likelihood that this kind of approach would have produced the evidence we needed was fairly remote. I could imagine what kind of response I would have received. So, I needed an agent provocateur.

It took a considerable amount of coaxing to get Mariko to do this, because she considered herself to be several classes above the sordid world of street prostitution, and she was worried that her high status in the sex industry (and therefore her high fees) would be at risk if she were recognised on the street by one or more of her favourite clients. But in
return for a favour which I was doing for her, she finally agreed to stand on a street corner in Kings Cross one night, masquerading as a street prostitute. Her experience that night at the curb side, is of no interest to us here, other than to report that, on the pretext that she wanted to meet a foreigner who would pay to marry her, she met other prostitutes there who were similarly involved and who put her in touch with none other than the liveried chauffeur. Continuing her masquerade for several days thereafter, she subsequently met this chauffeur and learned that he had a stable of street prostitutes whom he used as serial brides. He recycled each of them through the marriage and divorce circuit about once every three years, and maintained about ten to fifteen concurrent ‘marriages’ at any one time.

The recycling of brides in this and all other marriage rackets was assisted by Australia’s uniform divorce laws under which an application could be made after two years of marriage, for a divorce on the ground that the marriage had broken down irretrievably, and the parties had lived separately and apart for a continuous period of 12 months. (Sections 44 & 48 of The Family Law Act 1975) Bodgie marriages were of course tailor made for such quick divorces. This is because such marriages were doomed to break down irretrievably from their very beginnings and also, because the parties had never lived together, they were easily able to meet the separation requirements of the Family Law Act. Since the lead time from application to decree absolute was about one year, marriage racket serial brides were available for recycling roughly about once every three years.

In the case of de facto marriages, which required no formal divorce arrangements and had no minimum waiting time, the recycling of brides could occur over a lesser lead time; that is, as soon as permanent residence had been granted to the husband, which was normally about one year after application had been made. Some enterprising serial brides used both circuits simultaneously; that is, while awaiting a divorce from one ‘husband,’ they had already lodged another permanent
residence application for another ‘husband’ on the basis of a contemporaneous defacto relationship, on the ground that the formal marriage had already broken down irretrievably.

Because my informant had pretended to express an interest in becoming a serial bride in his marriage racket the liveried chauffeur explained to her that his fee to the foreign husbands was $30,000 of which she would receive $15,000 for each marriage. For this fee she would be required to attend a marriage celebrant’s premises with her ‘fiancé’ on a certain time and date to give notice of intention to marry, and then to attend again one month later to go through with the marriage ceremony. After the ceremony, full payment would be made. She was not obliged to be a wife in the normal sense of the word, and did not even need to cohabit with her ‘husband’. For her, it was very simple. Furthermore, the chauffeur explained, with the valid marriage as the basis of an application to stay in Australia permanently, it was then up to the husband to convince the Department that the marriage was “genuine and continuing” and as we shall see, this was often not hard to do. My informant’s only other obligation for the fee she would earn was that in due course, about three years later, she would be summoned to the Family Court to consent to a divorce. After that, she could volunteer her services again, for a similar fee, in another contrived marriage.

Now familiar with the recruitment process, and with a better understanding of how this particular marriage racket operated, we set about rejecting those applications for permanent residence where we could identify the serial brides, but to no avail. Our legal Branch baulked at the idea of rejecting applications on the basis that our serial brides were marrying serial husbands. In Australia, we were told, there was no law that prevented people from marrying and divorcing as many times as they liked. Furthermore, we could not even reject them on the basis that the brides had been paid to marry. Mary Crock (1998, p.73) quotes Dhillon (unreported FFC 8 May 1990) as the leading case in this matter when the court decided that:
It is not necessarily inconsistent with a genuine marriage relationship that it was entered into by one or both parties with a view to material benefit.

We were back to the drawing board again. The same court, however, also declared that the only test of a genuine marriage is if it can be said that “the parties have a mutual commitment to a shared life as husband and wife to the exclusion of others.” This pronouncement was interpreted by the Department to mean that the marriage certificate by itself alone was no longer the sole criterion for assessing a genuine marriage and that we now had the authority to assess each application on its merits to see if the relationship on which it was based disclosed a mutual commitment to a shared life as husband and wife to the exclusion of others.

Accordingly, for each application for permanent residence on the grounds of marriage to an Australian citizen or permanent resident, the Department then established a series of tests to be applied. Originally inserted in GORSH (Para 3.12.6) for the purposes of assessing the merits of de facto relationships, the tests were later enshrined in the Migration Regulations (Reg.1.15A.(3)) to be applied to any marriage relationship, de facto or otherwise.

The reason for these tests was to measure the strength of the relationship, and to ensure that it was publicly recognised. The rationale behind all this was the assumption that a strong marriage relationship which was publicly recognised could hardly be contrived. However, we were in for a great surprise.

For this purpose of measuring strength and public recognition, the parties to the marriage were asked to supply documentary evidence of the kind which any genuinely married couple would in the normal course of their relationship, be expected to possess. For example, any ordinary married couple might be expected to possess various kinds of official documentation addressed to both of them at the same residential address.
This might include telephone bills, electricity bills, rental receipts, mortgage repayments, council rate notices and so on. Most genuinely married couples would have relatives or friends who could attest to the genuineness of the relationship, so for the purposes of immigration assessment, these friends and relatives were asked to supply Statutory Declarations detailing their knowledge of the relationship. For a female applicant, her use of her husband’s surname was given some weight, and the couple’s financial commitment to each other might be evidenced by joint bank accounts, shared liabilities in the form of joint loans, joint credit cards, joint private medical insurance cards, joint household insurance policies, joint ownership of property, and the terms of each others’ wills. Recognition of each other’s families of their relationship could be evidenced by family photos, and letters from each other’s parents to both husband and wife. Shared upbringing of children could be evidenced by birth certificates showing joint parentage of the same children, and the joint payment of school fees, and the multitude of other expenses involved in the joint rearing of children. Further evidence of a continuing relationship could be shown by photos taken on joint excursions, joint holidays taken together, airline tickets and hotel bookings in joint names, and so on.

Collectively, all these documents were said to be evidence of commitment and cohabitation and were known in the jargon simply as “co-hab.” The whole point of this “co-hab” was that in an ordinary marriage, in an ordinary household, most of this evidence would be readily available, or easily obtainable, and easily deliverable to the Department for assessment purposes. On the other hand, the theory was that it could hardly be supposed that such “co-hab” would be available in immigration marriages, organised by racketeers like the chauffeur and his serial brides. Therefore, prima facie, this “co-hab” based assessment would seem to be foolproof. But the system was defective because both GORSH and the Regulations stipulated that the list of cohabitation evidence was not exclusive or exhaustive, and the absence of some was not necessarily decisive. What was required was a “balanced assessment,” having
regard to “all the circumstances of the relationship” (GORSH 3.12.6 and Reg. 1.15A (3)). In borderline cases therefore, it was always a subjective decision by the Departmental assessor, as to whether or not there was, on balance, sufficient “co-hab” to evidence a genuine and continuing marriage relationship on which to base the grant of permanent residence. This was always a weakness in the marriage assessment system, because one assessor might accept and another might reject an application, given the same amount of “co-hab”. If a decision to reject went to appeal, the courts would of course give the applicant the benefit of the doubt.

The more experienced racketeers, for an additional fee, would set about supplying their clients with ‘evidence’ of ‘co-habitation’ of sufficient substance for an application to pass assessment. This was easy to do, especially if the assessment was only cursory, or if the case could be considered “borderline,” but still of sufficient substance to justify an appeal to the Immigration Review Tribunal in the event that application was rejected. That is to say, not only could a marriage be contrived, but the “co-hab” to support that contrived marriage could itself, also be contrived.

For example, instead of paying a serial bride a lump sum inducement, the racketeer would set up a joint account for her and her ‘husband’, to which the ‘husband’ would pay in money on a regular basis, and she would withdraw money at her leisure. They did not need to live together to do this, but regular bank statements in their joint names sent to the Department’s file would create the illusion of an ordinary household financial arrangement between husband and wife in a genuine marriage. Similarly, any number of Statutory Declarations from ‘relatives’ and ‘friends’ would pass Departmental scrutiny unless some officer took the trouble to check out each deponent’s name and address and his connection with the ‘married’ couple. Also, rental receipts in joint names could be organised, simply by asking the real estate agent to issue them that way.
For the obligatory photographic ‘evidence,’ the serial bride was asked to spend a few hours with her ‘husband’ so as to show a loving couple eating at a restaurant, visiting the Opera House, shopping in Chinatown, and looking at the Harbour Bridge, and so on. If the serial bride was a prostitute, and most of them were, she would simply charge the usual fee for this service. For example, if the whole shoot took two hours at $160 per hour, the excursion for her was a welcome change from servicing a nondescript client in a sleazy hotel room during that same time frame. For the ‘husband,’ it was a valuable investment since it gave him the photographic ‘evidence’ he needed to help his application pass a casual scrutiny.

Of course, there was always the danger that a quick-witted Immigration Officer would notice the photographs were all taken on the same day, because the subjects were dressed the same in all the photographed locations. So, meticulous racketeers would arrange for several ‘photo shoots’ on different days, showing the subjects in different locations and in different clothes. It was easy enough to arrange, and it all depended on how much money the applicant was willing to spend on this kind of deception so as to give his application the appearance of validity. Similarly, the racketeer would arrange for a flood of envelopes, post cards and brochures to be sent to the same ‘couple’ together at the same address, and fake letters from ‘parents’ and ‘friends’ all written in the premises of the racketeer would give the impression that the contrived relationship was both ongoing and genuine. Unless a diligent assessor were to check the bona fides of these letters, it was all so easy to arrange. Meanwhile, back in the Department during the lead-up to decision-making time, all of this contrived ‘evidence’ would build up into an impressive arsenal of “co-hab” which would blind all but the most diligent assessors to the real nature of the relationship. Of course, a visit to the premises by immigration officers to determine who lived there would have exposed most of those fraudulent marriages where the parties had never lived together, but, except in exceptional circumstances, this was never done, and because it was never done, most fraudulent marriages were never
detected. It is true that the Department often considered cancellation of the permanent residence visa in cases where permanent residence was found to have been incorrectly granted, but the cancellation rate, for a variety of reasons which do not concern us here, was so low as to be an insignificant threat to any recipient of permanent residence in Australia.

What impeded the decision-making process further was the difference in work load between the approving and the rejecting of applications. Approving an application (any application, that is) was a relatively simple paper shuffling process, and even if it contained errors, no applicant would ever complain. As a result, an assessing officer might finalise five or six approvals per day. On the other hand, a decision to reject an application had to be meticulously crafted so that it would survive an appeal to the Immigration Review Tribunal or to the Federal Court. Sometimes legal opinion had first to be obtained from Canberra, so that a single rejection decision might take days or even weeks to finalise.

Most bodgie marriages were easy to detect, but it required some diligence, some investigation, and a good deal of time. This should never have been a management problem. The Department could easily have geared itself around the differential work-loading between approved and rejected applications in the same way that it does in the Onshore Protection Unit, where, as we have seen, the rejection rate among Indonesian refugee applicants was in the order of 97% (DIMA 1998a, 68).

The Onshore Protection Unit had no problem in gearing up for that, but in the Residence Sections throughout the Department, it was different. In the Residence Section, the work-loading between approval and rejection of permanent resident applications, was deemed to be the same; even though everyone knew that it wasn’t. Thus, the production quotient for each assessor in the Residence Section was measured by the total number of cases finalised, irrespective of whether they were approvals or rejections. Anyone with a low finalisation output was counselled, harassed, subjected to peer pressure, and generally told to get on with
the job and to stop wasting time. Promotion was not dependent upon the successful detection of fraudulent applications, but upon a high finalisation rate. When faced with a mounting case load of suspect applications, the average assessor had no choice but to reject only those which contained the most blatant examples of fraudulent marriage, and to approve all the others. There was simply no time or resources to decide otherwise. This situation continues to this day, and it has always been a basic flaw in the implementation of the Government’s permanent resident policy.

The grant of permanent residence in those days involved a single administrative decision, and once that decision had been made, even if the mistake was discovered afterwards, as far as the Department was concerned, for all practical purposes, that decision was final. It was this single one step decision making process which contributed to the reason why most applications for permanent residence based on bodgie marriages were destined to succeed.

In this context, nothing succeeds like success, and as the success rate continued to grow for permanent residence applications which had been based on fraudulent marriages, it generated a dynamic of its own. It became an open door for illegal immigration. As a result, the caseload of residence applications based on marriage soon contained more based on sham marriages than on genuine relationships. No wonder, therefore, that the Departmental Secretary reported that 70% of permanent residence applications in Australia were based on sham marriages (Hardy 1990), or that there were reports of up to 10,000 sham marriages formed each year to beat the migration laws (Luff 1996), or that the biggest immigration scheme of all was phony marriages (Sheehan 1998). So, along with the quick divorce, it was the one stage grant of immediate residence status in Australia which was helping this flood of fraudulent marriages. What had happened over the years was that although the testing methods by themselves alone were good enough, they had not been allowed to operate effectively, nor had the Department geared itself up to cope with the massive case-loading of fraudulent marriage applications which it had
attracted by its own ineptitude. In order to reduce this loading, or alternatively to discourage racketeers from lodging bodgy marriage applications, a drastic policy change was required.

It came in the form of the two stage process. In the first instance, it applied only to applications for permanent residence based on marriages formed in Australia, and it was designed to pre-empt fraudulent marriages by placing a time bar on subsequent remarriage. In effect, for foreigners marrying in Australia, it did what the Family Law Act had never done: It increased the lead time to divorce. This increased lead time did not, by itself alone, put an end to bodgie marriages. But it did slow down the chain migration which ordinarily followed on from contrived marriages. Chain migration could still happen, but the changes meant that there would be longer separation between the original bodgie marriage applicant, and the real spouse and family waiting to be smuggled into Australia from overseas.

Crock (1998, p. 71.) described the changes this way: “Permanent residence was granted only after a delay of two years, and on condition that the relationship in question remained current.” So, upon initial application a temporary entry permit was issued, and 2 years later if the marriage was assessed as still ongoing, then a permanent entry permit would issue. The Department measured the changes this way:

The introduction of the new arrangements was followed by a reduction in the number of on shore spouse and defacto spouse applications received. During 1991-92 an average of 656 spouse and defacto category applications were made each month, compared with a monthly rate of 805 for 1990-91. The total number of applications for the year in this category was 7881, in contrast to 9664 in 1990-91.

(DIMA Annual Report 1991-92 p. 60)

This 18% reduction is an indication of the size of the onshore marriage racket, since in all cases, the parties to a genuine marriage suffered no disability whatever from these changes, and were not effected
by them. However, for parties to a contrived onshore marriage it was different. The processing time for both entry permits and the subsequent divorce proceedings, meant that the fraudulent applicant in Australia and the real spouse waiting overseas could be separated for more than five years.

The 18% reduction however was not a real measure of the number of onshore bodgie marriages, because notwithstanding the obvious disadvantages now imposed by the changes, some foreign families endured this longer separation as just another obstacle placed in their pathway by Australia’s ‘controlled’ immigration policy. So the changes did not abolish the marriage racket. At best, they were only an inconvenience for it. In the beginning, this two stage process applied only to marriages contracted in Australia. It did not apply to foreigners who had married Australians offshore. For them, permanent residence was granted immediately upon the foreign spouse’s arrival in Australia; that is, even before emerging from the international air terminal building. As a result, the foreign spouse of a marriage contrived offshore did not have to keep up the pretence of that marriage in Australia. She, (and it was mostly she), could walk away from the marriage at the airport, without even speaking one word to her Australian husband, and many did. In the Immigration office in Sydney we were inundated by complaints from jilted husbands, each of whom had stood lovingly outside the Arrivals terminal at Sydney International, clutching the customary bunch of flowers, eagerly waiting to greet his arriving bride, only to see her pass by without a sideways glance, into a waiting car, never to be seen by him again, until she filed for divorce, some two years later. Then, about one year after that event, her name would appear in our records again as having sponsored a husband from her home country, accompanied, surprise surprise, by his children. No prize for guessing who their mother was.

In many ways, the offshore contrived marriage was a lot easier on the foreign family involved. For example, the foreign spouse had the advantage of remaining with his or her foreign family, in their foreign family
home, while awaiting the processing of the application for Australian permanent residence. For such offshore marriages, the applications were processed in the nearest Australian Embassy, and, with good luck and good management, the foreign spouse might even evade a sexual relationship with the Australian spouse before walking away from that marriage. For these reasons the offshore contrived marriage became very popular as an easy way for families to migrate to Australia.

However, as with the onshore marriage, when the Australian spouse to a contrived offshore marriage was an innocent party, a sexual relationship, even a brief one, was difficult to avoid, and the foreign spouse had to be content with this. These contrived marriages with innocent parties often produced some unintended consequences, as we shall see. But at this stage it is useful to examine some of the different methods that were used in offshore contrived marriage migration. I will describe four which were in common use in the 1980s, and 1990s.

The first two of these methods were popular because to migrate an extended family, no educational or other qualifications were needed, apart from a clean bill of health. All members of the extended families involved were either spouses, or dependents of spouses. They therefore bypassed the dreaded points system, as though that system did not exist. In both these methods, an essential ingredient was false documentation.

In this context, to ordinary Australians accustomed to our rigid identity checking systems, it may come as some surprise to know how easily false documents can be obtained by people of other nationalities. We have already seen that the Triad printed their own, and for some foreigners outside the orbit of the Triad’s operations, acquisition of false documentation was almost just as easy. This is particularly so for our nearest neighbours, in the Philippines, Thailand and Indonesia. This became evident to us during ordinary Compliance operations in the Department, when quite by accident we came across illegals whom we recognised because we had already deported them previously. In each
case, they had simply returned to Australia on another passport in a different name. When completing their visa applications, they just ignored the requirement to declare any other names they had used in the past, and in the absence of any real cross checking system which might have used DNA or fingerprints, the only way they would ever be caught out was by visual recognition. For females, it was easy; different hair style, different hair colour, different dress style, different name, different passport; who would see through this kind of disguise?

One Thai prostitute who returned to Australia with a different name on another passport after I had previously deported her, explained her new identity this way; “I told the (Thai) official that the other name was unlucky. It caused me to be deported from Australia.” It may sound trite in Australia, but in another country in another culture steeped in legends and superstitions, it is not so trite. An Indonesian man whom I had previously deported had an even more plausible explanation for his new passport in a different name, “it was easy, Tuan, I just paid a bit more.” So with false documents, easily acquired, the following two methods of people smuggling by marriage were easily contrived:

The brother / sister exchange.

This scam was particularly favoured by Indonesian illegal immigrants because of their customary lack of surnames. For example, Indonesia’s first two presidents Sukarno and Suharto each had no other names, and for a later Indonesian president, Magawati Sukarnoputri, the name “Sukarnoputri” was not a traditional surname. Translated, it simply means “daughter of Sukarno” which in fact she was. Thus without a tradition of family names, a sister could easily be presented as a wife, even with genuine Indonesian passports, since the home addresses in the passports for both brother and sister could be the same as for husband and wife. In this example, the aim is to migrate a family of four siblings to Australia, by bypassing the points system. A and B are brothers, C and D are their sisters. A applies in our Embassy in Jakarta for a visitor visa to
Australia. On the application form, he declares he has no siblings. On arrival, he contrives a marriage with an Australian woman, in the manner previously described, and in due course he is granted permanent residence in Australia. Three years after arrival, he divorces his Australian wife, and returns to Indonesia, where he ‘marries’ his sister C. There is of course no marriage ceremony, but they produce to our Embassy a false marriage certificate. As C has not previously been named on any Australian Immigration document, her real identity as A’s sister is concealed from our Embassy staff. C is given a spouse visa and is granted permanent residence in Australia, immediately upon arrival. As they are in reality, brother and sister, they live together in Australia, just as they had lived in the same house together previously in Indonesia, and no one in Australia would suspect that they were not husband and wife. But two years later they divorce, and return to Indonesia, where A ‘marries’ D, and C ‘marries’ B, and they all travel to Australia; A and C as returning permanent residents, and B and D as their migrating spouses. B and D are granted permanent residence on arrival.

This family now has two households in Australia. In each household, a brother and sister are ‘cohabitating’ as a normal husband and wife. They own property together, share liabilities and assets together, and the contrived relationship which they have set up would pass any ordinary Departmental relationship test. In due course they will all divorce again, and each will then bring a real spouse of their choice to Australia. A chain of Indonesian relatives will then follow in accordance with Australia’s generous family migration program.

In this particular example, the original contrived marriage between an Australian citizen and one sibling, enabled all the other siblings to migrate to Australia without passing the dreaded points test. It was all so simple, when you knew how. In fact, the only occasions that I know of when a “brother/sister exchange” was ever discovered was when sibling rivalry caused it to be deliberately revealed to the Department by an aggrieved party. That is how we knew that this method of immigration
marriage existed. But in the normal course of events, the ‘marriages’ of the brother/sister exchanges were concealed so cleverly that no one in Australia outside the family would ever have known the true relationship between the parties.

The Indian rope trick

The next example is not so simple. Known in the jargon as “The Indian Rope Trick,” Departmental legend has it that the name derives from two sources, first, because it was originally detected amongst Indian migrants, amongst whom its machinations were well suited to the lifestyle of a Sikh undivided family. This is because even though it relies on false documents, its central requirement is the ability to live at close quarters with in-laws. Secondly, the whole process is so convoluted that, like the mythical Indian rope trick, it has no visible means of support. In essence, the Indian rope trick is a variation of the brother/sister exchange with the addition of children. It involves the migration to Australia of an entire extended family, in which not one member of that family would qualify for migration to Australia, other than as a spouse or young child of an Australian citizen or resident.

The Indian rope trick is a good example of the chain migration which can follow on from a single contrived marriage. Even today, ordinary Australian visitors into the Indian or other ethnic enclaves in Australia such as Woolgoolga near Coffs Harbour in New South Wales, or in some of the Western Sydney suburbs, often wonder at how so many unskilled migrants who cannot even speak English, ever made it through our immigration controls. We know that some of them did it this way, and for them the Indian rope trick was the perfect avenue for the illegal migration into Australia of entire extended families. It was particularly suited to those families who had no one who could pass the skills test of our ‘controlled’ migration program, provided they were all patient, that is, because it took years to complete the cycle, as in this example:
The Indian Rope Trick

The aim, in this example, was to migrate an extended family of 19 people into Australia, by bypassing the points system, by way of a succession of intricately contrived marriages. Thus:

A and C are brothers. A is married to B, C is married to D, and D has a brother E who is married to F. They comprise 3 nuclear families, each of which has 3 children, and the lineage includes two sets of grandparents, making a total of 19 people. By agreement amongst all adult members of this extended family, E is selected to obtain permanent residence in Australia via a contrived marriage with an Australian citizen. For this purpose, E divorces F and goes to Australia, where he contrives a marriage with G, an Australian woman. Because of this marriage, E obtains permanent residence in Australia. Two years later, E and G divorce. If E were to marry his original wife F again so quickly, our officers in the overseas post might be alerted to the scam. So B divorces A and E marries B, of whom our overseas post has no record. B comes to Australia with her children by A, and they live in Australia with E. Two years later, they divorce. E then pretends to marry his sister D who has, in the meantime divorced C and acquired a new identity. E brings D to Australia, together with her children by C. Meanwhile, B marries her brother in law C, and brings him to Australia. Two years later, they all divorce. At this stage, B,C,D and E are all in Australia. So C and D resume their marriage relationship, even though, officially, they are still married to other partners. B then divorces C, and remaries A, her real husband, and brings him to Australia, and E divorces D, and remaries his real wife F and brings her to Australia together with their children. By now, they are all living in Australia, and all living in their real life relationships again, so C and D remarry. The families then bring out the grandparents, and the entire extended family of 19 people has successfully relocated to Australia. They did this without having to pass the immigration points test, because all the persons in this equation obtained permanent residence status in Australia by marriage with an Australian permanent resident.

The marriage equation has then turned full circle, after having passed through the following stages, where “=” indicates the official marriage relationship:

\[
\begin{align*}
A &= B \quad C = D \quad E = F \text{ (in India)} \\
& \quad E = G \text{ (G is the Australian citizen)} \\
& \quad E = B \\
C &= B \quad E = D \\
A &= B \quad C = D \quad E = F \text{ (in Australia)}
\end{align*}
\]

The equation, in this example, took 10 years to complete.

This is an actual case which I investigated.
The success of the Indian rope trick was due to the combination of three interlocking features. The first was the endurance of the members of each nuclear family to withstand years of separation from each other. The second was their compatibility to live with their close kin and affines, and the third was the corporate memory loss of the Department. This corporate memory loss occurred because in all the years that it took to complete a rope trick cycle, the foreign extended family remained the same (give or take a child birth or an unexpected death in the meantime), but over the same time span, the immigration officers who were to process the chain migration applications, were not the same.

The reason for this is that officers on secondment to overseas posts were rotated every two years. Thus, the immigration officers at the beginning of the cycle were no longer in the same posts at the end of the cycle, and even in the more sedentary environment of the Sydney Immigration offices, routine transfers, promotions, and retirements saw the faces of the immigration officers change over the life span of an Indian rope trick cycle. So officers who might have suspected a scam at the beginning of its cycle, might not be around to investigate it at the end of the cycle.

This loss in continuity of effort led to a loss of corporate memory. In short, the Department could easily lose track of an Indian rope trick. Furthermore, space-saving policies meant that files could not be kept indefinitely, and unless specifically flagged as part of an ongoing investigation, files were routinely destroyed after ten years.

Although basic details from these destroyed files would remain on the Department’s computer data base indefinitely, by the time most Indian rope trick cycles were completed, the original paper records might no longer be available to investigating officers. This meant that even if a prosecution were intended, any documentary proof of the false names or double identities used during the cycle could be lacking. In fact, in all the completed Indian rope trick cycles which I investigated, although we knew
what had happened over the intervening years, the documentary evidence sufficient to convince a Court was no longer available. For these reasons, time was definitely on the side of the extended family, and before closing the rope trick circle, the longer these people could endure the separation and their mixed up nuclear family arrangements, the safer they would be from any Departmental investigation. As with the “brother/sister exchange” scams, evidence of rope trick cycles often came to light from time to time as a result of sibling rivalries or other family squabbles. If this happened early in the cycle, we were able to take deportation action. But, for the reasons I have mentioned, although we sometimes knew what had happened, there was often little evidence remaining on which to launch a prosecution.

Even when there was sufficient evidence available, the cycles had by then often become further convoluted by the addition of Australian born children who became Australian citizens on their tenth birthday in the manner I have already explained. At this stage there would be little point in even trying to unravel the genealogical mazes involved because the politics of the situation would preclude any further Departmental action. So, unless a rope trick cycle was detected at its early stages (i.e. at the E=G or E=B stage in the example shown) those who had been involved in it were safe from prosecution or deportation, and before long they would all be part of our multicultural landscape, as though the whole process of their migration to Australia had all been genuine.

Like all marriage racket scams, each Indian rope trick cycle began with a single sham marriage contrived with an Australian citizen or permanent resident. Our own failure to detect that first sham marriage in each cycle was the reason why, as a clandestine form of illegal family migration into Australia, the Indian rope trick was so successful. Also successful were the other immigration marriage scams I have mentioned, which were known in the jargon respectively as “the double banger” and “the mail order bride.”
The double bangers

The double bangers were husband and wife teams. They came to Australia together and claimed permanent residence status separately through marriages contrived with different Australian partners. Each person in the double banger team became involved in three separate marriages simultaneously, that is, their continuing marriage to each other, together with their contrived marriages to their two separate Australian partners.

The double banger scam differed from the brother sister exchange and the Indian Rope Trick in that it contained no facility for chain migrants to follow on as spouses of Australian citizens. Chain migrants could still follow, but only as ordinary migrants under the family reunion program. Nevertheless, the double banger was popular amongst young married couples intent on migrating illegally into Australia together, because in its early form, it allowed the married couple to live in Australia together without separation, while each contrived a separate marriage with an Australian citizen or permanent resident. After each had obtained permanent residence status separately through these separately contrived marriages, they could then divorce their Australian partners, and resume their own marriage, without ever having to depart Australia.

That was the theory. However, it was fraught with hazard for various reasons which I will now explain. To avoid confusion in this explanation, I will refer to the parties to each husband and wife team as “the spouses,” and I will refer to the Australians with whom each of the double bangers contrived a separate marriage as “the Australian partner.”

After the spouses had decided to migrate to Australia illegally via the marriage racket, people-smugglers would arrange for them to travel to Australia on different visas, on different airlines, on different days, with the wife’s passport and other documents in her maiden name. For visa, entry or other Australian Government requirements, the spouses simply ignored
their existing marriage together, and registered themselves as “never married.” Having arrived in Australia separately, the spouses then reunited at a predetermined rendezvous and continued to live together as husband and wife while they searched for their separate Australian partners. However, apart from the fact that the spouses were of the same nationality, the Department had no record of any other connection between them, or that they were already married to each other.

As with other onshore bodgie marriages, the spouses could find their Australian partners in either of two ways. They could seek their Australian partners via a marriage racket agency, in which case the Australian partner would be a co-conspirator; or they could go and search for their own Australian partners, in which case the Australian partner would be an innocent victim. In both cases, of course, the marriage with the Australian partner would be bigamous, a fact not revealed to the Department.

If the spouses chose to go to a racketeer, their main problem was money. For both spouses together, the total cost would be at least $60,000. The other problem was that they had to lodge their separate applications for permanent residence before their temporary visas expired. They therefore needed to raise a large amount of money very quickly. The only way they could do this, in most cases, was for both spouses to work at multiple jobs or double shifts in factories and restaurants. Sadly, even this was often not enough, and sometimes in order to raise the required amount of money on time, the spouses were forced into the drug trade or into other clandestine activities, or the wife could become a prostitute. Either way, their own marriage was put under extraordinary strain. If the spouses decided to seek their own Australian partners, and in my experience most double bangers usually did, then the spouses would have to live apart from each other for most of the time. They could still be together for some of the time, and to do this, they would often maintain a love nest somewhere. For example, they might rent a dingy little room in a run-down tenement, where they could sneak away
from their respective Australian partners for rare moments of marital bliss together. However, as their Australian partners were innocent victims, the spouses would still have to maintain the pretence of marriage with them. In reality of course, it was in each spouse’s interest to help maintain the other spouse’s contrived marriage also, lest their entire plan fail through the rejection of either one of their applications for permanent residence. But it was not easy. Just keeping one marriage on an even keel is hard enough for most couples, so for the double bangers, keeping three marriages going at the same time between them was a formidable task to say the least. It didn’t always work. In my experience, whenever a double banger failed, it was usually because of the presence in Australia of the other spouse, who could not accept the reality of the scam. Within the marriage racket, it was axiomatic that in a contrived marriage with an innocent Australian partner, both foreign spouses had to accept that there would be some intimacy including normal marital sexual relations with that partner.

In other kinds of bogus marriages where only one spouse was in Australia during its currency, the other spouse was far away in the home country, and was sufficiently isolated from this intimacy to make it bearable under the circumstances. But for double bangers, there was no escape. They were constantly exposed to glimpses of the other spouse, driving around with the Australian partner, shopping together, holding hands in public, and so on, and when alone in their love nests the spouses would often exchange details of their intimacy with their separate Australian partners. It was often too much for them to bear.

For this reason, many double banger scams ended voluntarily. Sometimes without first telling their Australian partners, the spouses departed Australia together, and the first we would know of a particular double banger scam was when the Australian partners contacted us, seeking the whereabouts of their spouses. Our Departmental inquiries would reveal that they had simply packed up and gone home.
On other occasions, the spouses deserted their Australian partners but remained in Australia as illegal immigrants. And on rare occasions, distraught double bangers would come to us, seeking our help to return to their home countries. It was during interviews with them on these occasions that we got to know the dynamics of the double banger system. During these interviews, the wife would look on whimsically while the husband agonised over the enormity of their situation. Sometimes double bangers were located from routine follow up of documents accidentally found in their love nests while we were searching the same building for other illegals. In all these cases, routine file and visa checks revealed the true nature of their relationship with each other and with their Australian partners. Sometimes we had to break the news to the Australian partners who it will be remembered, were innocent pawns in this great scam. Generally, on these occasions, the Australian husbands took it all philosophically, but the Australian wives were heartbroken; collateral casualties of this cruel marriage racket.

Double bangers who had been forced to pay the marriage racket fees also came to our attention from time to time. Sometimes they were detected during routine Immigration brothel raids. Sometimes they were found and referred to us by police who had arrested them during police drug enforcement raids. Routine file and visa checks then disclosed the real nature of their relationship with their Australian partners. How many double bangers survived the double lives they had to lead, eventually to receive permanent residence in Australia from their bigamous marriage to their Australian partners, we will never know. Like all other scams in the marriage racket, there are no statistics for successful fraud.

The mail order bride

The expression “mail order bride” is in some respects, a misnomer. It implies that a husband never met his bride until their wedding day, and that all prior arrangements between them were made by correspondence.
That did happen, but where it did, in my experience it was confined to those migrants whose cultures required that marriages be arranged by the respective parents, and not left to the vagaries of the young. This thesis is not concerned with these kinds of marriages.

In all the mail order bride cases which came to my attention, the “mail order bride” had already met her husband, if only briefly, before her marriage. In some cases, the first meeting was years before the marriage, with frequent, if brief, meetings in between. In this context, the “mail order” part of the equation refers only to the correspondence which flowed between wife and husband after they had first met, and prior to their marriage.

The actual proposal and acceptance was sometimes made during the course of this correspondence, or during one of the intermittent meetings. Either way, correspondence was a necessary part of the romance, because it filled the void between what in most cases had been a brief face to face initial contact, and brief meetings thereafter until the marriage which eventually followed. The features which distinguished the mail order bride from other spouses involved in the marriage racket were these:

First: unlike the brother/sister exchange, the Indian Rope Trick, and the double bangers, where all foreign adults involved were co-conspirators in a plot to circumvent Australia’s immigration laws, the majority of mail order brides and the Australians who married them were genuine. This thesis is not concerned with them. This thesis is concerned only with the minority of mail order brides who contrived their marriages in order to migrate their families into Australia. But to show how the fraudulent marriages were contrived, it is necessary to make some comparison with the genuine marriages.

Secondly: in other forms of the marriage racket, most of the initial costs were born by the foreigners involved, for example, the costs relating
to the original travel to Australia, the provision of false documents and so on, were all borne by the foreigners engaged in these scams. On the other hand, the main feature of the mail order bride scam was that all the costs were borne by the innocent Australian partner. I never knew of any mail order bride who paid her own fare to Australia.

Thirdly: unlike the brother/sister exchange or the Indian rope trick where all adults concerned obtained Australian permanent residence status by marriage, in the mail order bride scam it was only the bride who obtained residence status this way, together with the ‘real’ husband, if there was one. All the other foreigners involved in the chain migration which followed the mail order bride into Australia, were subject to the ordinary Immigration points test, just like any other migrant coming to Australia under the family migration program. In this respect it was similar to the double bangers. The mail order bride scam was used by people of various nationalities. But for reasons which need not be explored in any great depth here, it was a very popular method amongst Filipinos. In this context Smith and Kaminskas (1992, p. 72) observed:

At the moment, one in five women marrying an Australian resident sponsor came from the Philippines, and these women appear to be the largest group participating in cross cultural marriages or intermarriages, with Australians.

They also discovered that for the year 1989/90 a total of 1,841 spouses and fiancés migrated to Australia from the Philippines. They studied the percentage of male to female spouses for that year and the preceding two years and noted that of the Filipino spouses coming to Australia each year, 88% were female. Balaba and Roca (1992, p. 59) also remarked that “the Philippine-born population in Australia is predominantly female” and quoting from the 1986 Census data they noted that of the 28,232 Philippine-born, 72.6% are married, of which 4,935 are males and 15,587 are females. Of the married Filipinos, seven out of every ten are married to persons born outside the Philippines” (p. 61). Given this phenomenon, it is not surprising that Cooke (1986, p.23) commented that there is “voluminous literature on Filipino women” and
Coughlan (1997, p. 240) has added “There has been a large amount of research into the Filipino community in Australia, primarily, as a result of the ‘mail order bride’ phenomenon.” Because of the predominance of Philippine wives amongst the foreign born wives of Australian men, the examples I use here refer only to ‘mail order brides’ from the Philippines. In this context, Cooke also commented that “In the popular view Filipinas marry for economic reasons. There are also reports about those who use marriage as a passport to enter Australia. The Filipina then is seen to be calculating and manipulative, using marriage as a passport to ‘the promised land’,” a comment which as we shall see aptly fits some of the examples of ‘mail order brides’ which I shall give.

In 1986, the Joint Committee on Foreign Affairs and Defence of the Australian Parliament noted (at page 192) “Tourism is an important earner of foreign exchange for the Philippines, with prostitution being an important component.” The Committee also noted that there were some 100,000 licensed ‘hospitality’ girls or prostitutes in Metro Manila alone. Under recent Presidents, two of whom were female, Manila has long since been cleaned up, but during the Marcos dictatorship when the mail order bride system was at its height, Manila attracted Australian men, like flies to a honey pot. The reason for this was the extraordinary availability of young women, in an exotic variation of the world’s oldest profession. For although these girls did give sexual services for a fee, in all other respects they were quite unlike the western concept of a prostitute, for, in addition to whatever sexual pleasures a client might wish, the girl would also be his shopping companion, tourist guide, dinner guest, dancing partner, live in housemaid, and general companion. I cannot imagine Kings Cross prostitutes being all of these, but Manila bar-girls were, and they referred to themselves as “hospitality girls.” It was their all inclusive ‘hospitality’ which especially endeared them to Australian men who visited the Philippines.

I visited Manila several times during the height of the Philippine mail order bride phenomenon. In those days, Manila under Marcos was a
vibrant bustling city. The heart of the tourist belt where most expats congregated was a gaggle of tourist hotels, restaurants and girlie bars strung out along the two parallel streets of Mabini and Del Pilar in the bay side suburb of Ermita. Because the hospitality girls were found only in bars, they were generally referred to as “bar girls.” They were not bar maids in the Australian sense of serving drinks to customers. Bar-girls sat on the customer’s side of the bar, generally chatting with the customers and offering other services and they did not serve drinks. On the contrary, they drank small ‘ladies drinks’ at inflated tourist prices the cost of which was added to the bar tab of whichever customer befriended the girl.

In some bars, these girls wore Playboy Bunny costumes, but in most of the others, they just wore very brief bikinis. The bikini was an excellent employment criterion for these bars, because any girl who did not look good in one, could not get a job. These bars ranged in size from small hole-in-the-wall dingy little dives to the big raucous night clubs which boomed out honky tonk music all night. These places had splendid names, like Red Rooster, Kiss, The Firehouse, and El Dorado and the most notorious of these was Bubbles, which boasted 300 girls.

In a chapter entitled “The Bar System” Saundra Sturdevant and Brenda Stoltzfus (1992) explain the general relationship between bar-girls, the bar management, and the customers, but in general terms a girl could leave the bar with a customer if he paid her “bar fine.” The bar fine varied according to the establishment but was generally within the range of P300 – P600, then equivalent to a month’s wages for a cashier (Sturdevant & Stoltzfus, p.46). These days the bar fine is P1000 (roughly $35). The purpose of the bar fine ostensibly, was to compensate the management for loss of bar trade caused by the girl’s absence. But in reality it was a money making gimmick for both bar and girl. Yet it wasn’t all heartless because, if a steady relationship developed between girl and customer, as it frequently did, the bar manager would agree to a “steady bar fine” which was a daily rate, much reduced, to accommodate the customer’s budget and his infatuation with the girl.
Since the girl was not obliged to return to the bar during the currency of her steady bar fine, she was free to spend all her time with the customer, while still retaining her employment position with the bar. This arrangement transformed the customer into a companion. It allowed the girl to accompany the tourist and to help him explore other parts of the Philippines where tourists otherwise might never have ventured alone. These exotic adventures together to the rice terraces at Benaue, or to the Mayon volcano near Legaspi, or to the Cross of Magellan in Cebu, or to the historic Spanish city of Zamboanga, often led to lasting intimate relationships, and sometimes even to marriage.

Bar-girls were not the only attraction for Australian tourists, who often fell under the spell of other Philippine girls in the tourist industry. One Australian manager of a tourist hotel in Angeles City told me he employed fifty girls in his hotel, not as bar-girls, but as cleaners, waitresses, kitchen hands, shop assistants, tour guides, hotel receptionists and so on. He said that in any one year, about 140 different girls would pass through those fifty positions on their way to the altar; each one marrying an American, an Englishman, a European, or an Australian who had been a guest at his hotel. Each girl became a mail order bride, he told me, because he saw the envelopes of letters addressed to them at the hotel, when he collected the hotel’s mail. The girls also asked him to cash the cheques which they had received with the letters. And not only that, he added, but each girl corresponded with as many as twenty or thirty former guests all at the same time, until the guest of her choice proposed to her. Furthermore, he said, not only was there a waiting list among guests for his hotel; there was also a waiting list amongst employees. As a result, he said, he could always choose to employ the most attractive girls, and this he said was itself an extra attraction for the guests. I asked him if he ever made any money from the mail order bride business which was gratuitously operating out of his hotel. He said his reward was a hotelier’s dream come true: continuous 100% occupancy.

For Philippine women not employed in the tourist industry there was
always the introduction agency. Although it must be said that the majority of Philippine women who used these agencies were genuine, it was amongst these agencies that the racketeers’ business really thrived, especially after the two stage onshore spouse visa came into operation.

There had always been a fair representation of fraudulent Filipino spouses among the other fraudulent applicants for the onshore spouse visas, but, as I mentioned earlier, the five year reuniting delay for ‘real’ spouses caused by the two stage onshore visa, imposed an additional hardship upon the fraudulent spouses. This resulted in an 18% reduction in onshore spouse applications. But there was still an offshore market to be tapped, so the Australian marriage racketeers promptly opened branch offices in the Philippines. The Australian office would advertise in Australian newspapers on behalf of Philippine women seeking Australian husbands, and the Philippine office would assist in the Philippines those Australian men who had responded. It was all done surreptitiously, not to protect any of the parties involved in the prospective marriage, but to make money for the agencies. I went along to one such agency in Sydney, just to see how the system operated. For $20, I was allowed to look through an album which contained photographs of pretty Philippine girls. Each photograph was named and numbered. For example, “Rosalita 325.” For $60 I could view a videotape of “Rosalita 325” which I did. The videotape was a general opportunity for the girl to explain her likes and dislikes, hobbies, background, ambitions and other introductory information which might interest a prospective husband. If I wanted to write to Rosalita 325, I had to register with the agency as a prospective husband, for a fee of $1000. The agency would deliver my letter to her, via their branch in the Philippines for a fee of $50. If she responded, I could collect her reply from the Sydney office for another fee of $50, and so on, until she either stopped writing, or until she told me her actual address in the Philippines, when I could then write to her directly without having to go through the agency. If I wanted to go to the Philippines to meet Rosalita 325, and marry her, the Philippines branch of the agency would then (for an additional fee) assist me further there. It was all so well organised. I
bailed out of my masquerade before paying the $1000 registration fee. So I never got to meet Rosalita. But in the normal course of my Immigration duties, I did get to meet many Filipino mail order brides who had genuinely used an introduction agency for the purposes of genuinely finding an Australian husband, and migrating to Australia. I usually met them while interviewing them for Australian citizenship, that is, after they had married their Australian husbands, and more than two years after they had arrived in Australia. They usually came to the Immigration office accompanied by their Australian husbands, and as they sat across my desk while I processed their citizenship applications, I would engage them in small talk, just to set them at ease. During this small talk, I would casually ask them how they had first met. The responses which I received in answer to my question were almost as exotic as the brides themselves. This is because for a husband born in Australia, it was not possible that his Philippine bride had been “the girl next door,” a sister’s best friend, a classmate at school, part of an office romance, met on the Manly ferry, or a partner from some long prenuptial relationship. In fact, the average Australian courtship paled into insignificance when compared to the average mixed Australian-Philippine romance, like that of a girl named Aimee, born in a barrio high in the hills of Cebu. She told me that she had seen her mother grow old and wizened after a lifetime of poverty and hard work in the paddy fields, and unless Aimee could escape all this, she knew she would share the same fate. She couldn’t get a decent job in Cebu City because she lacked the education, and the only menial jobs which awaited her there would see her living in the same sort of poverty, but in a hovel in a filthy urban slum. Aimee said she had thought of becoming a hospitality girl, but some of her school friends had tried that, only to return home diseased and abandoned with mixed race fatherless children, little hope of marriage, and a future life more insecure that that which they had originally left behind. So, in desperation she applied to become a mail order bride. She did this through the Cebu City branch of an agency based in Sydney. It cost her nothing, since the Australian men paid for everything. Agents in the Cebu branch videotaped an interview with her, and in response to her application, she received fifteen initial
letters of introduction from Australian men, complete with their photographs, and what we would now call biodata. But for a variety of reasons, one by one they all dropped out of the loop, except for one who had continued to maintain contact with her.

After many letters back and forth he visited Aimee in the Philippines and their first meeting took place in a hotel lobby in Cebu City, in the presence of her parents. During the next year, between letters, he returned to the Philippines twice, on both occasions travelling by jeepney to her barrio, where he met all her family. On his next visit to the Philippines he did not tell her he was coming. He rode by jeepney to the barrio where he saw her father in their house, and there and then he asked and received her father’s permission to marry her. But she was not in the house at the time. She was out in the paddy fields, shin deep in water, lined up with ten other women wearing conical nipa hats, bent over, planting rice seedlings, in the manner her people had always done for the last two thousand years. But he could not wait for her to return to her house, so he walked over to the paddy field to find her. She said that because she was hot, sunburnt, sweaty, dirty, and in her old working clothes, she was too embarrassed to acknowledge his presence, so she said nothing, and bowed her head in her nipa hat hoping he would not recognise her. Undeterred, he plunged into the paddy field, and waded along the line of women until he found her. Then he asked “Will you marry me Aimee?” and before she could reply, he scooped her up and carried her back to dry land, while all the other women applauded, still standing in line, shin deep in water in the paddy field. Hollywood, she told me, could never have done it better. Nor, I might add, could they have told the story better. Now with two children, I still see them sometimes shopping at their local supermarket and we remember that day when she told me her story, and I approved her Australian citizenship.

But not all mail order bride stories have such a happy ending. The grant of immediate permanent residence on arrival in Australia on the basis of an offshore marriage, was a boon to people smugglers intent on
exploiting the mail order bride regime. To begin with, it was axiomatic for this category of marriage that prenuptial close contact between the parties was, in the general physical sense, minimal. It occurred mostly during the husband’s two or three weeks’ annual leave from Australia, or during one or two weeks’ special leave. Very few Australian husbands of mail order brides were in a financial or employment situation which would allow them to stay longer in the Philippines, on any one visit. The Australian partner was therefore at a disadvantage in assessing the bona fides of his Philippine fiancée, even if he ever thought to do so. In the example I gave of the girl from Cebu, the Australian partner did make the effort to visit her in her home province prior to marriage. He met the family, assessed the situation and made an informed decision to marry her. But many of the jilted husbands who later complained to me when their wives deserted them, had not done this. Some, totally ecstatic at having their marriage proposal accepted by some beautiful bikini clad bar-girl, were so smitten by the occasion that they never thought to look into the girl’s current family situation. Others who did inquire, told me that the girls fobbed off any probing family questions, with claims that the family lived far away in Southern Mindanao or in Northern Luzon, where even the most ardent Australian suitor would be unlikely to venture.

Marriage racketeers were quick to skill their clients in the gentle art of desertion, and we were inundated with complaints, particularly about early desertions, some of which occurred as soon as the bride had got a job in Australia, or even at the airport on arrival. Some even walked casually past their husbands at the airport to disappear into the crowd. Some brides were even able to fob off any sexual advances by the husbands. One jilted husband told me that he never had sex with his wife; not even once. During their prenuptial face-to-face contact in the Philippines she made sure she was always chaperoned, and after the marriage, prior to his departure, she always had some excuse. When she eventually came to Australia, she complained of jet lag, headaches, and so on, and she deserted him one week after arrival. Early desertions left some Australian husbands not only emotionally distraught, but also,
financially crippled. Some mail order brides not only deserted their husband, they also took his property. These desertions usually occurred when the husband was absent at work. One devastated husband told me his wife took exactly half his property: That is, half the cutlery, half the crockery, half the linen, and half the furniture. When he met her again by chance, some six months afterwards, she told him she took her half on the basis that the Family Court would have awarded her half anyway.

Unintended consequences.

Although the marriage racket was, and still is a gigantic fraud against the Commonwealth, nevertheless some of the bodgie marriages which came to my attention had the most extraordinary and unexpected consequences. In the mail order bride scam for example, when the original intention was to desert the Australian husband and sponsor the Filipino husband to Australia, it frequently happened that, after her arrival in Australia, the bride discovered she preferred her Australian husband instead. In this kind of situation, the bride would remain with her Australian husband, and she would desert the Filipino husband, refusing to sponsor his migration to Australia. We were often alerted to this kind of situation by requests from the Filipino husband, back in the Philippines. He might complain to our Manila Embassy, or he might mail a request directly to us, to deport the bride so he could reclaim her when she returned home. In all such cases which came to my notice, the Australian husband had no knowledge of the previous Philippine marriage, nor of the contrived nature of his own marriage in which he had been an innocent party. He also had no idea that the girl had fouled up the original clandestine arrangements by falling in love with him, a situation never factored into the original plan. Similarly, double bangers often came unstuck when one of the original spouses became jealous of the other’s Australian partner, or if one did not want to separate from the Australian partner. News of this would come to us via an ‘anonymous’ telephone call from the aggrieved spouse. On one occasion, both double bangers came
to me with the extraordinary news that they had both decided to stay with their Australian partners and to abandon their own marriage. Since both Australian partners never knew that they had been pawns in the original double banger scam, I saw no good reason in telling them, nor in making their innocent lives dismally unhappy by prosecuting or deporting their Philippine spouses. So, in the end, I did nothing. And when I see the Philippine wife with her Australian partner sometimes, together with their children, in what is obviously a loving, genuine and ongoing marriage, she gives me a faint Mona Lisa smile, acknowledging the secret that she and I still share.

Instances of the Indian rope trick were sometimes revealed when the wrong wife had the wrong baby to the wrong husband. How could this happen? If you look at the example of the Indian Rope Trick you can see that in the third phase of the cycle, E is ‘married’ to B, and both of them are in Australia. In order to maintain the cycle and for immigration purposes, E and B must maintain a pretence of marriage. In reality, their only relationship to each other is that B is the wife of E’s sister’s brother-in-law. This relationship may well come within the marriage prohibitions of the culture in their home country, but that culture is far away. Not only that, but they have both lived apart from their real spouses for perhaps a year or more, but in close contact with each other, together in the same house. So, sometimes the inevitable happened, and B fell pregnant in circumstances where her husband A could not possibly be the father, because he was still back in the home country. To avoid the retribution they might expect from home, E and B might decide to live in Australia together, and break the cycle. But if they did this then A would lose his children who were in Australia with B, and F would be abandoned in the home country, together with her children by E. C and D of course would be cut out of the Rope Trick in mid cycle. The ramifications of this sequence of events were so horrendous for the family back in the home country, that they would often alert us, requesting deportation of E and B, so that the real parents could be reunited with their real children. And that was how we became aware that the Indian Rope Trick was operating.
It never ceased to amaze me how some mail order brides in the marriage racket could keep up their pretence of marriage with their Australian husbands, literally, for years and years, while still in the process of chain migrating their natal families into Australia. One such case which came to my notice involved a retired Navy Petty Officer. After years at sea and in service situations which made marriage for him a remote possibility, his chance came on retirement, so with his Navy superannuation and a mail order bride, he set about making a new life for both of them in Australia. Their life together began very well, and they had two children. Meanwhile, by coaxing, cajoling, and complaining, she managed to persuade him into sponsoring her family to migrate to Australia. As one by one her siblings and their immediate families arrived in Australia, he saw his superannuation lump sum diminish, since, of course, he had to pay for all their airfares, all their immigration fees, and all their resettlement expenses. Finally, when the last of her natal family and all their offspring were to arrive in Australia, she went to the airport to meet them, taking her own two children with her, and she never returned to him.

By courtesy of the Family Court, in the subsequent divorce proceedings and the property settlement, she was awarded the custody of the children, and she retained the house he had built for her. She subsequently married her childhood sweetheart who had been waiting patiently back home in the Philippines, and brought him to live in the house. The retired Petty Officer had lost everything. He came to us, bankrupt, broken and bitter, begging us to deport his ex-wife and all her relatives, because of her contrived marriage with him and the chain migration which followed it. But what could we do? All the relatives had migrated into Australia lawfully, as part of Australia’s family migration program, and after six years of marriage and two children together, which Judge would believe that the original marriage had been contrived? This case was typical of many others which came to my attention during my time in the Department. All over Australia there are thousands of such victims, not only men, but also women, and, after their parents separate,
children can also become innocent victims of the marriage racket.

Conclusion to the Marriage Racket

I have dealt at some length with the marriage racket, mainly because as Sheehan (1998) has already stated, of all the immigration scams, it is the biggest. And as I have already explained, these contrived marriages are a significant source of chain migration into Australia. One important feature of the marriage racket, even today, is the ability of the foreign partner to withstand long absences from the natal family or the real spouse, while marking time in Australia, during the life span of the contrived marriage. Although some do fall by the wayside, as I have mentioned, I never understood how the majority could stand the separation for so long. My Indonesian informants explained it this way: in the longitudinal lifespan of an Asian lineage, a few years apart from the children, or the sacrifice of several years separation between spouses, are but milestones in the greater saga of family life. It does not matter that a young girl is shunted into a contrived marriage, if the family is the greater beneficiary. She will acquire honour and merit and praise for her great sacrifice; a reward of greater value to her than her otherwise erstwhile fate would bring, from a life of poverty in the paddy fields, or from the filth and famine of an Asian slum. Migration to Australia is the new way; a once in a lifetime chance to improve the lifestyle of the whole family. So whatever it takes, and however long it takes them, they will take it, and the only way to take it, for many Asian families, is through the marriage racket.

The marriage racket is a good example of Salt and Stein's (1997, p. 470) proposition that there are considerable problems in separating legal from illegal forms of immigration, because at various stages migrants may drift in and out of a legal status. On this we may well ponder: during the immigration process in a mail order bride contrived marriage, at what stage is the foreign spouse an illegal immigrant? As many do, what if she
decides to stay with her Australian husband instead? Does she suddenly become legal again? Or was she never illegal? Or, should a double banger spouse who has deceived the Department with her bigamous marriage, be deported for staying with her Australian partner?

The Marriage Racket also conforms with Lee's (1969, p. 292) explanation of how intervening obstacles in migration are passed over "as elevated highways pass over the countryside." For as we have seen, in a successful scam, and the majority were, there are only two real obstacles in the Marriage racket. One is time, and the other is money. People-smugglers and racketeers and an unsuspecting Department take care of all the rest. Finally, I have shown the marriage racket to be an example of immense Immigration policy failure. For although some methods have been taken to prevent the immigration marriage, it continues to thrive although somewhat abated, even to this day, and it remains a major source of illegal immigration into Australia.

In the next Chapter I will explain the later policy changes which were imposed so as to stem the tide of illegal immigration by way of the immigration marriage. As we shall see, some of these policy changes were quite effective as the Federal Government faced up to the problem of the marriage racket.
CHAPTER TWO

The policy problem

By 1996, the year when the Howard Government replaced the Keating Labor Government, the incoming Immigration Minister in the new Coalition Government inherited a marriage racket which was out of control. Notwithstanding the Immigration reforms of the previous Government, it was clear that another policy change was required to check the rampages of the marriage racket. The new policy change came in the form of the same two stage visa for offshore marriages which had earlier been imposed on the onshore marriages, and it was introduced for the same reason, but, it did not defeat the racketeers.

The problem with the policy changes which were introduced in the previous attempt to prevent illegal immigration by way of contrived marriages, is that the people-smugglers had simply bypassed the onshore controls by going offshore in the manner I have already described. In this context the new Immigration Minister told Parliament in 1996 that for years the annual migrant intake in the preferential family category had been in the order of 36,000 or 37,000. But in 1995 alone, it had jumped to almost 50,000. This was caused, the Minister said,

largely because the number of people entering Australia as either a spouse or de facto partner of an Australian resident or citizen rose by almost 33 per cent, from almost 21,000 to 27,790.

(Ruddock 1996a)

It is a change, the Minister continued, “that we believe reflects some underlying problems concerning the basis upon which some people might be entering Australia through the migration program, particularly through the spouse categories.” This was of course a polite reference in Parliamentary speak to what the jargon referred to as “the bodgie marriage.” And just in case the honourable members did not get that
message, the Minister concluded:

I know that many of my colleagues have had complaints, as I have, from people who find that after they have sponsored a partner into Australia, they leave them almost immediately that they have been granted permanent residency.

(Hansard, House of Reps, 16 Sept 1996 p. 4301.)

Three months later in a media release, the Minister said it even more plainly:

I have been concerned for some time that people were contriving relationships for the purpose of migration to Australia. An initial two year temporary entry visa will do much to discourage non bona fide applicants (Ruddock 1996b).

It did, but as with the bodgie onshore marriages, all the two stage visa did for the bodgie offshore marriages was to add an additional hurdle. It had the same effect of reducing the numbers, but it did not eliminate the problem. It added a few more years to the “brother / sister exchange” and it made closing the circle of the Indian rope trick a little more difficult, but it did not stop the rope trick entirely. In a continuing effort to stamp out the marriage racket, policy was again changed, with another burden super imposed upon the two stage visa. The new policy was referred to in the jargon as “the twice in a lifetime rule.” It is best explained by reference to the Department’s FACT Sheet 30 (2003) which at its page 3, states:

**Limits on sponsorship.**

There are limits on the number of partner sponsorships a person may make, and the time frame in which they may be made. A limit of two approved sponsorships or nominations can be made, and a minimum of five years apart; and if the sponsor was sponsored or nominated to Australia as a partner, they must wait five years before sponsoring a spouse, fiancé, or interdependent partner.

This policy change translated into law as Migration Regulation 1.20.J.
Because there were still people so desperate to come to Australia that they would accept this additional hurdle, the marriage racket was still not defeated. For example, referring to the Indian Rope Trick example, E, having been sponsored by G, (an Australian citizen), could still, after obtaining Australian permanent residence, and after five years since his own sponsorship, sponsor B, and five years after that, he could also sponsor D. Meanwhile, B, having been sponsored by E, when E was an Australian permanent resident, after five years of her own sponsorship and after she herself had obtained Australian permanent residence, could still sponsor C.

So the equation had not changed. All the “twice in a lifetime rule” had done to this equation was to make the closure take many years longer. Of course, it should be mentioned that all members of the family were not necessarily separated from each other for the whole of the time span of the cycle. Those who had permanent residence in Australia could still visit family members waiting in the home country, and home country family members could visit those members residing in Australia. In fact, these days modern technology has made it a lot easier on separated family members. Email, conferencing over home computers and the marvels of the mobile phone mean that separated family members who may be thousands of miles apart, are really only one phone call away.

The net result of all these policy changes is that the marriage racket continues to thrive. In fact, according to one report “arranged marriages to Australians, set up by criminal syndicates are on the rise” (Saunders 2003) (My emphasis). Saunders continues:

In the more organised rackets, Immigration Department sources have revealed brokers organise the marriage right down to supplying fake documents such as house leases and bank account statements. “They build up a portfolio of documents photographs and quite often videos as well” one department source said. “The broker will actually arrange the marriage itself, and pay off the Australian involved.”
I wrote more or less the same, but in greater detail, back in page 205 of this thesis. But I was then describing the situation back in the 1980’s and the 1990’s. Saunders was reporting on the situation as at 2003. So it seems that despite the policy changes in all that time, the people-smugglers are still processing applications for bodgie marriages, just as they always did. Saunders’ report also states that according to the latest figures, sham marriages comprise 45% of all immigration fraud allegations, and that 597 allegations of sham marriages were investigated in the six months to December 31, 2002. In all this time, the only real difference in the marriage racket seems to have been that the price has gone up. I quoted the racketeer’s fee (circa 1993) as $30,000. Saunders (2003) quoted the 2003 fee as $50,000. Obviously the people-smugglers have kept abreast of inflation and rising administrative costs, in a clandestine industry which continues to thrive to this day.

Conclusion to Part A

In the overall context of illegal immigration into Australia, the policy has been clearly stated. It is:

To facilitate and effectively control the entry of persons into Australia and their compliance with the Migration Act.

(DIMA Annual Report 1991-92, P. 8.)

In the narrower context of illegal immigration by boat via Australia’s northern approaches, it has been even more succinctly stated by the then Prime Minister John Howard:

We will decide who will come to Australia and the circumstances under which they come.

It was the slogan which helped to re-elect the Howard government in 2001, following the Tampa precedent that year. In this narrower context
the policy has been totally effective. That is, no boat carrying illegal immigrants has reached the Australian mainland since the Tampa Precedent of August 2001, although there were two near misses since then. One group got as far as Port Headland on 1 July 2003, but were arrested before they could land (Banham 2003) and the second reached Melville Island on 4 November 2003 and did land, but that Island had been excluded from Australia’s migration zone the previous day (Morris 2003). In both cases, the arrested people were processed offshore, and no one from either boat set foot on the Australian mainland. Then, in 2006 thirty-four illegal immigrants from the Indonesian province of Papua landed on Cape York Peninsular but at the time this thesis was completed, there have been none since then.

The Pacific Solution, remains the solution for illegal immigration by boat. But there has never been a solution to the wider influx of illegal immigration via our airports. Yet we have seen that some legislative control can be very effective. For example, even though baby dumping continues on an individual basis because of the 10 year rule, organised baby dumping was stopped by an Act of Parliament at midnight on 19 August 1986. Similarly, I have shown that the legislative changes which introduced the “2 year, 2 stage visa” and the “twice in a lifetime doctrine” slowed down the marriage racket. But that racket was not stopped entirely and it continues to this day.

Australia is not a country of contiguous sanctuary for illegal immigrants, as Pakistan is to Afghanistan, or as Thailand is to Burma. True, we do share a sea border with Papua New Guinea and Indonesia, and now with East Timor. But these are formidable maritime boundaries which are difficult to cross, and it never ceases to amaze many people that Australia can have an illegal immigrant problem at all, given our country’s geographical isolation from the source countries of our illegal immigration.

But, if airborne illegal immigration cannot be legislated out of existence, it can still be confronted by the simplest of all social control
systems, and that is the people to people method. And it has been our failure to use the people to people method in most aspects of illegal immigration to Australia which has seen such failure in the implementation of our basic immigration policy. Instead, what we have adopted is the far less effective method of people to paper. That is, we made decisions based on documents which can easily be forged or fabricated.

For example, how many of the Triad’s BMP recycled “business investors” would have passed scrutiny when found at interview to have been illiterate peasant farmers with no business acumen? How many ELICOS students would have been granted student visas when found at interview to have been illiterate even in their own language? How many bogus students would have failed to answer correctly even the simplest of questions relating to their studies? Instead we issued visas on the basis of forged business backgrounds and forged academic qualifications, with no later follow up investigation in Australia to determine if these migrants were using the skills on which their original visas had been issued.

Similarly, in an ordinary contrived marriage for example, a knock on the door would soon reveal if the parties were living together, and if they were not, then this discovery should have alerted officers to the true nature of the relationship which could have been tested by further investigation. Instead, we relied on documentary evidence of ‘cohabitation’ which, as I have explained on page 205, was easily forged or fabricated.

It has to be admitted that the Department had little defence against the fraudulent mail order bride, or other fraudulent marriages where the Australian partner was an innocent victim. This is simply because if the true nature of the relationship was concealed from the Australian partner, it was generally well concealed from the Department also. Nevertheless, there is a policy solution. We made drastic changes to the law relating to our hallowed Australian birthright in order to stop organised baby dumping, and we could make equally drastic changes to our immigration law to
prevent the chain migration which follows a fraudulent immigration marriage.

Finally, in the policy context of illegal immigration into Australia, I conclude that with the exception of the Pacific Solution, there has been a significant policy failure. We failed to stem the tide of organised people smuggling by the big syndicates like the Triad, and even the smaller syndicates like those of the marriage racketeers. Continuing instances of bogus students (Contractor & Noonan 2002) and contrived marriages (Saunders 2003) are proof enough of this. The major revelation of Australia’s Immigration policy is that it does not function in the way in which it was originally intended. It is wracked with fraud and failings, as we have seen. And whilst statistics tell a story of a continuing and a successful immigration of people from many countries into our great multicultural nation, reality tells another story. With the exception of baby dumping and the fraudulent marriages where the Australian partner is an innocent bystander, it can be said that the real culprit in all of this policy failure is the people to paper method of immigration assessment. Why succeeding governments continued to base their Immigration decisions on documents which are easily forged or fabricated, is one of the greatest mysteries of policy failure in modern public administration.

We will see how extensive this failure is, when we examine illegal immigration from Indonesia.
PART B : THE INDONESIANS

Introduction

Indonesia is only one of the many countries from which illegal immigrants come to Australia, and as the statistics show, the actual number of Indonesian illegal immigrants in Australia at any one time is only a fraction of the total number of illegal immigrants in Australia. For example, in 1990 it was estimated that there was a total of 90,000 illegal immigrants in Australia. Of these only 5,500 were from Indonesia (DIMA 1991a, p.32). During 1993, the total was said to be 67,464 of which only 3,484 were Indonesian (DIMA 1994); in 1998 the total was 50,600 of which only 3,644 were Indonesians (DIMA 1999b). The total number of illegal immigrants in Australia varies from year to year, and so does the Indonesian component of this number. But, generally speaking, the nationality spectrum more or less remains the same, and notwithstanding the proximity and population size of Indonesia, the Indonesian component of this spectrum has only ever been, on average, about 6% of the total. With Indonesian illegal immigrants in Australia then, we are not dealing with large numbers as we would be if we were to examine in greater detail, the influx of illegal immigrants from the Peoples' Republic of China (PRC), or overstayers from the United Kingdom or USA. On the contrary, the significance of illegal immigration from Indonesia is not its size but its uniqueness. What we will be examining, from now on, are the distinctly Indonesian features of illegal immigration from Indonesia.

These distinctly Indonesian features will be demonstrated in the following chapters of this thesis, in which I also present a case study of certain Indonesian illegal immigrants interviewed while they were in Immigration custody, and another study based on a sample of failed refugee applications lodged by Indonesians in Australia. However, before I examine the ‘Indonesian’ features of illegal immigration, it is important to remember that some Indonesian illegals were able to obtain residence in
Australia by other means. For example, the Class 815 Visa (the Bob Hawke visa) which is discussed in detail earlier this thesis, was designed exclusively to give Australian residence status to certain illegal immigrants from the Peoples’ Republic of China (PRC). But as I explained then, the Triad had included amongst its clientele, not only citizens of the PRC, but also ethnic Chinese of other nationalities.

The Triad could include Chinese of other nationalities, by fabricating the “records kept by Immigration” criteria of this visa. I then explained that provided that the client paid the fee, ‘looked’ Chinese, and spoke a Chinese dialect, his actual nationality made no difference to the Triad. The Department, with insufficient resources to prove otherwise, had no way of telling the difference, anyway. Then, as of now, some of the Indonesian illegal immigrants in Australia were of Chinese ethnic origin. So back then in the days of the Class 815 Visa, and with the help of the Triad, these ethnic Chinese Indonesians were able to obtain Australian residence status via the Class 815 visa by masquerading as illegal immigrants from the PRC.

We will never know how many Indonesians of Chinese ethnic origin were accommodated by the Class 815 visa in this way, because in fabricating the “records kept by Immigration” criteria for this visa, the Triad, of course, used false names which could not be cross referenced with the Department’s arrival details for those clients. In this immigration milieu there are no statistics for successful immigration fraud, but the anecdotal evidence is there, and many of my Indonesian informants knew of some of their compatriots who had obtained 815 visas because they ‘looked Chinese.’ As I explained in the “Baby dumping” section of this thesis, people who overstayed their visas during the 1980s and who have never been located since, would now have children born in Australia who became citizens on their tenth birthday. Amongst these overstayers and tenth birthday citizens would be a certain number of Indonesians.

There would by now even be second generation Australian-born
citizens of Indonesian origin, born of parents who themselves became Australian citizens on their tenth birthdays. But, since birth records in Australia do not show the immigration status of grandparents, we will never know how many Indonesian people have been absorbed into the Australian population in this way. Census details do not include racial origins, so, second generation Indonesians would be shown in our census records as having been born in Australia of parents born in Australia, just like any other well established Australians.

Similarly, many Indonesians obtained permanent residence in Australia via the marriage racket, in particular by the use of the “brother/sister exchange” method. What attracted Indonesians to this method was their widespread lack of surnames. Even Indonesia’s first two Presidents, Sukarno and Suharto had no other names. So, in the absence of DNA testing which might have shown consanguineous connections, Indonesian siblings each with only one name could easily pass as husband and wife. They could even do this with valid Indonesian passports, which could show, for siblings, as for husbands and wives, the same home address in Indonesia. Thus, after obtaining permanent residence in Australia, a sibling who had masqueraded as a spouse could later be ‘exchanged’ for a real spouse. So, as we have seen, some Indonesian illegal immigrants were able to settle in Australia by using the methods I have previously explained, and apart from the Indonesian single name use of the brother /sister exchange, there is nothing particularly ‘Indonesian’ about these methods.

However, what distinguishes illegal immigration from Indonesia from illegal immigration from other countries is the uniquely ‘Indonesian’ methods which the majority of Indonesian illegal immigrants used in their endeavours to come to and remain in Australia. In this context, illegal immigration from Indonesia differs markedly from illegal immigration from other countries. First, unlike the boat people of the Tampa precedent, who tried to enter Australia illegally without visas, the Indonesians arrived in Australia with valid visitor visas, or other kinds of visas, which they then
overstayed. Secondly, unlike the Chinese clients of the Triad, who came on the ‘come now, pay later’ method, the Indonesians paid their fares in advance, in Indonesia, before arrival in Australia. In this respect, like the Tampa illegals, the Indonesians in their home country were relatively well off, skilled, educated, and sometimes with some knowledge of English. They were definitely not the uneducated peasantry of the Triad clientele. Thirdly, unlike both Triad and Tampa illegals, the intention of most illegal Indonesians was not to settle in Australia permanently, but to work in Australia for a few years and then to return home to Indonesia after they had accumulated sufficient money to live in Indonesia comfortably for the rest of their lives. In other words, the majority of Indonesian illegals were circular migrants.

Some Indonesians did remain in Australia permanently, but the whole modus operandi of the majority of Indonesian illegals was to stay in Australia temporarily but to avoid, by any means, premature return to Indonesia. The actual method of remaining in Australia for the desired period of time was left to the people smugglers the Indonesians had engaged, and to the Australian migration agents who processed the necessary ‘work permits’ for them, and generally, apart from the periodic necessity of signing various immigration English language documents which they could not read, the Indonesians showed no interest in the actual methods the migration agents used. So, having overstayed their visas, we will now examine some of the methods by which Indonesians were able to stay in Australia illegally.
CHAPTER THREE

The Indonesian Immigration Scams

A. The Indonesian lapsed nationality scam

One of the earliest methods which some Indonesian illegal immigrants used to remain in Australia was to manipulate their own Indonesian nationality status. The concept of nationality in Australia was described as “citizenship” in our Citizenship Act 1948. But in Indonesia, as in most other countries, it was described as “nationality”. The law which establishes Indonesian nationality and which was more or less the Indonesian equivalent of our Citizenship Act, was The Republic of Indonesia Nationality Act 1958. Since both Acts refer to the same concept by different names, I have, for the purposes of this thesis, used the terms “nationality” and “citizenship” interchangeably.

For the purposes of manipulating their Indonesian nationality status, Indonesian illegal immigrants were able to make good use of Indonesia’s doctrine of lapsed citizenship, (or as they describe it, Nationality) which was enshrined for every Indonesian visitor to Australia to see, on the inside back cover of their passports. A sample of the inside cover of an Indonesian passport, is reproduced at Figure 2. Its English translation clearly states:

Please pay attention to Law Number 62 of 1958 on the Nationality of the Republic of Indonesia, specially article 17K on the loss of the Nationality of the Republic of Indonesia as follows:

Other than for state service, staying abroad (overseas) for five years successively, without expressing his (her) desire to retain his (her) Indonesian nationality prior to expiry of that period and ever after, that desire must be expressed every two years to the Representative of the Republic of Indonesia from his (her) place of residence.

(my emphasis)
Shorn of its quaint Indonesian officialese, what this meant was that Indonesian citizens living in Australia would lose their Indonesian citizenship after five years unless within two years of arrival here, and every two years thereafter, they reported to their nearest Indonesian Consulate to express a desire to retain their Indonesian citizenship. In practice, the desire to retain Indonesian citizenship was evidenced by a Consular date stamp inserted into an Indonesian passport. Thus, Indonesians who had retained their Indonesian citizenship while living in Australia for many years, had many such stamps in their Indonesian passports. But, for Indonesians illegally in Australia who wanted to avoid deportation back to Indonesia, all they had to do was to deliberately let their Indonesian citizenship lapse. They could do this by deliberately not reporting to their nearest Indonesian Consulate every two years, so that five years after arrival in Australia their Indonesian citizenship would lapse automatically, in accordance with Article 17K of their own Nationality Act. They could only do this of course, by avoiding Immigration detection during this lapsing lead time, and needless to say, many did. Then, if they had no other citizenship, for example, Australian citizenship, they would be stateless, and we could not deport them anywhere, since their own Indonesian government would have disowned them, and no other country would accept them. Being stateless did not mean that they automatically acquired Australian residence status. On the contrary, it placed them in a state of limbo, in which they had neither Indonesian nationality, nor Australian residence status. But for Indonesians wanting to remain in Australia to live and work here, a state of statelessness was an ideal state for them to be in, since we could not then send them home. In fact, we could not then send them anywhere.

So, for Indonesians who had managed to avoid Immigration detection for five years, and had deliberately lost their own nationality in the meantime, they were at no risk of deportation if they were later detected, so there was no longer any reason for them to avoid Immigration officers. Not only that, but an Indonesian who had become stateless in this manner could obtain from his nearest Indonesian Consulate a
certificate confirming his loss of Indonesian citizenship. These certificates were printed for our benefit in English and I have reproduced a sample of such a certificate at Figure 3. As I have mentioned earlier, my access to official documents was on condition that no one, other than myself, was to be identified. So whilst it is important to show how the Indonesian lapsed citizenship scam operated, I have altered the information contained in Figure 3 so that no one can be identified by it. Thus the names, dates, file numbers, signatures and any other means of identification on Figure 3 have been deliberately altered from the original, and for this reason Figure 3 may not look authentic. But the use of this kind of document in the manner I describe was real nevertheless.

Indonesian illegal immigrants who came to our attention during the course of routine Immigration enforcement operations and who possessed such loss of nationality certificates, would gleefully brandish these certificates at us and claim immunity from deportation. They could still be arrested of course, because they were in Australia illegally, but then there was nothing else we could do with them, other than to detain them momentarily. Under the Old Act, illegal immigrants in custody had to be taken before a magistrate within 48 hours of arrest, and the magistrate would authorise further custody while deportation arrangements were made. (Section 92(3) of the Old Act). But if there was to be no deportation (because the arrested person was stateless), then no further custody would be authorised, and the detained person would have to be released.

Under the New Act (Section 196) there was no requirement to take immigration detainees before a magistrate, but they had to be released from custody on a bridging visa if they made a valid application to remain in Australia. Of course, with the aid of certain Australian lawyers, many did. As we shall see, the only legal requirement for lodging a ‘valid’ application to remain in Australia, was that it be made on the correct form. The fact that the reasons for lodging the application might have been spurious, exaggerated, contrived, or in other respects false in detail, did not affect the ‘validity’ of the application provided that it was made on
the correct form. We shall examine some of these applications in due course.

It was only after the rejection of these ‘valid’ applications months or even years later, that the stateless Indonesians became illegal again, and could be arrested again. With no requirement under the New Act to take them before a magistrate for authorisation of further custody, the theory was that they could then be kept in detention indefinitely. However, the Department was generally reluctant to do this while, as explained in the news item at Fig.4, it was pursuing discussions with the Indonesian government about this apparent impasse. Meanwhile, there were thousands of Indonesians illegally in Australia apparently immune from deportation. It was such a scandal at that time that it became headline news in Australia as shown at Fig 4, a front page item with its headline emblazoned with the caption “THE 3000 INDONESIANS WE CAN’T SEND HOME.”

This was true. We could not send them home, or so we thought at the time. Were then these ‘stateless’ Indonesians marooned forever in Australia, never to return to Indonesia? Actually, no: It was all a masquerade, and it took us years to realise that it was just a clever trick, which only the Indonesians could pull. Our understanding of this trick came slowly, and it was only during routine surveillance of the illegal immigrant population in Australia that a sharp eyed Immigration officer discovered in the Department’s departure records, that some ‘stateless’ Indonesians had mysteriously returned home to Indonesia of their own volition. They had departed Australia through the normal Immigration controlled airport exits, using valid Indonesian passports. How could they do this, if they had already lost their Indonesian citizenship? Puzzled, I asked one of my Indonesian informants. It’s all very simple, she said, when they want to go home, they just apply to have their Indonesian citizenship reinstated.

At first I did not believe her. Look in our Nationality Act, she
suggested. I did. I obtained a copy of the Indonesian Nationality Act 1958 from the Indonesian Consulate in Sydney. Apart from the fact that it was written in Indonesian, it was much like our own Citizenship Act, in that it dealt with acquisition of nationality by birth, descent, grant and so on, just as our Act does. But there was one major difference in the Indonesian Act and this concerned the loss of Indonesian nationality, and there at Article 17K was loss by lapse, just as it is explained on the inside cover of Indonesian passports (Figure 2). Beneath Article 17, was Article 18, which dealt with reinstatement of lost nationality. I have reproduced Article 18 at Figure 5, together with my translation of it. Briefly, what it stated was that an Indonesian who had lost his Indonesian nationality by the doctrine of lapse described in Article 17K, could have that Indonesian nationality restored by declaration made to the Indonesian National Court in Indonesia. It all looked like a very complicated process, and I wondered how it was done by Indonesians here in Australia. So I visited the Indonesian Consulate in Sydney and asked one of the officials whom I knew there. He took me into his office and in a friendly manner, described the process to me. All it takes, he said, is for a stateless Indonesian to request in writing the restoration of his lapsed citizenship. Just like that. Could he show me how it is done? Yes, and not only that, but he gave me a photocopy of a declaration made by one of our illegal Indonesian immigrants who had recently departed Australia with his lapsed nationality restored.

I could hardly believe it. The ‘process’ consisted of a scrap of paper, on which the Indonesian had scrawled in barely readable handwriting words which I translate as:

To the Indonesian Consulate General in Sydney,

I, (his name) believe that I have lost my Indonesian nationality. If this is so, I ask for my Indonesian nationality to be restored so that I can go home to Indonesia.

And he had signed and dated it.
Beneath the signature was a Consular stamp, which stated that the validity of his passport had been extended to a certain date. What about the “entry permit” on which his residence in Indonesia is based I asked? His passport gives him permission to enter he said, as soon as its validity is extended. So how long does the process take? I asked. Where identity could not readily be established, the official said, for example, in relation to ethnic Chinese Indonesians who had lost or destroyed their Indonesian passports, and who needed to re-establish their Indonesian identity from scratch, the process could take months. However, the official explained, most Indonesians who had deliberately let their Indonesian nationality lapse so they could continue to live and work in Australia, were nevertheless careful to retain their Indonesian passports in case they needed to return home quickly to Indonesia, for example, because of a family emergency. So in most such cases, he said, the whole process might only take about twenty minutes. I returned to my office in a pensive mood. It had all been a gigantic scam, and we had been caught by it for years. The 3000 Indonesians we could not send home, could easily have been sent home if they had applied for the restoration of their lapsed citizenship. The trick was how to force them to apply. Under the Old Act, it could not have been done, since we had no authority to hold them in custody longer than 48 hours if we could not then make arrangements to deport them.

Under the Old Act, stateless Indonesians in custody were simply released into limbo, even if they were still illegally in Australia. The New Act, amongst other aims, was intended to correct this limbo status, by mandatory detention for all illegal immigrants, or mandatory release on bridging visa, if there were grounds to issue a bridging visa. So in theory, under the New Act, if a stateless Indonesian illegal had exhausted all visa applications available to him and had exhausted all his avenues of appeal, there was still the option for the Department to detain him indefinitely. But the thinking at the time was that there was no justification for detention if we were still unable to deport. So the only other option under the New Act, was the bridging visa. But, if ineligible to apply for a substantive visa
or if all visa and appeal options had been exhausted then the only applicable grounds for grant of a bridging visa was that the applicant was making preparations to depart Australia. Thus, under the New Act the practice had arisen in the Department to grant stateless Indonesians bridging visas on the grounds that they were making arrangements to return home. That is, being circular migrants the chances were that they would go back to Indonesia sooner or later although at the time of granting such a bridging visa to depart Australia, we had no idea how they could return to Indonesia if they were stateless.

The legal justification for granting bridging visas in these circumstances, was supplied by an edict in Departmental doublespeak in which the situation of stateless Indonesians was said to be “under review” and in this context, in Figure 4, Kirk (1992) refers to “negotiations” between the Australian and Indonesian governments intended to arrive at some future agreement for the repatriation of stateless Indonesians, hence the bridging visas. These bridging visas were granted, usually with a three month validity, renewable indefinitely, until the Indonesians eventually, it was hoped, would go home.

It was a bizarre situation, and what it really meant was that our ‘controlled’ immigration policy against illegal immigration from Indonesia was not very well controlled at all. It especially meant that if we had not repatriated an illegal Indonesian immigrant before his Indonesian citizenship had lapsed, we had then lost the initiative of removing him from Australia forever after. He could go home of his own volition, but not on our volition. Or so we had previously thought. But, now armed with the information that the state of statelessness for stateless Indonesian illegal immigrants was really a fiction brought about by deliberate manipulation of the Indonesian Nationality Act, I decided to put an end to this scam, by testing its fortitude on the next stateless Indonesian illegal who approached our office for a renewal of his bridging visa. A few days later, it happened. With his previous bridging visa expired, the unsuspecting Indonesian approached our office counter with an application for another
bridging visa to allow him to remain in Australia ‘legally’. I asked him if he was making arrangements to depart Australia within the next two weeks, and of course he was not, so I refused his application. Without another bridging visa, he was then technically, illegally in Australia, and I arrested him on these grounds. Immediately, he produced his certificate of loss of Indonesian nationality (Fig. 3) and demanded to be released. I then showed him my copy of the Indonesian Nationality Act, open at Article 18, and reading it out to him in Indonesian, I explained to him that his Indonesian nationality could easily be restored by the method I had already discovered. I advised him that he would remain in custody until removed from Australia, and that would happen the day after his Indonesian nationality was restored, however long that restoration might take. Within hours I received by telephone, a demand by the Indonesian’s Australian lawyer to release the Indonesian immediately, and I again read out to the lawyer, this time in English, the provisions of Article 18, and I asked him if he was familiar with the Indonesian protocol for loss and restoration of nationality. There was a stunned silence at the other end of the line.

Whether or not the lawyer had prior knowledge of the provisions of Article 18, we will never know. But an approach was quickly made by the lawyer to the Indonesian consulate in Sydney, and within three days, with his Indonesian nationality restored, this particular Indonesian was deported back to Indonesia. The bluff had been called and the game was up, at least for this particular scam. And suddenly, “The 3000 Indonesians we can’t send home,” were now liable to be sent home after all. But of course, allowance had to be made for the “Missouri Syndrome.” That is, whilst we were deporting ‘stateless’ Indonesian illegals from our Sydney office, elsewhere across Australia the ‘policy review’ of stateless Indonesians continued. The matter was not finally decided until 2004 when the High Court of Australia in Al Khafaji’s case (HCA 38 6 Aug 2004) found that indefinite detention of stateless non citizens was lawful under the Australian Constitution and the Migration Act. So whilst we always thought we were acting lawfully in Sydney, by detaining ‘stateless’
Indonesians, the legality of our actions was finally confirmed by the High Court in 2004. In this particular case Mr Al Khafaji was one of the boat people who arrived unlawfully on 5 January 2000 without proper travel documents and he was placed in immigration detention. He applied for refugee status and although he was found to be a refugee, it was also found that Australia owed no obligation to protect him because he had a right to re-enter and reside in Syria, so his application for a protection visa was refused. This decision was confirmed by the Refugee Review Tribunal, but on appeal to the Federal Court, an order was made by Justice Mansfield that Mr Khafaji be released from custody on the grounds that there was nothing to indicate that there was any real prospect of Mr Khafaji being removed to Syria or any other country within the reasonably foreseeable future. The Minister appealed this release order and considering this case in the High Court Justice Callinan stated: “People who do not have valid claims to refugee status or to whom the nation owes no obligations of protection take the risk in unlawfully entering the country that they will be detained.” The decision was not unanimous but the result was that the High Court allowed the appeal, ordering that Mr Khafaji be kept in immigration detention until removed from Australia however long that may take.

This was the view we had taken in relation to Indonesian illegals who had deliberately made themselves stateless and who could easily apply to have their Indonesian nationality re-instated. In any case, to my knowledge, once we began calling their bluff by detaining ‘stateless’ Indonesians until they arranged for the restoration of their Indonesian nationality, no ‘stateless’ Indonesian ever contested the issue. That is, once they were detained for being illegally in Australia they very quickly arranged for the re-instatement of their Indonesian nationality and within days, they were back home in Indonesia. After all, as I have previously mentioned, these Indonesians were circular migrants, intending at some stage to return to Indonesia, and all we ever did was to hasten their return date. And as we shall see, none of those whose refugee applications I examined had any valid reason within the parameters of our Migration Act
to remain in Australia. It had been a clever manipulation of their own Nationality Act, allowing thousands of Indonesians to remain in Australia for years on end. But once discovered, this unique Indonesian immigration scam gradually came to an end.

B. The onshore / offshore visa application scam

As we have seen, for as long as the lapsed Indonesian nationality scam operated, illegal Indonesians were able to remain in Australia for as long as they liked, immune from deportation. However, by definition, this scam protected illegal Indonesians from deportation only after their Indonesian nationality had lapsed. Illegal Indonesians whose Indonesian nationality was still current, and who came to Immigration notice, were still liable to be deported, unless they could find protection under another scam. For them, there was always the fraudulent refugee claim, and, under the New Act the bridging visa which was automatically issued whenever such a claim was made would protect them for as long as their claim was being processed. In the beginning, such claims took so long to process, years that is, that the lapsed Indonesian nationality scam often came into operation before the application was rejected. As we shall see when we come to examine some of the rejected claims for refugee status lodged by Indonesians, the majority were so obviously frivolous or unfounded that the wonder was that they had taken so long to be rejected. The reason is that all applications for refugee status, like all other applications before the Department, went into a queue, to be processed in the order in which they had been lodged. It was all very logical, with each application awaiting its turn. Under this processing method, while Immigration officers were legitimately spending time pondering the merits of genuine claims from genuine refugees of other nationalities, the obviously frivolous Indonesian claims which took comparatively little time to reject were all marking time in the same application queue, awaiting their turn to be processed. The illegal Indonesian applicants of these obviously questionable claims were therefore by administrative default,
the fortuitous benefactors of this single queue process, which of course in
the muddled middle management levels of the Department, all made
perfect sense.

It was not until Philip Ruddock became Immigration Minister in
1996 that the single queue processing policy was changed, to a double
queue system in which all refugee applications were quickly pre-vetted for
merit. Into one stream went those applications which at first glance
appeared to contain some merit, and into the other stream went those
which at first glance appeared to contain claims for refugee status which
obviously did not meet the Convention requirements, or contained no
claims at all. The spurious or unfounded claims were then fast tracked
through to rejection, relatively speaking that is, because procedural
fairness and other processing requirements had to be taken into
consideration, so that those applications in the fast track still took up to
two months from lodgement to rejection. Nevertheless, this double queue
was a vast improvement over the single queue method.

However, the fast track did not please the Indonesian illegals. As I
mentioned earlier, these people were not intending to be permanent
settlers in Australia. They were circular migrants, and their reason for
lodging refugee applications was not to obtain permanent refugee status in
Australia, but to avoid deportation while they worked in Australia and
accumulated sufficient funds to give them a comfortable resettlement
back in Indonesia. In this context, a two month turnaround from
lodgement to rejection, did not suit their purposes at all. They searched
for a scam which would delay refusal of their applications. It was a neat
approach for their purposes, and it came in the form which became known
in the jargon as the “onshore / offshore visa.” This scam was open for
anyone to operate, but as the principle behind it was delayed rejection and
not permanent residence, it did not suit all illegals. In fact, it only suited
circular migrants illegally in Australia, and as the largest national
component of these circular migrants were Indonesians, the
onshore/offshore visa became a scam almost exclusively Indonesian. It
was another of those uniquely ‘Indonesian’ methods of illegal immigration into Australia.

Just as the “lapsed Indonesian nationality scam” had operated by lawfully manipulating the Indonesian Nationality Act, so also the “onshore / offshore visa application” operated by manipulation our own Migration Act. As its name might suggest, the “onshore / offshore visa application” consisted of two separate components. The “onshore” component was the visa applicant, usually an Indonesian national who, at the time of lodging the application, was already living in Australia: he was “on shore.” Meanwhile, the application itself was lodged in an Australian Embassy in a foreign country, usually Russia. In Australian terms, the application was physically “offshore.”

To the uninitiated, none of this makes sense. Why would an Indonesian living in Sydney with an application to remain in Australia, lodge that application at our Embassy in Moscow, when he could easily walk into our Sydney office and lodge it there? And, in any case, how could he lodge an application in Moscow, if he was living in Sydney? The answer was simple: by mail. The process is known in the jargon as “visa shopping” and to this day it is still quite common in Western Europe. It is used there to avoid processing delays in some Australian Embassies. For example, in countries like the United Kingdom, which is a traditional source of migration to Australia, intending migrants can expect long processing delays because of a perpetually heavy case load in Australia House, London. On the other hand, the case load is lighter in Australian Embassies located in countries with a lesser stream of migration to Australia, and visa processing times in these Embassies are frequently a lot shorter. So, for intending migrants who want their visas to Australia in a hurry, it pays to shop around. The Department assists them to do this, by publishing regular world wide average visa processing times. So if the visa processing time is less in nearby Continental countries than it is in London, then UK citizens might apply by mail to our Embassy in the Hague, or to our Embassy in Paris. An interview in these Embassies, is
then only a matter of a quick trip across the Channel, or a pleasant train ride to Paris. Combined with a weekend in Holland during Tulip time, or a few days in Paris in the spring, visa shopping becomes a pleasure.

Not so in Moscow. Moscow was chosen because during the early 1990s the Soviet Union was in the throes of self destruction. With some parts of the original whole seceding, what was left of the old Union of Soviet Socialist Republics (USSR) was metamorphosing into the Russian Federation. The accompanying independence struggles, civil wars and general civil disorder across the old USSR had produced a flood of visa applicants into most of the Western Embassies in Moscow (including the Australian Embassy) as people tried to avoid the disintegration and destruction at home, by seeking to join friends and relatives who had previously migrated to other countries. Amongst all these people were genuine refugees of the old USSR, seeking resettlement in Australia. With all resources strained to cope with this case load, our Moscow Embassy staff were not about to accord any high priority to refugee applications from Indonesians living safely and comfortably in Australia. Meanwhile, in Australia, the Department was also not about to transfer extra Immigration staff to our Embassy in Moscow to deal with the extra loading there from applications from Indonesians in Australia, who could easily have lodged their applications here in Australia. Furthermore, these applications were doomed to failure anyway, because none of the Indonesian applicants in Australia was likely to attend an interview before an Australian Immigration officer in Moscow. As a result, their applications were destined to fail by interview default. These Indonesian applications therefore did not have the same ring of urgency about them as those which originated from the old USSR and for any genuine Indonesian refugees, this was not an ideal situation. But for bogus refugees seeking only to remain in Australia to work for a few years before returning to Indonesia (i.e. circular migrants), and whose sole aim in lodging their applications in Moscow was to delay the eventual and inevitable rejection, it was perfect. Because of the low priority given to processing these applications, it took years for the Department to get
around to rejecting them. This of course was exactly what these Indonesian illegals had wanted. For them, it was visa shopping, or more accurately, visa *rejection* shopping par excellence.

How could the Department find itself in such an absurd situation, of being party to such manipulation of its own Migration Act? More importantly, how did the average illegal Indonesian in Australia know about the average visa processing time in Moscow, or did he even know where Moscow was? In fact, most of the Indonesian onshore/offshore applicants I interviewed said they did not even know they had applied for asylum in Australia, nor that their application, whatever it was, had been sent offshore. As I have already explained earlier in this thesis, most of the Indonesians I interviewed said they thought they had applied for and paid for a permit to work in Australia. In fact, the onshore/offshore visa application was not a process thought up by Indonesians. It was the brainchild of an Australian lawyer.

Several Australian lawyers specialised in helping Indonesians to stay in Australia. They advertised their services in the Indonesian language press in Sydney and one whom I knew employed an Indonesian agent to trawl through the illegal Indonesian population in Sydney scouting for likely clients, and he found many. The procedure was quite simple: the Indonesian scout would, in exchange for a fee of $300, take the illegal’s details, and his passport, and get him to sign an application form, and in due course the scout would return the passport to the illegal, together with a bridging visa with permission to work. That was all the illegal needed to know. Behind the scenes, the lawyer applied on the illegal’s behalf for a protection visa, then, showing proof of having dispatched that application to Moscow he would apply at our office in Sydney for a bridging visa giving permission for the illegal to work in Australia until a decision on the protection visa application was made in Moscow. As we now know, this decision would not be made until some years later. Since the grant of the bridging visa under these circumstances was automatic, the onshore/offshore visa application was a very neat ‘legalisation’ of
Indonesian circular migration into Australia.

The fame of this Australian lawyer spread to Indonesia by word of mouth, and soon other agents in Indonesia were arranging work tours to Australia, beginning with a visitor visa issued by our Embassy in Jakarta. On arrival in Australia the circular migrants were taken to a 'safe house' where contact with the lawyer's scout was made, and so on, as I have already explained previously in this thesis. The problem for us was that the principal actor in this scam, the Australian lawyer, seemed to be acting lawfully. We could not prove that he was lodging documents which contained information which was false or misleading, because none of his applications which I examined made any claims of actual persecution against his applicants. His applications generally consisted of sweeping statements about situations which we knew to be true; like times are tough in Indonesia, people are poor, good jobs are hard to find, there is occasional ethnic violence, churches get burned down, public education is not much good, health services are poor, and so on. But none of these hard luck stories contained claims which would satisfy the United Nations Convention for grant of refugee status, and they failed for this reason. We attempted to get the Department to take disciplinary action against this lawyer on the grounds that it was unethical for him to lodge with the Department on behalf of his clients, refugee applications which he knew would be certain to be rejected. He had an answer for this also: he was acting in the best interests of his clients. He said if it was their desire to work in Australia, then he could legally obtain permission for them to work here by way of the bridging visa which issued automatically upon lodgement of an application for a substantive visa offshore. Secondly, he said he was acting in their best interests by giving them the status of 'failed refugee applicant' when their offshore applications were rejected. This status, he said, might stand them in good stead in the future. In this context, as he frequently told me, he only had to point to the 'Bob Hawke' visas as an example. As I have previously explained, one of the grounds for grant of a Class 816 Visa was that the applicant had been refused refugee status in Australia. So, this lawyer argued, who can say that
Indonesian failed asylum seekers will not one day be granted a similar visa. They are far better settlers than the Chinese, he said, and given our falling birth rate, closer ties with Indonesia, and a need to fill our empty spaces in the north, it might one day be politically expedient to allow more Indonesians to settle in Australia. An easy way to do this, he suggested, was to process Indonesians into Australia using criteria similar to that used when the Chinese were processed into Australia by way of the class 816 visa, that is, that the main vehicle for processing Indonesians if they have no other status in Australia could be the status of “failed refugee applicant.” After all, he insisted to me, “your Department is not driven by logic, but by politics.” I couldn’t argue with that.

The end of the onshore/offshore visa scam when it came, was decisive enough, although its effect, blurred by the Missouri Syndrome, dragged on for years. After 1 October 1996, bridging visas were no longer to be granted for applications made offshore. In its Information Sheet of 9 October that year, the Department explained this development this way:

On October 1 1996, a change was made to the rules affecting bridging visas which can be obtained by people in Australia who make or have made an application for a visa at one of Australia’s overseas offices. The change means that they will no longer be able to apply for a bridging visa while they await a decision on the overseas application. The change renders any such application invalid. The change was necessary to remedy an error made in bridging visa regulations which inadvertently allowed people in Australia who applied for offshore visas to be eligible for bridging visas.

(DIMA 1996d)

The change was engineered by an amendment to Migration Regulation 010 under which bridging visas are granted. In its particular subclause which listed the requirements for the grant of a bridging visa, this regulation had previously stated that an applicant meets the requirements of this subclause if the applicant has made a valid
application for a substantive visa and that application has not been finally determined. So, in the absence of any particular geographical limitations, the criteria allowed for applicants in Australia to lodge a substantive visa application offshore, and obtain a bridging visa onshore, the essence of the “onshore/offshore” visa scam.

But the 1996 amendment inserted the words “in Australia” into the criteria, so that the regulation then stated that the applicant met the requirements for the grant of a bridging visa if “the applicant has made in Australia a valid application for a substantive visa” etc. etc. (my emphasis) From that day onwards if an application for a substantive visa was made in Moscow, the applicant no longer qualified for a bridging visa in Australia, to await the result of that application. The amendment did not affect bridging visas already in existence, and it did not stop applications from being made offshore by people in Australia who already held other substantive visas, but it did stop the scam from continuing. Finally, when the last visa application had been rejected offshore for the last bridging visa holder in Australia onshore, the “onshore/offshore visa application” scam finally came to an end.

C. The court process scam

The Australian lawyers who specialised in helping Indonesian illegals to remain in Australia soon realised early during the currency of the onshore/offshore visa scam, that sooner or later, when the Government got around to doing so, it could easily terminate that scam with a simple amendment to Migration Regulation 010. As we have seen, that is exactly what happened. But there was still money to be made from the contingent of Indonesian illegal immigrants in Australia, who were still willing to pay lawyers to further delay the deportation process, in the manner which the other successful Indonesian scams had done. What the lawyers needed was a new scam, one which was so robust that it could not be so easily defeated as by a simple amendment to the Regulations. So, concurrently
with the last vestiges of the onshore/offshore visa scam, the same lawyers who had been involved in that scam launched into a new scam; one which plunged into the very heart of our constitutional system - the division of powers.

Since the whole basis of the Indonesian scams was not to obtain permanent residence in Australia, but to delay deportation, the lawyers and their Indonesian clients found an ally in what ordinary Australians would consider to be a defect in our legal system, and that is the inbuilt procedural delays involved in our judicial process. It takes time for an appeal to be launched and decided by the Federal Court, and time was exactly what the Indonesians were asking for. Thus, the "court process scam" was born. Just as the "lapsed Indonesian nationality scam" had been based on a manipulation of Indonesian law, and the onshore/offshore visa scam had been based on a manipulation of our Migration Regulations, so the court process scam was also based on a manipulation of the Australian court process. That is, the purpose of the new scam was to delay deportation by delaying the courts, and just like the onshore/offshore visa scam, it was all perfectly legal. The avenue of appeal against a decision by the Department to refuse the grant of refugee status led firstly to the Refugee Review Tribunal, and thence to the Federal Court. Its legality was based on Sections 475 and 476 of the Migration Act which together set out the principles and the grounds on which an appeal against a decision of the Refugee Review Tribunal could be made to the Federal Court. But amongst the multitude of grounds on which an appeal could be brought to the Federal Court there was no stipulation that the original application for refugee status had to be genuine, nor that the appeal had to be honest.

Of course, the probability of winning a spurious appeal against the rejection of a fraudulent refugee application was nil, but that was beside the point. The point was not to win, but to delay. Delay was exactly what the lawyers did. In this context, by 2003 the Immigration Minister Philip Ruddock, was reporting that:
If applicants were being successful in their litigation one might think that it might have some justification. But of the 1,904 cases resolved by the courts during the year ended June 2002, applicants won only 111 or 6%. The reason people bring these matters to the court is that they expect to obtain delay. 

[Ruddock (2003a), Hansard, House of Reps, 24 June 2003, Page 17283]

Once the court process scam was launched, it soon developed a dynamic of its own. Later that same year, the Minister again told Parliament:

In 2002-03 over 5,000 new cases, more than double the number we had in 2001-02 and 15 times the number of cases we had in 1994-95 were pursued. Magistrates in Sydney, I am told, are listing Immigration matters for 12 months time in order to hear them. (my emphasis)


Therefore, the mere act of just listing a case for hearing, whether it won or lost, gave an illegal another year’s work opportunity in Australia, and in December 2003, the Minister commenting on the results which these court cases achieved, stated that “This is the only area of public law where to obtain a delay is an advantage” (Shanahan 2003).

A further incentive to pursue a groundless appeal to the courts was the low cost involved. Indonesian illegal immigrants were encouraged to join in a judicial process known as the ‘class action’ by which any appellant who had the same grievance (real or contrived) against the same defendant could join together and make one court case out of what otherwise might have become many court cases. The advantage for the appellants to join in a class action was that the cost of launching the single case class action could be shared amongst all the appellants. The advantage for the lawyers was that the more clients they could entice into a class action, the more money the lawyers could make. Informants involved in one such class action told me that they only had to pay $380
each. One class action included 690 applicants (Macabenta [1998] 1643 FCA 18 December 1998). Assuming the fee to be the same or similar for this class action, we can assume that the lawyers’ total income for launching and prosecuting this one only court case was approximately $262,200.

Not surprisingly, because the scam was so profitable, lawyers who were operating the various class actions, began to tout for clients. At Figure 6 is a copy of an advertisement in an Indonesian language publication in Sydney inviting Indonesian illegals to join in the latest class action. According to this advertisement, these lawyers had managed to include some 5000 applicants in class actions during the previous two and a half years. If the fees were the same as those mentioned above, these lawyers might have received for their efforts in this particular endeavour, some $1.9 million. With incomes like this, it is not hard to understand how the court process scam was able to sustain the kind of momentum which the Minister referred to in Parliament.

Confirming what the Minister said about delay being an advantage, Macabenta’s Case was initiated in the Federal Court on 20 November 1997, and was not finally decided on appeal until 18 December 1998. If the information about costs is more or less correct, then for less than one week’s wages, the applicants were able to delay their departure from Australia for more than one year. It was a win win situation for both illegals and lawyers alike. Of course, since the aim of this scam was not to win the case, but to delay its decision, some lawyers soon realised that they could save on court costs, by not appearing at all in court for the hearing. That is, if they already knew that their own case was so spurious that it could not possibly win, they would still continue with it so as to give their clients the greatest delay which could possibly be coaxed out of the manipulated court process. They would appear for listing, directions, mention, requests for adjournment and any other brief preliminaries before the actual hearing date, so as to string out the process as long as possible before an actual hearing date was set. Then,
when they knew they could no longer delay the hearing any further, they would withdraw the appeal. By 2003 the Immigration Minister was reported as having commented that of the immigration matters before the courts:

it was clear that the majority were unmeritorious applications, because 92 per cent either failed or were withdrawn. (Shanahan 2003) [my emphasis]

As far as the lawyers’ clients were concerned, the effect of withdrawal at a late stage in the court process was the same as if the lawyers had lost the case. But this was no disadvantage at all to them, because this mangled methodology had already obtained for them the delay which they had been seeking. For an ordinary litigant, a failed or withdrawn court case could mean disaster. On the contrary, for an Indonesian illegal, a failed or withdrawn court case was a great victory.

The scam became so popular both with illegals and lawyers alike that the increase in the number of appeals lodged began to clog the court lists to such an extent that one media report observed that the “High Court is drowning in a flood of migration cases.” That report stated that migration cases made up 82 per cent of all matters filed with the court in 2002-03, up 41% from the previous year (Pelly 2004). It was therefore no wonder that the lawyers were touting for clients. In the advertisement in Figure 6, the magic words were “free consultation” and “Bridging Visa.” To the Indonesian illegals, the bridging visa was synonymous with “work permit” and their primary concern was extending their permit to work in Australia, which was what the bridging visa was already doing for them.

As I mentioned earlier, none of the Indonesian illegals I interviewed seemed to understand the legal process which they were being led through by their Australian lawyers. Unable to read the English language documents they signed, none of them seemed to have had the slightest idea that they had applied for refugee status nor that they had been involved in subsequent appeals to the Refugee Review Tribunal or to the
Federal Court. For them, the process had no meaning other than for possible bureaucratic glitches or problems with the renewal of their 'work permits' which had originally been arranged for them by their people smuggler on arrival in Australia. The subsequent payments made to the lawyers every two years or so after arrival for the various appeal stages which they were being led through were to the illegals, simply renewal fees for their 'work permits'.

I checked further with one of my Indonesian informants, asking in particular, if some of the illegals she had questioned knew that they had applied for refugee status in Australia. Her response was “How could they know? They know they are not refugees. They have come to Australia to work, and they have work permits, which get renewed from time to time (for a lawyer’s fee at each stage of the appeal process) and to them, all the rest which the lawyers take care of, is just Australian legal mumbo jumbo.”

It may have been mumbo jumbo to the illegals, but to the lawyers and the judges involved, it was serious business. Lesser mortals like myself could not understand why the highest courts in our land were seriously involved in this pursuit of fiction. The cost to the Australian taxpayer was enormous. In the year ended 30 June 1996, the Department’s litigation expenditure was less than $6.5 Million. But by 30 June 2004, the litigation expenditure for the year ending on that date was $34 million [DIMA Fact Sheet 9]. Worse still, such expenditure was unavoidable, since to offer no contest at appeal meant that the appellant would win by default, and could thereupon in relation to the cases I am referring to here, obtain permanent residence in Australia on the basis of a groundless refugee application. So the Minister was forced to contest every fraudulent refugee application which found its way into the Federal Court or the High Court, even, as we have seen, if the appeal was withdrawn. Because, if the matter had not been contested, then it would not have been withdrawn, and the appellant would still have won permanent residence in Australia, by default, but still on the basis of a
refugee application which was groundless.

Such a situation could have been avoided by self regulation within the legal profession. That is by encouraging lawyers not to proceed to court with cases which they knew had no merit, and by the judges agreeing to dismiss such cases quickly, before the appellants could gain an advantage from any delay. That is to say, since the judges knew their court process was being manipulated in a manner never intended by the law, they could have stopped it. But they did not. So the Minister himself decided to put a stop to it all, by removing certain migration matters from the jurisdiction of the courts. It was a momentous policy reversal, as decisive for the courts as the Tampa precedent had been for the boats. It skirted the boundaries of judicial separation, and it wedged the scam to the brink of extinction.

However, this new policy, decisive as it was, did not make the scam totally extinct because to eliminate the courts from the migration process completely would have been unconstitutional. The reason for this is that the Australian Constitution gives the High Court in certain circumstances jurisdiction to consider challenges to the decisions of Commonwealth officers, in this case, decisions by Immigration officers to reject refugee applications. Although an Act of Parliament could not abolish the court’s jurisdiction in this field, it could narrow the scope for judicial review.

The vehicle for doing this was an amendment to the Migration Act (Migration Legislation Amendment (Judicial Review) Act No: 134 of 2001) and it is worthwhile to repeat here an edited account of what the Minister told Parliament about how he was going to restrict the courts’ jurisdiction in immigration matters:

The Bill gives legislative effect to the Government’s longstanding commitment to introduce legislation that in migration matters will restrict access to judicial review in all but exceptional circumstances. This commitment was made in light of …concerns
about the growing cost and incidence of migration litigation and the associated delays in removal of non-citizens with no right to remain in Australia.

The key mechanism in the new scheme is the privative clause provision at new Section 474…. The new judicial review scheme will also apply to the High Court and not just the Federal Court. The privative clause does not mean that access to the courts is denied but the grounds for judicial review before either court have been limited…. The high level of litigation particularly by twice-refused refugee claimants cannot remain unchecked.

From experience we know that a substantial proportion of these cases will be withdrawn by the applicants prior to hearing. The percentage of applicants who withdraw fluctuates between one third and one half of applicants. Of the cases which go on to substantive court hearings, …decision is upheld in around 90 percent of cases.

In the migration area, litigation can be an end in itself – it is an area where delaying the final determination is seen as beneficial by those pursuing the court action…. There is a high incentive for refused applicants to delay removal from Australia for as long as possible. (my emphasis)

The amendment came into operation on 2 October 2001 and in essence what it stated was that a decision of an administrative character made under the Act (for example the decision to reject a refugee application) “is final and conclusive, and must not be challenged, appealed against, reviewed quashed or called into question in any court.” It was plain enough that henceforth, from that date onwards the courts were no longer part of the migration decision review process. The same policy change also put an end to class actions in migration proceedings, so for all intents and purposes it seemed that the court process scam had finally ended. But this was only in relation to decisions made after that date, because the legislation was not retrospective. There were still hundreds of cases in the pipeline, relating to decisions made prior to that date, all waiting to be heard and determined under the old procedure, and it was these cases which were still causing the High Court to “drown in a flood of migration cases” three years after the policy change (Pelly 2004).
The scam did not die easily for another reason. The 2001 amendment was soon challenged on Constitutional grounds in the Federal Court although to no avail. The case summary stated simply:

All the judges agree that the October 2001 amendments have removed what would otherwise be errors in the making of some migration decisions from the scope of judicial review by the courts.

(NAAV V Minister for Immigration etc. 2002 FCAFC 228)

So, like the “onshore/offshore visa scam” applications which wended their way through the Missouri Syndrome for years after their terminating amendment in the Regulations, so too the migration cases still before the courts will one day be finally determined, and when that happens, the court process scam will end.

The scam had been brilliantly conceived, since the intention of its architects was to protect it from attack by hiding it behind the Constitutional doctrine of the separation of powers between the executive and the courts, and as we shall see, the plan to protect the scam almost succeeded. While it had been operating, the scam had been a bonanza for the lawyers, not for all lawyers that is, but specifically those few who specialised in delaying court decisions in migration cases in the manner described by the Minister. Because only a very few lawyers were actually involved in the withdrawal of cases prior to hearing, it is hard to believe that the judges did not know of the scam, particularly as it was the same lawyers who were repeatedly withdrawing cases. So with a fifty percent withdrawal rate to alert them, and with the same lawyers involved in the withdrawals, how could the judges have allowed these contrived delays in the judicial process to continue in their own courts, without calling the bona fides of these lawyers into question?

Not so surprising though is the time it took for the Minister to get Parliament to exclude the judges from the review process. For twenty years the courts and the Department had been in a love hate relationship
in immigration matters. But for the thirteen years of the previous Labor Government they had tolerated each other, mainly because as we have seen with the Chinese racket, towards the end of its tenure, the Labor Government had completely lost control of its immigration portfolio. One reason for this is that the Department had lacked a continuity of leadership, in that there were no less than four different Labor Immigration Ministers during this period.

Meanwhile, during the whole of this 13 year period while the Labor Government was changing Ministers in mid stream, Philip Ruddock, was biding his time as opposition shadow Immigration Minister, with a vision which would change the immigration landscape of Australia forever. Part of this vision was to separate the courts from their immigration jurisdiction. It was an emotive proposal, and one which at first glance was unlikely to succeed because it touched upon the sacred cow of separation of powers, one of the entrenched principles in our Constitution. Even after the 1996 elections which brought the Coalition to government, its prospects were still slim as the Labor Party still controlled the Senate, and it used its majority there to block several of Philip Ruddock’s immigration reforms.

This was not the only problem for the Coalition because during the lead up to the 2001 Federal elections, the Coalition was facing almost certain defeat. If defeated at these elections, Philip Ruddock’s plan to exclude the courts would have been scuttled. Then, on 29 August that year, the Tampa precedent occurred. The decisive action taken by the Howard Government in dealing with these illegal immigrants suddenly changed the electoral prospects of the two major parties significantly and in the separation of powers debate, the position of the courts was no longer as secure as it had previously been. The policy cry which Prime Minister Howard adopted was the now famous “We will decide who comes to Australia, and the circumstances in which they come”.

Within days of the Tampa precedent, popular support for the Howard Government soared dramatically while correspondingly, support
for the Labor Party plummeted. In order to avoid annihilation at the forthcoming election, the Labor Party had no option but to reverse its obstructionism in the Senate, and support the Government’s immigration policy changes.

Less than one month after the Tampa precedent, Philip Ruddock addressed Parliament on 26 September in relation to the 2001 amendment. The amendment came into operation six days later, and the election was held the following month, when the Coalition was returned to office. It is expected that this amendment will eventually end the court process scam.

D. The Ministerial scam

Riding in parallel with the court process scam was the Ministerial scam. Sections 351 and 417 of the Migration Act allowed for a final appeal to the Minister, after all other appeals had failed. Section 417 was in relation to failed appeals for refugee status, and the other section was for other visa application failures. Apart from the fact that they related to different categories of visas, the Sections were more or less the same, in that they gave the Minister the power to “substitute for a decision of the Tribunal, another decision being a decision that is more favourable to the applicant.” “The Tribunal” was either the Immigration Review Tribunal, or the Refugee Review Tribunal, whatever the case may have been, and in practice, “a decision more favourable to the applicant” was the grant of the visa which had previously been refused.

The Act stipulated that the criteria on which the Minister was to decide these appeals was “public interest” and it was left to the Minister to decide what the public interest was. However, to guard against patronage, favouritism, and unseemly use of this power, the Minister was required to report to Parliament at six monthly intervals on the number of instances in which he had exercised his Ministerial power in relation to these appeals.
These appeals were an administrative process initiated by a letter to the Minister. Collectively, they were known in the jargon as “Ministerials,” and that is how they will be referred to here. They were called “Ministerials” because unlike other decisions made under the Act, the Minister could not delegate this particular decision making power and he had to decide these matters alone, and herein lies the basis of the Ministerial scam.

The Ministerial was originally intended to be a safety valve in extraordinary cases not covered by any established visa criteria or any other processing method. For example, one Ministerial which I sent to the Minister involved a Vietnamese girl who had fled Viet Nam with her parents, and she had been accepted into the United States as a refugee and on this basis she was granted a resident permit there. Soon after arrival there her parents died in tragic circumstances and after that she was befriended by a Vietnamese family who was visiting the United States from Australia, where they had been granted refugee status. With no other family to go to in the United States, the girl accompanied this family to Australia, arriving here on a visitor visa. She applied for refugee status here, but that application was refused on the grounds that she had already been granted refugee status in the United States, and was therefore no longer a refugee. She went through the usual channel of appeals and was rejected at each level for the same reason. She thereupon became an illegal immigrant. The girl then decided to go back to the United States but found that because the application and appeal process in Australia had taken so long, her US residence permit had lapsed. She applied to the US Embassy in Australia for another residence permit for the US, based on her original refugee status there, but this was rejected because she had disdained the previous refugee status by leaving the US to come to Australia and because as she was already living safely in Australia, she was no longer a refugee. In desperation, she tried to return to Viet Nam, but discovered that her Vietnamese citizenship had been revoked when her family fled, because her father had been “an enemy of the people.” She was therefore refused a Vietnamese passport,
and a Vietnamese visa in any other passport. She was then in the extraordinary situation of being marooned in Australia, a stateless illegal immigrant, liable under Australian law to be detained for the rest of her life. Fortunately, the Minister made for her “a decision more favourable to the applicant” and so on that basis she finally became a permanent resident in Australia. That is how the Ministerial was intended to operate.

But instead of restricting the Ministerials to cases deserving of the Minister's discretion such as this case of the Vietnamese girl, the lawyers discovered another delaying mechanism which they could put to good use. The scam was attractive for four basic reasons. First, there was no intrinsic cost. That is, because the Ministerial appeal was made by letter direct to the Minister, there was no set form on which to apply, and no application fee. Apart from the fee of any lawyer involved, it basically cost nothing to launch a Ministerial except for the price of a postage stamp. Secondly, there was no time limit. This meant that although the Ministerial was an appeal from the decision of a Tribunal, in practice an applicant did not need to apply to the Minister until after all other avenues of appeal had been exhausted, for example an appeal to the Federal Court, or even to the High Court, or by one or more class actions, or by launching an application for a different class of visa, which then triggered another line of appeal through the courts. When everything else had failed, an illegal could then appeal to the Minister on the basis of a Tribunal decision which might have been decided some years previously. Thirdly, there was no limit to the number of times that the same applicant could apply to the Minister. That is, if the Minister had already decided not to exercise his discretion, or had decided not to make “a decision more favourable to the applicant” then the applicant could always try again, and many did. One of my illegals made fourteen separate appeals to the Minister, one after the other. It took years to process all these Ministerials, before this illegal immigrant was finally deported. And herein lies the basis of the fourth reason: the processing time. Anyone who has ever written a letter to a Minister of the Crown is often perplexed at the time it takes to receive a reply.
When the reply does come, it is quite often not signed by the Minister at all, but by one of his staffers. Such a letter usually begins like this: “The Minister thanks you for your letter, and has asked me to reply to it on his behalf”…etc.. etc. As the Minister does not sign the reply, there is no knowing if he even knew about the originating letter.

In the jargon, this kind of reply is said to be a “Clayton's reply.” That is, it is the reply you get from a Minister when he does not reply personally. The reason why a Minister does not reply personally to every letter received in his office, is because there are so many. In 1996-97 for example, the Immigration Minister received “some 18,568 items of correspondence” (DIMA 1997a, p.102). They were not all Ministerials, since the Minister received mail from a multitude of different sources relating to different aspects of the portfolio. However, between other duties to the Parliament, his Department, his Party, his electorate, and a host of other demands which go with the position, including those associated with travel both inside and outside Australia, the Minister managed to personally sign 89% of the replies.

In the case of a Ministerial, there was no Clayton’s reply, because the Act stipulated that the Minister must make the decision personally. This meant that although many staffers could be delegated to respond to correspondence with Clayton’s replies in all other matters, none could be delegated to decide a Ministerial. The Minister could delegate all relevant clerical functions before he made a Ministerial decision, and in this respect his office and the Department could help him. But irrespective of the size of the Ministerial case load, the Minister had to decide every one of these cases by himself alone.

The personal case load burden on the Minister was a significant factor relating to the processing of Ministerials, and another factor which complicated the process even further was the distance the Ministerial had to travel. Taking a Ministerial whose applicant lived in NSW as an example, the Ministerial’s odyssey went like this:
First, the letter asking the Minister to intervene with “a decision more favourable to the applicant” was sent to the Minister’s office in Canberra. However, before the Minister could decide this matter, he would need to be acquainted with the full facts of the case. Even if all the facts were apparent in the letter, the Minister would still need advice from his Department as to why the original application for the visa had been rejected. So the Minister’s staff in Canberra would set about assembling the facts of the matter so they could present these facts to the Minister. If the letter had been written by a lawyer, then details of the originating case would be clearly stated in the letter. But it sometimes happened that the letter might have been handwritten, by a semi literate applicant in a jumble of English and foreign language, for example, Indonesian. Although this would still be a perfectly legal form of application to the Minister, it might take some time for his staff to decipher its content, and to determine its State or Territory of origin.

For Ministerials originating in NSW this meant that the decision appealed against was made in the Sydney office of the Refugee Review Tribunal. Details of the Tribunal’s decision to uphold the Department’s original decision to reject the visa application together with any other relevant details had to be assembled for the purposes of briefing the Minister. By this stage in the appeal process, the applicant would have accumulated an immigration history of some magnitude, and information relevant to this last final stage in the appeal process might be spread over several separate files, in different Sections of the Department.

For example, the decision of the Refugee Review Tribunal (RRT) which initiated the Ministerial would be in a file in the Sydney Office of the RRT together with the evidence upon which that decision had been made. But if that applicant had come to the Department’s notice because of other matters prior to the RRT appeal, then the Department may have created other files on the same applicant. There would of course have been a file in the Sydney Onshore Protection office where the decision to reject refugee status was recorded. But there might also be other files
elsewhere in the Department, together with supporting evidence. For example, if the applicant had been involved in some prior application to stay in Australia, there may have been another file in the Residence Section, and there could have been another file in the Compliance Section, awaiting activation if and when the time came to deport the applicant. So, for each applicant, there could have been at least three or four bulky manila files in separate locations across the Department, each containing background information which could assist the Minister to decide a Ministerial.

Originally, in years gone by, what then used to happen was that the Minister's office in Canberra would ask the Sydney Office of the Department to send these files to Canberra so that the Minister's staff could firstly examine them and then compile the briefing for the Minister. After the briefing, the Minister might still call for one or more of the relevant files so that he might be better informed of the circumstances, so the files had to be in Canberra for this purpose. In those days when Ministerials were relatively fewer than they are today, it was no problem to bundle up all these files together and courier them off to Canberra. But just as the Minister had said that litigation delay “can be an end in itself” (Hansard, House of Reps, 26 Sept. 2001, p. 31559), the lawyers also turned the Ministerial into another art form of delay. They did this by appealing to the Minister on behalf of their clients even when the appeal was groundless, and for the same reason they had made groundless appeals to the RRT and the courts. That is, not to win, but to seek further delay.

As I have already mentioned, when one Ministerial failed, they could do it all again, and again, and again, and as no one but the Minister could decide a Ministerial, the more Ministerials lodged on behalf of the same applicant, the greater would be the delay which that applicant could accumulate. Not surprisingly, the Ministerial scam, like all the other scams, soon generated a dynamic of its own.

In 1997, the Minister set up a special unit to deal with Ministerials
for NSW. This special unit was accommodated in the Department’s Sydney office, and its purpose was to do all the preliminary clerical and other administrative work necessary to brief the Minister on the NSW Ministerials which awaited his decision. During that year I investigated the processing time taken from the date a Ministerial was received in the Department’s Sydney office to the date it was finalised. The total number of Ministerials originating in NSW alone for that year was 2,810 with an average of 234 per month, with the Minister of course, having to decide every one personally. With a case load of this size, just for NSW alone, it was almost a logistical impossibility to assemble and pack up some 6000 or more bulky manila files and dispatch them all to the Minister’s office, and a greater impossibility to store them there and sort out the contents in some semblance of order for the Minister to peruse, by himself alone. Fortunately, at this point in time, much of the Department’s record system had been computerised, and some files could now be ‘sent’ from Sydney to Canberra with the click of a computer button. Nevertheless, the requirement that the Minister alone decide the Ministerials still created a processing bottleneck, and for 77% of Ministerials examined, the time elapsed from receipt to finalisation was between six and seven months.

Why did it take so long? The answer lies in the tortuous odyssey the Ministerial pursued, even with computerised documents. In fact, even for a groundless Ministerial, the request for the Minister’s intervention still passed through the same fourteen different stages before the letter was answered. Basically, what happened was that the request ping-ponged back and forth between the Minister’s office in Canberra, the Department in Canberra, and the Department’s Sydney office, in fourteen stages thus:

The fourteen stages of the Ministerial odyssey

Stage 1. The letter requesting the Minister to intervene in the appeal process with a decision “more favourable to the applicant” was received in the Minister’s Office. It was then sent to the Department’s Ministerial Services Section in Canberra (MSS).
Stage 2. MSS staff examined the request and entered its details into the Department’s computer system. The details were then sent electronically to the Parliamentary Liaison Office (PML) in Sydney.

Stage 3. PML staff checked that the request was valid, and that it related to an identifiable RRT refusal. The request was then sent electronically to the Sydney Onshore Protection Team (ONPRO Sydney) which refused the original application, for a statement of reasons why the application was refused.

Stage 4. An Onshore Protection case officer in ONPRO Sydney prepared a narrative, giving details why the protection visa application was rejected, with a summary of the RRT judgement, which upheld the Department’s decision to reject the visa. This narrative was then returned to PML.

[Author’s note: The narrative was a summary of about 200 words. As we are here referring to groundless applications only, the narrative would explain why both the Case Officer and the RRT found that the application did not disclose any Convention reasons which would justify the grant of refugee status]

Stage 5. PML then included this narrative in a schedule which contained about 60 separate narrative summaries, all of a similar category. For example one schedule might contain only summaries relating to groundless applications, another might refer to cases from the same migration agent, and another might contain summaries which might invite the Minister’s special attention. Another schedule might be reserved for summaries of a more compelling nature which might invite the Minister to make “a more favourable decision” and so on. The marshalling of these summaries into their respective schedules took a considerable amount of lead time, and this could not be avoided. When the schedules were complete they were then sent electronically to the Onshore Protection Section in Canberra (ONPRO Canberra).
Stage 6. ONPRO Canberra checked the narratives for spelling, presentation and appropriate language, and sent them to the Minister’s office.

Stage 7. The Minister’s staff decided which cases required a full submission (together with Departmental files) for the Minister’s attention. Such cases might be those for which there had been a change in the applicant’s circumstances since the RRT rejection. The schedules were then returned to ONPRO Canberra.

Stage 8. ONPRO Canberra asked PML to organise full submissions where requested, and to relist the remainder in an instrument.

Stage 9. PML removed submission cases from the schedule, and sent these back to the case teams in ONPRO Sydney for full submissions. The remaining cases were listed on an Instrument.

Stage 10. The completed submissions were sent back to PML. These submissions were then sent to ONPRO Canberra, together with the Instrument, and any letters for the Minister to sign.

Stage 11. ONPRO Canberra vetted the submissions, and checked the language of the letters, and sent them to the Minister’s office.

Stage 12. The Minister signed the Instrument, and any letters attached, and in relation to the submission cases, decided whether to intervene or not, with a “decision more favourable to the applicant.” All matters were then returned to ONPRO Canberra.

Stage 13. ONPRO Canberra arranged evidence and visa grant for those cases in which the Minister had intervened, and sent these and the other matters to PML.
Stage 14. PML prepared letters to the applicants, advising them of the Minister’s decision, and finalised the cases on the Department’s computer system.

Although computer based files could be transmitted electronically between destinations at the speed of light, they could not be processed so quickly. Often they were queued up inside the Department’s computer system for days or even weeks on end, awaiting action by the appropriate officer. That is why, back in 1997, it took at least six months for most Ministerials to be finalised. In those days, applicants could do it all again, just to obtain further delay, which was of course, the essence of this scam. It did not take six months to reject the repeated Ministerials though, because those illegals who specialised in submitting serial letters to the Minister requesting his intervention were soon recognised by the Department and the Minister, and these repeat applications were queue jumped and processed more quickly through the system.

The lawyers, however, quickly realised that more extensive delay could be achieved in serial Ministerials, by claiming that since the last rejection by the Minister, the applicant’s circumstances had changed sufficiently to justify a reconsidered decision. These serial Ministerials would then have to pass through the same fourteen stages so that the claimed change in circumstances could be investigated. It sometimes happened that although the original Ministerial failed, a subsequent Ministerial succeeded. This could happen for example, if during these contrived delays, a child of the applicant became an Australian citizen on that child’s tenth birthday.

As I explained in the Baby Dumping Scam, after 1986, children of illegal immigrant parents born in Australia were not Australian citizens at birth, but they did acquire Australian citizenship on their tenth birthday if they were then still in Australia. Given all the processing delays which could be contrived in the various ways I have explained, it was often possible for the family, when all other attempts had failed, to obtain
permanent residence in Australia, on the basis of their child’s tenth birthday. So it did not matter how fraudulent the previous applications had been. Residence could still come via a Ministerial.

For example, suppose an illegal family had already been in Australia for five years before location by Immigration officers and that during that time a child had been born to them in Australia, and that that child was three years old at the time the family was arrested. Following arrest, but before they could be deported, the father might have lodged a groundless asylum application. Suppose further that that application took two years to determine, with the result that their asylum application was rejected. Suppose further that the father then appealed to the RRT. Two years later, the RRT also rejected that application, so the father then appealed to the Federal Court. One year later just as the case was about to be heard, it was withdrawn, and the father then joined a class action in another court case. Suppose again that because of adjournments, and other processing delays contrived by the lawyers, that that class action might have taken another two years before it was finalised, only to be rejected again. The Australian born child would then be ten years old, and would have become an Australian citizen on his or her tenth birthday. The significance of that event was that that child could not then be deported, although the other non citizen members of the family, legally, could. But no Australian government could withstand the media frenzy which might accompany the deportation of a family whose ten year old Australian citizen child was left behind crying at the airport. So, even though the family could not qualify for permanent residence in Australia on the basis of their fraudulent application for refugee status, they could still appeal to the Minister to intervene on their behalf, with “a decision more favourable to the applicant” on the grounds that the father and the mother were now parents of an Australian citizen child. And on that basis alone they could, and usually were, granted Australian permanent residence.

In fact, the Ministerial scam could be used even if the child was still six months away from his tenth birthday at the time when his family’s
last application through the judicial process had failed, because the family could then appeal to the Minister on the grounds that the child “will soon be” an Australian citizen. If the Minister was unimpressed with this argument and rejected the Ministerial, the family could try again, and again, until the child finally did become an Australian citizen. By this time the Minister would then be in an invidious situation. If alternate arrangements could not then be made for the upbringing of the Australian citizen child in Australia, (for example, by living with relatives here while the remainder of the family was deported) then the Minister could find himself in such a position that he would have no option for political reasons but to grant the family permanent residence in Australia.

In the year ending 30 June 1998 the Minister intervened in 55 cases, using his powers under Section 417 of the Act. That is, residence status was granted by a decision of the Minister after the original application for refugee status had been refused by the Department and refused again on appeal to the Refugee Review Tribunal (DIMA Annual Report 1997-98 p,107). But the days of the repeat Ministerial were numbered. On 1 December 1998 the Minister amended the Migration Regulations in relation to the grant of bridging visas during the processing of Ministerials. A new Regulation 050.202(6) specified that following a request to the Minister to “substitute a decision more favourable to the applicant” a bridging visa pending the outcome of the request would only be granted if the applicant “has not previously sought the exercise of the Minister’s power to substitute a more favourable decision.” This amendment did not make serial Ministerials unlawful. Applicants could still apply again if they wanted to. But the effect of this amendment was that if the first Ministerial had failed, no bridging visa would be granted during the currency of any further Ministerials lodged by the same applicant. This meant that during the course of subsequent Ministerials, an applicant was liable to be kept in Immigration custody. And suddenly, from that date onwards, the sheen went out of the Ministerial as a scam by itself alone as a continuing ‘work permit’ to remain in Australia, and the Ministerial scam was over.
E. The mass produced application

Another of the methods used for delaying the inevitable rejection and enforced departure in groundless refugee applications was the mass produced application. It is true that many Indonesians lodged their own groundless refugee applications without the assistance of Australian lawyers or migration agents. But, especially after the Ruddock fast tracking reforms were introduced, applications lodged without the assistance of lawyers or migration agents were doomed to a relatively quick rejection, simply because applicants who were not genuine refugees generally did not know what to write in the application form or how to manipulate the Department’s processing system. Some made general claims of poverty at home with a hope for a better life in Australia, while others even made no refugee claims at all, and submitted blank forms. Both were doomed to early failure.

But lawyers and migration agents who knew how to frustrate the Department’s assessment procedures could gain considerable delay for their clients by lodging very bulky mass produced applications. The theory behind this methodology was that the more complicated or convoluted an application could be made, the further it would be shunted down the processing queue until an assessor plucked up enough enthusiasm to assess it. In the early days when applications were assessed in the order in which they were received, this theory did not always work, and there was not much advantage in employing it anyway, since in those days the average groundless application would still take from one to two years to finalise in any case. But after Philip Ruddock introduced the two stream processing method into the Department, short and simple groundless applications were predestined for a quick rejection. On the other hand, the mass produced application compiled by a lawyer or migration agent was guaranteed to avoid the quick rejection queue, because these applications looked so big and so convoluted and took so long to assess. Thus, for the purposes of delaying rejection and enforced departure it was to an applicant’s best advantage to retain one of
these lawyers or migration agents, so most Indonesian applicants did.

For the groundless asylum seeker, another advantage of the massed produced application method was that it could be introduced at any stage of the appeal stream. Thus, although of a different category, the same method could be used on lodgment with the Department in the first instance, on appeal to the RRT or to the courts, and even as a last resort in a Ministerial. In fact, just as the repeat Ministerial was designed to overload the Minister, so the mass produced application was intended to clog the Department’s decision making process at every stage, and it did this very well.

The Attorney-General alluded to this problem briefly during his second reading speech in relation to the 2005 amendment to the Act when he said

It is equally irresponsible for advisers to frustrate the system by lodging mass produced applications without considering the circumstances of each case.

(Ruddock, P., Hansard, House of Reps, 10 March 2005 p. 4)

(my emphasis)

The mass produced applications came in two forms, known in the jargon as “the real mass produced” and “the false mass produced,” and I will explain these separately:

The real mass produced

What was “real” about the real mass produced, was that it referred to real situations and real events in Indonesia which the Department did not dispute. These “real mass produced” applications were couched in broad terms, and chronicled in a general way the misery and suffering endured by life in poverty stricken Indonesia. It was a tale of woe to which were added specific mentions of religious or ethnic persecution which
were corroborated by photocopies of newspaper items depicting churches being burned, riots in the streets, and so on. The one application might consist of 20 pages of narrative with newspaper items, World Bank economic forecasts, and supporting documentation of one kind or another attached. All in total, were predicting doom and gloom for Indonesia.

The advantage for the lawyers and migration agents in lodging applications of this nature was that the one format could be used for every application lodged on behalf of an Indonesian. In fact, apart from name, address, and other identifying personal details which distinguished in each application one applicant from the others, the content of each application was often exactly the same. Each of these applications, of course, was doomed to fail, simply because none of them disclosed any reasons in accordance with the United Nations Convention, as to why refugee status should be granted. Nor was any particular applicant identified as having a well founded fear of persecution, within the terms of that Convention if forced to return to Indonesia. In the jargon, such applications were said to contain “no Convention reason”. However, the ordinary rules of procedural fairness required that where no Convention reason was found, the applicant had to be advised, and offered the opportunity to submit further information which might contain a Convention reason. This was usually done by inviting the applicant in to the Department for an interview.

The advantage to the applicant in responding to the invitation to attend an interview for the real mass produced application was that the scheduling and attendance for the interview would waste the Department’s time. It could add one or two month’s further delay to the inevitable rejection of the application and subsequent forced departure from Australia, and as far as the applicant was concerned, this of course was the whole purpose of the exercise. Furthermore, the applicant had no fear of attending the interview. This is because even with no knowledge of exactly what the lawyer or migration agent had written into his application, all the events referred to in the application were real and of some relevance to the applicant. Thus, when questioned by the assessor, or
later by the RRT, the applicant could generally give a good account of the miserable life he had led in Indonesia before fleeing to Australia. But the application would still be rejected in the end simply because even at interview, no Convention reason would be found. But while these kinds of applications were easy for the migration agents to produce, they were hard for the Department to assess in such a way as to satisfy the courts. The reason for this was that every claim in each application, had to assessed against the Convention criteria. Thus, part of the assessment might read:

whilst I accept that in the months prior to the applicant’s departure from Indonesia several churches were burned down during religious riots in the Celebes, there is no evidence that the applicant who lived in Java, had a well founded fear of persecution within the meaning of the Convention as a result of these events in the Celebes.

As the assessor addressed each claim of land shortage, poverty, unemployment, deficient health care facilities, poor education prospects, and insufficient infrastructure in this way, the process extended.

It was time-consuming bureaucratic nonsense, but because the courts could overturn an assessment on the grounds that the assessor had not taken all relevant claims into account, it had to be done this way. Thus in its own way, the “real massed produced” application, became a monument to delay which was of course the whole purpose of the Indonesian refugee application.

The false mass produced

Some of these applications had to be seen to be believed. In the early 1980s when personal computers were not widely in use, migration lawyers and agents made use of duplicated forms designed to cater for a range of refugee scenarios. The originals of these forms were produced from a typewriter, and then photocopied, and it was the photocopy which
formed the basis of the refugee claim. There was space at the top of each form in which to hand write the applicant’s name, address and other details, so as to distinguish one refugee application from another, but thereafter these forms contained pick lists of mutually exclusive situations, from which alternatives could be deleted by hand. The end result looked a bit untidy, but with all words relating to differential situations erased, the form became a logical presentation of refugee claims, made by a particular applicant referring to his own particular circumstances.

Thus an all purpose refugee application based on religious discrimination in the home country might begin:

I am a Moslem / Christian / Jew / Buddhist / Hindu / Sikh and I have a well founded fear of persecution if I am returned to my country of origin (etc etc.)

The lawyer or migration agent assisting the applicant would cross out the alternatives not applicable to this particular client, so the claim might then read “I am a Jew and I have a well founded fear of persecution if I am returned to my country of origin” or “I am a Moslem and I have a well founded fear”… and so on.

The claim, in this duplicated form, sprinkled with erasable alternatives would go on page after page, making for a particular applicant, a stereotyped claim for refugee status in Australia. It was easy for the agent to produce, and time consuming for the assessor to assess. Claims like these were made in broad terms, without specific details, so they were doomed to failure. But even though it was on a duplicated form, each claim made still had to be addressed in the manner I have described, so the end result was a delayed rejection – just what the applicant wanted.

There were other inherent delays in these claims. For example, the form might claim that the applicant’s “Mosque / church / synagogue / temple / prayer house” had been “stoned / burgled / burned /
bombed” and that he had been frequently “punched / kicked / robbed / stabbed” and that his wife had been repeatedly “spat on / heckled / insulted / stripped / raped” with the alternates either deleted or included to match the theme of the claim. It sometimes happened that with multiple clients from different backgrounds, or in groundless applications which obviously had no chance of success, the migration agents sometimes became lazy, and either did not bother to erase the alternatives, or forgot to do so, or erased the wrong alternative by mistake. Thus the form might be submitted to the Department indicating that the applicant was, a Muslim, Christian, Jew, Buddhist, Hindu and Sikh, all at the same time, or that it was a Muslim church or a Sikh synagogue which had sustained such horrendous damage. And because of a mistaken erasure in some applications, an Indonesian might claim a well founded fear of persecution if returned to Indonesia because he was a Muslim: An unlikely event in the world’s largest Muslim nation. Further investigation might have found that the applicant was later claiming to be a Christian. Oversights like these meant that the assessing officer had to seek further information from the agent as to the applicant’s exact claim.

Sometimes, with telephone calls to the migration agent, letters between the migration agent and his client, and then renewed contact with the Department, requests for further time to produce more details and so on, it took months just to sort out the basis of the claim, yet all had to be done with meticulous detail lest on appeal the courts might have reversed a rejection because the assessor had not taken reasonable steps to ascertain the exact nature of the claim.

These days, modern technology has solved the problems relating to hand deleted alternatives, but only marginally. Computerised word processors can make every copy look like an original, but quite often when the master copy was altered to suit the circumstances of the next client, one client’s claims became infused into another client’s application when the wrong paragraphs were transposed. Thus an application from an Indonesian asylum seeker might contain graphic details of persecution
suffered in Iraq, because the migration agent transposed by mistake, certain paragraphs from a previous application made on behalf of an asylum seeker from Iraq. Here again, the assessor would have to contact the migration agent to sort this matter out, thus causing further delays.

A well written refugee application mass produced by a modern word processor can create the illusion that it is documenting real events and real circumstances of persecution suffered by a particular asylum seeker. That is, until the application of that asylum seeker is compared with the application of other asylum seekers represented by the same migration agent.

Sometimes, except for the name and other information distinguishing one applicant from another, the wording even over a 24 page claim, was exactly the same. And even when differing claims were made, the “find and replace” function on any personal computer can change the location of the persecution claimed without the need to rewrite the whole application. Thus, one application might refer to claimed events which occurred in Medan, Sumatra and might read:

Last month when I was walking down a street in Medan, I was set upon by a gang of Moslem youths and they punched me and robbed me. Later that night my car was burned.

But for the next applicant who might come from Semarang in Java, the computer’s “find and replace” function could be instructed to automatically change “Medan” to “Semarang”, throughout the application, and to make the claims appear even more personalised, a really diligent agent might create a somewhat different false scenario by replacing “car” with “house” and “robbed” with “stabbed” so that the Semarang application might read:

Last month when I was walking down a street in Semarang, I was set upon by a gang of Moslem youths and they punched and stabbed me. Later that night my house was burned.
In each case the computer print out made each application appear to be an original production, and because these applications were so neatly presented, unless each was compared with other applications lodged by the same agent, each application by itself alone, could give the impression that it was genuine. It could all be done with a touch of a computer button.

Using the “cut and paste” functions of the computer, even more diligent agents would change the paragraphs around, so that between individual applications, apart from the names and other personal details, the opening paragraphs would be different, creating the illusion that the different applications lodged by the same agent bore no resemblance to each other. It was only later, on closer examination and comparison with the other applications lodged by the same agent that it could be seen that all these applications came from the same base document.

The first clue was the agent, and his reputation for lodging groundless applications. But even then, such applications could not be summarily rejected, because the Courts would argue that notwithstanding the results of other applications lodged by the same agent, who is to say that a particular application made from the same base document was not genuine? After all, each application had to be judged not on the reputation of the agent who lodged it, but on its own merits, and to decide otherwise, was an invitation for an appeal.

Of course, there is nothing illegal in using the same base document for different clients, if the claims made in respect of each client are genuinely similar. That is why each application had to be examined in some detail to ascertain not only if it disclosed a well founded fear of persecution within the meaning of the Convention, but also if the claimed events really happened. But in an attempt to avoid the “same agent” scrutiny, some agents, particularly those who were also people-smugglers, did not declare themselves to be agents at all. They made their computer generated mass produced applications appear to have
been written by an applicant himself. That is, the applications and any covering letter or summary relating to the applications were written in the first person, and did not refer to the applicant as being “my client” or “the applicant”, in the format normally used by ordinary registered migration agents.

However, these applications would only appear to be ‘agentless’ for as long as the assessor could overcome the urge to wonder how this average Indonesian illegal immigrant had suddenly acquired such eloquent English language skills as to produce by himself alone such a convoluted and detailed claim, and at the same time to be so well acquainted with the labyrinthine workings of Australia’s refugee law. Of course the assessor only needed to check with some of the other ‘agentless’ applications the Department had received to discover that all these applications were themselves surprise surprise, also variations of the same base document. All these mysteries could easily have been solved by interview with the asylum seeker, and here we find the main delay mechanism difference between “the real mass produced” and “the false mass produced” application.

As I have already mentioned, because the “real mass produced” was a genuine hard luck story, albeit not one which contained any Convention reasons for the grant of refugee status, applicants could generally be expected to give a good account of a past miserable life in Indonesia. For this reason applicants were encouraged by lawyers or agents to attend the interview. This interview itself would contribute to further delay during the scheduling lead time, and this delay could be deliberately further exacerbated by the agent seeking on a client’s behalf and for reasons real or contrived, one adjournment after another or a rescheduling of the interview date. Here again the assessor had to be careful not to oppose a rescheduling date, lest on appeal a court might decide that the applicant had not been granted a reasonable chance to put his case.
On the other hand, in relation to “the false mass produced” application, further delay from interview and rescheduling of interview was not available, because it was in the applicants’ best interest not to attend the interview, lest they be exposed as frauds. This is because although applications might contain established Convention reasons, they were of course, false claims relating to events which never happened, and the applicants would have some difficulty in keeping to the story of fear and persecution which had been concocted by the agent. This was particularly so if the applicants, as I have previously mentioned, did not even know that the agent had applied on their behalf for refugee status.

Therefore, in cases like these, agents might advise clients to ignore the invitation to attend the interview. Agents might say for example that the interview was “an immigration trick” designed by a cunning assessor to try and trap applicants into giving reasons why the applicants should be deported immediately. However, as I have mentioned, according to most of the Indonesian illegals I interviewed prior to their departure from Australia, the agent did not even tell them that they had been invited to an interview, mainly because he had never told them that he had applied for refugee status in Australia on their behalf. This is not surprising since none of the Indonesian illegals I interviewed ever claimed to be genuine refugees. As far as they were concerned, and I have mentioned this repeatedly throughout this thesis, they had come to Australia to work, and the money they had paid their people smuggler was for a ‘work permit’ and to them all the rest of the application processing and appeals was just some form of “Australian legal mumbo jumbo”. Small wonder then, that they did not attend for interview at the Department during the initial processing stages of their applications, nor on appeal to the Refugee Review Tribunal (RRT). In fact, by 2005 Parliament was told that “40 per cent of claimants at the RRT do not even deign to turn up for the hearings” (Ferguson 2005). And now we know why.

So the delay difference was this: A migration agent for an applicant in a “real mass produced” could obtain further delay for his client by
applying for rescheduled interview dates and by using other similar tactics. On the other hand, although interview delay was not available to an applicant of a “false mass produced” who chose not to attend an interview, a corresponding period of delay was available from the longer period the assessor required to refute the false events claimed in the application.

These are the kinds of “mass produced applications” which the Attorney-General was referring to in Parliament. And the advantage which both categories of the mass produced application had for their applicants is that both kinds of applications survived the fast tracking rejection stream which the Attorney-General introduced when he was then the Immigration Minister.

The reason why these applications survived the fast tracking queue was that because they were so well presented, at first glance they either looked genuine, or at least looked as though they might have needed further consideration. Either way, they were excluded from the fast tracking rejection stream and were held aside for further assessment. This of course meant that there was a delay increment in the mass produced application which was unavailable to other groundless applications which had not been so well presented.

Before Philip Ruddock became Immigration Minister in 1996, ordinary applications, even groundless applications, took years to decide, and the subsequent appeal to the Refugee Review Tribunal also generally took one or more years. Then the appeal to the Minister via a Ministerial could itself take a year or more to decide, and so the average Indonesian visitor to Australia could expect a working holiday in Australia of at least five years, legally that is, after arriving in Australia on a visitor visa, followed by a $30 fraudulent refugee application, and the automatic bridging visa. But after Philip Ruddock instituted the fast tracking of groundless refugee applications, and of equally groundless appeals to the Refugee Review Tribunal, the legal stay in Australia for fraudulent applicants was reduced considerably. However, the same sort of working
holiday in Australia albeit somewhat truncated by the Ruddock reforms, was still possible for fraudulent refugee applicants. This is because notwithstanding the Ruddock reforms, procedural fairness and ordinary processing was still required, even for a groundless refugee application. Processing times and procedural fairness could still string out a working holiday in Australia for a fraudulent refugee applicant in this way:

1. A visitor arrives in Australia on a visitor visa valid for three months.
2. One day before that visa expires, he lodges a groundless refugee application, and is granted a bridging visa.
3. Under the fast tracking arrangement, the groundless refugee application is rejected after one month.
4. The bridging visa remains valid for another 28 days to allow the applicant to either appeal to the Refugee Review Tribunal or depart Australia.
5. 27 days after the rejection of the refugee application the applicant lodges an appeal with the Refugee Review Tribunal. The bridging visa remains current during this appeal process.
6. Under the fast tracking arrangement, the Refugee Review Tribunal (RRT) rejects the appeal after one month. The bridging visa will expire within 28 days giving the applicant time to depart Australia or else appeal to the Minister.
7. On the 27th day after Refugee Review Tribunal rejects the appeal, the applicant appeals to the Minister. The bridging visa will remain in force until the Minister decides whether or not to intervene with a “more favourable decision.”
8. Three months later, the Minister decides not to intervene. And it takes two weeks for the applicant to be advised of this decision.
9. 27 days after being informed of the Minister’s decision the applicant departs Australia on a valid bridging visa.

10. *Total time in Australia is approximately eleven and a half months.*
This is the barest minimum the applicant could expect. Delays in the decision making process, contrived or otherwise even now can still drag out the time in Australia for two or three more months, making the total time in Australia more than one year. In all that time the applicant will be ‘lawfully’ in Australia in spite of his original groundless refugee application. Thus the five year contrived ‘work permit’ for a groundless refugee application is now a thing of the past, but the current shorter version of one year or so is still an attractive option.

What makes this shorter version attractive, is that because the asylum seeker is never ‘technically’ illegal throughout this whole processing period, he does not attract the return to Australia prohibition which applies to other ‘ordinary’ illegals. So, some time in the future if he wants another ‘working holiday’ in Australia, by again remaining legally in Australia throughout another refugee processing cycle he can do it all again. This is how Indonesians who were illegal in accordance with this thesis definition, could continue to remain and work ‘lawfully’ in Australia, notwithstanding the latest Ruddock processing reforms. If they were literate enough in English, and many were, they could do it all without the cost of a lawyer. This is because it doesn’t matter what jumble of words forms the ‘grounds’ of the application, since the whole basis of all the Indonesian scams, is not substance, but delay. Of course, for as long as the mass produced application is still permissible, and the Indonesian can afford the fee, it is still to his advantage to employ an Australian migration agent.

Since the basis of illegal immigration from Indonesia was circular migration, we have seen how Indonesians have easily overcome the obstacles placed in their way in order to achieve their goal of temporary work opportunities in Australia. We have also seen that what enables them to remain in Australia during their migration cycle is not some form of lawful temporary residence in Australia as envisioned by established immigration processes, but various kinds of processing delay never intended by Parliament. One form of delay which Indonesians
themselves discovered was the lapsed Nationality scam, used by them with some success until we realised that their nationality was easily restored. The onshore/offshore visa scam, and the court process scam and the Ministerial scam were the inventions of some Australian lawyers and so was the main vehicle which conveyed these scams – the mass produced application. Of course only a very few Australian lawyers were involved in these scams. I only ever knew three who were. One of these is mentioned in Chapter Four where I recorded that of all the Indonesian failed refugee applications which I investigated and in which an agent was named, 73% were lodged by the same agent.

The onshore/offshore visa scam was successfully terminated by a simple amendment to the Regulations. However, the court process scam required an amendment to the Act which restricted access to the courts but because of the Constitution, no such amendment could abolish access to the courts completely. Similarly, with the Ministerial scam, an amendment to the bridging visa provisions of the Regulations effectively put an end to serial Ministerials. But the Act still required the Minister alone to decide Ministerials, and deliberate saturation of this level of appeal could still give to unsuccessful applicants the processing delay which they still sought. Abolishing Ministerials entirely from the Act would indeed have put an end to the delay these Ministerials caused, but it is highly unlikely that any Australian government would ever do this, since the Ministerial remains the only safety valve for circumstances of a compassionate nature which cannot otherwise be accommodated by the Act.

So, basically, what remained of these Indonesian scams was restricted access to the courts, and unrestricted access to first attempt Ministerials. Both avenues of access could still be manipulated by clever Australian lawyers. In fact, throughout the long drawn out policy initiative directed at blocking all these scams, the villains in the way have always been those Australian lawyers and migration agents who deliberately clogged the application channels at every stage of the immigration
process. And they did this as we have seen by lodging on behalf of their Indonesian clients baseless, fraudulent, exaggerated, or otherwise unmeritorious claims for refugee status in Australia, all furnished by the mass produced application.

It was not until 2005, more than twenty years after I joined the Department that some attempt was made to discipline the lawyers. Here again Philip Ruddock, now Attorney-General in the Howard Government, did what the Judges should have done years ago, and that is to introduce penalties directed at lawyers who deliberately use delay as a tool to prevent deportation of those failed asylum seekers within the thesis definition of “illegal immigrant”.

Thus on 10 March 2005 during his second reading speech for the Migration Litigation Reform Bill 2005 Philip Ruddock told Parliament:

*In recent years, the Government has won over 90% of all migration cases decided at hearing...The very large proportion of unsuccessful migration cases is a strong indicator that some unsuccessful visa applicants are using judicial review inappropriately to prolong their stay in Australia......Some applications (for judicial review) are being lodged up to six years after the original visa decision......Having regard to the high rate of unsuccessful migration cases, the government is also concerned to ensure lawyers and other advisers on migration matters do not promote the prosecution of unmeritorious cases and claims....It is grossly irresponsible to encourage the institution of unmeritorious cases as a means simply to prolong an unsuccessful visa applicant’s stay in Australia...It is equally irresponsible for advisers to frustrate the system by lodging mass produced applications without considering the actual circumstances of each case. The measures in this bill seek to deter such conduct....Before lawyers file documents in migration cases they will be required to certify that the application has merit. Lawyers acting ethically and in accordance with their professional duties have no need for concern. However, representatives who encourage the institution and continuation of proceedings which have no reasonable prospect of success run the risk of a cost order being made personally against them.*

(Ruddock, Hansard, House of Reps. 10 March 2005, page 4)

(My emphasis).
Will it ever happen? The judges took no action against these lawyers in the past, and even if it does happen, will costs be realistic? Because if only small portions of the costs are awarded against offending lawyers, then these lawyers might pass on these costs to their clients in the form of increased fees, and thus suffer no penalty at all. Still, it is a start.

When I joined the Department, there was an intention even then to do something about these adventurous migration lawyers, and now, twenty years later, this intention, now established policy, has finally made it through the Missouri Syndrome. In the realm of policy development, this amendment is as dramatic a manoeuvre against the lawyers, as the 2001 amendment was against the judges, and the Tampa Precedent was against the boat people. And for the same reason: an election. But this time the manoeuvre did not relate to an impending Federal election, but to the recent past election of 2004 in which for the first time since it came to office in 1996, the Howard government won control of the Senate. Notwithstanding its years of obstruction in the Senate which in the past had prevented some of the Ruddock reforms from ever becoming law, except those passed before elections as I have previously mentioned, the Federal Opposition found itself in a position where further obstructionism was pointless. Instead, it offered some helpful constructive criticism.

The Labor Party’s reply to the second reading of the 2005 amendment criticised the Government for not going far enough in its immigration reforms, and suggested that if it was the lawyers who were part of the problem of immigration malpractice, why not ban them from part of the process, as indeed, the Government had already done with the judges? Another suggestion, also delivered by the Opposition’s Shadow Immigration Minister was for removing the opportunity for deliberately manipulating administrative delays, by instituting decision management at an earlier stage of the immigration process (Ferguson, L., Hansard, House of Reps., 17 March 2005, p.40).
This suggestion touches upon the essence of the intrinsic processing delay which the Indonesian cases were easily able to exploit, and it refers to the particular processing methodology of the Department. As we shall see, when we come to examine some of the refugee applications lodged by Indonesians in Australia, it was obvious at first glance that in terms of the United Nations Convention on Refugees, most of these applications were groundless. That is, some application forms were even blank, claiming no refugee grounds at all. Yet, in the past, it took years to reject them. Even now, it still takes months, and the reason for all this is the bureaucratic paper shuffling process involved in the Department’s archaic methodology.

The way it usually worked when I was in the Department was that a refugee applicant approached the counter at any immigration office, and presented a claim for refugee status in Australia. The officer serving at the counter would be a Clerk Class 3, authorised to accept applications for refugee status, but not to assess them. That officer would check the applicant’s details then issue the applicant with a bridging visa which would come into operation at the time the applicant’s current visa expired. The bridging visa itself would be valid until 28 days after a decision on the application for refugee status had been made. And in relation to that application, that was all that that officer was delegated by the Minister to do. If the officer in glancing at the application form happened to notice that the application was obviously without merit, or contained no grounds at all, or contained claims which were obviously exaggerated, fraudulent, or dishonest in any way, there was nothing that officer could do with that application but to pass it on into the system for assessment by an officer in the Onshore Protection Section authorised by the Minister to make such assessments. In some cases, the Onshore Protection Section might be in the same building, but quite often, the section delegated to assess these applications might be in a different building, or even in a different State, so the application would begin an odyssey not unlike the odyssey of the Ministerial, although somewhat less convoluted.
Even the most blatantly fraudulent application would take part in such an odyssey, awaiting its turn for assessment, giving the fraudulent applicant months, or, before the Ruddock reforms were implemented, even years of temporary residence in Australia, with Medicare and other social benefits supplied at the Australian taxpayer's expense. It might seem unbelievable that such bureaucratic nonsense would apply to an obviously fraudulent application, but that is the way it was done when I was in the Department.

The odyssey of a groundless application began with the counter officer depositing the application into an office trolley. There it would stay along with all other applications received that day, until the end of the working day when it would be wheeled away into the file room where, during the following day, all the applications for all visa classes would be sorted. For applications received by mail, the process began here in the file room. Depending upon visa class, applications would then be dispatched to the various Sections within the Department where, in the fullness of time, they would be assessed; spouse applications were sent to the Residence Section, business sponsorships to the Business Section, student applications to the Students Section and so on, and refugee applications to the Onshore Protection Unit (ONPRO). On arrival at ONPRO, details of the applicants were entered into the ONPRO computer filing system, and a paper file was raised, and this file was then allocated to an assessing officer who, in time, would eventually process the application.

Before the Ruddock fast tracking system was introduced, the file would await its turn in a processing queue, and even groundless applications might take more than a year to be assessed. These days, a cursory assessment is first made to determine if the application is groundless, or if it contains some substance. Those with substance or those which appear to have some substance (i.e. the mass produced applications) then wait in a queue for a more detailed assessment, and those without substance are rejected. However, it was often some weeks,
or even a month or two after the fast tracked application was lodged, that
the applicant was informed that the application had been rejected.

Fast tracking took weeks. A computer generated mass produced
groundless application still took months, and either way, for the refugee
applicant whose intentions were only to remain in Australia for work
related reasons, the delay, however short or long it was, was welcomed.
What the Shadow Immigration Minister Laurie Ferguson was suggesting to
Parliament in 2005 was that delays of this kind could be prevented, if
assessment and rejection occurred earlier in the process. For example,
(although he did not specifically say so) this could happen at the counter
where the application was lodged, or for applications received by mail, in
the mailroom where the application first came to official notice. And
although he did not say this either, an application form which was blank,
or only had a few words written into it, or bore no relation to Australia’s
onshore refugee program, or made no claim at all for refugee status in
Australia could have been rejected immediately. Of course, applications
which did contain substantive claims of some kind should still have been
referred on to ONPRO. But it has never ceased to amaze me that
obviously groundless refugee applications, which contained only a few
scribbled lines with no relation to any refugee issue at all, were never
selected for initial processing at the counter, in the presence of the
applicant. This might not have been practicable in the smaller Immigration
offices like Cairns or Townsville, which received relatively few refugee
applications. But it would have been feasible in the larger Immigration
offices like Sydney or Melbourne where most of the refugee applications
were lodged. In these larger offices, an officer from the Onshore
Protection Unit (ONPRO) could have been stationed with the counter
staff, to receive whatever refugee applications were brought to the
counter. With the appropriate Ministerial delegation, this officer could
have made a quick merit check of each application to determine if it
contained sufficient substance to be sent on to his colleagues at ONPRO
for further in-depth assessment, or if the application was so devoid of merit
that it could be assessed and determined then and there. Alternately, the
applicant, while still at the counter, could have been invited to submit further details to support the application. Such a procedure would have precluded months of processing delays for the greater number of groundless applications.

Laurie Fergusson also suggested that processing delays could be further reduced with the intervention of Ministerials much earlier in the processing stream. Although he would have had no knowledge of the case of the Vietnamese girl I mentioned, we could refer to that case as an example of what he was suggesting. In that case, it must have been clear to the officer making the initial Departmental assessment, that that girl would never qualify for refugee status in Australia, and that she would be stateless and marooned in Australia, and liable to be held here in detention indefinitely unless the Minister intervened, as indeed, he eventually did. But a better process might have seen a faster resolution of this problem, with less strain on the Department's resources. For example, instead of putting this girl through the trauma of uncertainty and further delays of rejection and appeal, and instead of wasting the resources of the Refugee Review Tribunal with an application which had no prospect of success at that level, a differently worded Section 417 might have allowed this matter to bypass the ordinary appeal system with all its inherent delays and to go directly to the Minister.

Also to be considered at this point was the case load of Ministerials upon the Minister personally. We have seen that even in the streamlined rejection process for finalising groundless refugee applications under Section 417 of the Act, the Minister had to decide all Ministerials by himself alone. It was because of this that it was at this level of appeal that the greater delay occurred. And why wouldn't it, when every Ministerial from every State and Territory across Australia had to be decided by one person, the Minister. A simple amendment to the Act could have allowed the Minister to delegate his authority to decide the most blatantly groundless Ministerials to some of his senior officers, or in politically sensitive matters, to some of his Parliamentary colleagues. Such a
delegation of authority could have hastened the rejection of these matters and thus reduced the significance of the Ministerial as the last bastion of delay. The effect of such an amendment would have meant that the blatantly groundless Ministerial would cease to give asylum seekers any real delay advantage at this final level of the immigration appeal process. In the same address in reply to the second reading of the 2005 amendment to the Act (p. 43 & 44) the Federal Labor Opposition also suggested that the processing of migration applications might be improved by taking the first decision away from the Department and giving it to the RRT, thereby giving the RRT an original jurisdiction. An alternate suggestion was that it might be better to have this first decision made by an entirely different kind of tribunal, one which is completely independent of the Minister and of the Department.

There is indeed an alternate tribunal which could be used for such a purpose, and one which is not without precedent in immigration matters, and I refer here to the Magistrates’ Courts. These courts it will be remembered were part of the deportation process under the Old Act, when detainees had to be taken before Magistrates within 48 hours of arrest for us to obtain further custody pending deportation. In those days, the Magistrates’ Courts came into the immigration environment not only towards the end of the enforcement train while we were in the process of arranging deportation but also sometimes at the beginning. That is, if after arrest, an illegal wanted to lodge an application, then the Magistrate could authorise further detention until that application was lodged. So, continuing the methodology suggested by the Labor Party in Parliament during the second reading of the 2005 amendment, it would not be too great a step forward to increase the involvement of Magistrates in the immigration process by authorising the Magistrate to examine the application to ascertain whether or not it appeared to contain some genuine grounds for the grant of refugee status. If it did, then it could be passed into the Department for assessing in the usual way, and if it didn’t the Magistrate could reject it and return the applicant to custody pending deportation.
For applicants not in custody, and lawfully in Australia on current temporary visas of one kind or another, the application could still be lodged in a Magistrate’s Court for initial scrutiny in the manner I have suggested. The Magistrate could either reject the application or refer it to Immigration in the same way, releasing the applicant on the same current temporary visa. Applicants not yet in custody and who were illegally in Australia would still have to approach a Magistrate to lodge their application. For them the process could be similar to that of illegals already in custody. That is, if the Magistrate found that the application was groundless, they would go directly into immigration custody. On the other hand, if the application was found to contain some grounds which needed consideration, then the application would be passed on to the Department for assessing, and the applicant released until determination.

Pre-empting the contrived delay

Notwithstanding the suggestion for Magistrates to be involved in the decision process there would be no real advantage in having the Magistrates’ Courts or any other new tribunal become involved in the immigration process unless the prime reason for the contrived delay is pre-empted, and I refer here to the written application. That is, it is because the claims in the application are written, and all the arguments contained therein are written, that the contrived delay occurs. It is the written content of the application which is the essence of delay. This is because, for as long as the law still allows computer-generated mass produced applications to embody claims to refugee status in Australia whether real or concocted, there will always be the opportunity for the contrived delay. In other words the contrived delay will still occur irrespective of who or what, is the assessing authority, for as long as the applications are in writing. Therefore, the real answer to the contrived delay, is to abolish the written application, and this is how the Magistrates’ Courts could help. For example, in an ordinary Magistrates court today, if everything had to be submitted to the magistrate in writing, so that a complaint would include all the written evidence on which it relies, and the defendant’s lawyer
would present a defence in writing, and witnesses were asked questions in writing and cross examined in writing and replied in writing, and with continual adjournments so that one party or the other could ask a written question or submit a written reply, then a simple traffic case would drag on for months or even years. This is exactly why refugee applications did drag on for months or years. They took so long because the entire case with all its background information and argument and evidence all had to be submitted in writing. In reality, Magistrates courts do begin with written charges and written statements of facts, but thereafter all the evidence and argument is recorded by the court. Years ago, before modern technology intruded into the court room, the court record was made by depositions clerks laboriously typing out every word, and before the advent of typewriters, it was even more laboriously done by hand writing. These days the evidence in a Magistrate’s court is recorded by sound technology, and printed out if and when required. But notwithstanding all the modern technology now available, the Department’s methodology for assessing applications is still back in the dark ages.

The reasoning goes: why should not the initial refugee claims be lodged in a magistrates court, with the basics of the claim made in writing on a single sheet of paper, just like a criminal or a civil complaint is made these days, with all subsequent details given orally by the applicant, and recorded by the court, just as all other matters before the court are now recorded? Under the Old Act, ordinary State magistrates, and there is usually one in every major town or city across Australia, were involved in the deportation process. So, why not do it again? But this time for the purposes of eliminating the contrived departure delay. For there is no doubt that in the majority of the groundless refugee applications now made, the result in a Magistrate’s Court would then be immediate rejection, and there would be no contrived departure delay at this level of the process. The reason why there would be no delay at this level of the processing is because it would be impossible to deliver in court the spoken equivalent of the computer generated mass produced application. For even if a lawyer were to attempt to lead an applicant through the
intricacies of the real mass produced application the magistrate would be constantly interjecting with requests to come to the point with precise details of the persecution claimed. Since the whole purpose of the real mass produced is not to produce any precise details at all, the application would quickly be revealed as one which contained no substance, and it would be summarily rejected. Similarly, in the spoken equivalent of the false mass produced application the lawyer would be hard pressed to get the applicant to give any details at all of events which never really occurred. In fact for an applicant who thought he was only applying for a work permit, and who in truth had no claims of persecution, there would be no point at all in putting him before the court. Thus it can be seen that these mass produced groundless claims would not survive very long in a magistrate’s court, if the asylum seeker had to appear personally. It is true that there would still be avenues for delay during the appeal process, that is, to the RRT and thence to the Minister, but by then there would be little point in appealing a claim which had already been discredited as having no substance.

When we come to examine some of the rejected refugee claims made by Indonesian asylum seekers, we will see how groundless most of these claims were, yet it took years to reject them, even at the initial decision stage, because of the vulnerability in the methodology of written claims. This was the fundamental issue in the majority of refugee applications lodged by Indonesians in Australia. These applications could have been rejected summarily if a different methodology had been employed, and this is the whole basis of my thesis. As I mentioned earlier, 97 per cent of all refugee applications lodged by Indonesians in Australia were rejected, for failing to show cause why refugee status should be granted. And as I also explained, most of these applicants I spoke to, never claimed to have suffered persecution. Most said they thought they were applying for work permits, and those who had employed lawyers or agents to complete their applications said they did not know what had been written into their application forms. So there will be no surprise at this high rejection rate now as we examine a sample of these applications.
CHAPTER FOUR

Analysis of failed refugee applications made by Indonesians in Australia

We have seen how Indonesian illegal immigrants were able to stay in Australia indefinitely by various scams and schemes, some of which have been explained earlier in this thesis. For example, it was explained in Part A how some Indonesians were able to obtain permanent residence in Australia under the ‘Bob Hawke’ visa by pretending to be citizens of the Peoples Republic of China, and the long term creeping illegal migration of the insidious baby dumping racket was examined. The various methods of the marriage racket which some Indonesians had used, and in particular, the machinations of the Indian rope trick were explained as well as the double banger, and the mail order bride scam and why some Indonesians favoured the brother/sister exchange method of the marriage racket.

Although some Indonesians did use the scams I have mentioned above, by far the greater majority of Indonesian illegals remained in Australia illegally under what I have referred to as the specifically ‘Indonesian’ scams. In this context I explained how some Indonesians contrived to lose their own Indonesian nationality and how they were able to exploit the onshore/offshore visa application system, the courts and the other appeal processes, and how they were able to obtain extended temporary residence in Australia by delaying the rejection of their refugee applications.

Of the two categories of immigration scams mentioned, that is, those mentioned in Part A, and those mentioned in Part B, the difference between them is this: apart from baby dumping which relied on the innocence of birth and genuine Australian birth certificates, those scams mentioned in Part A involved the use of fraud, forged documents and false identities. They also contained a deliberate intention to circumvent Australia’s immigration laws.
This category also sometimes saw the heartless disregard of injury to innocent victims, for example as in a marriage racket in which the Australian partner was an innocent participant. On the other hand, of those scams mentioned here in Part B most involved the lawful manipulation of immigration procedures and court processes by clever Australian lawyers and agents in circumstances where the applicant’s deliberate intention to deceive was either minimal or non-existent. Although false stories were sometimes apparent in the Part B applications, generally speaking it can be said that false identities and false documents were not a feature of the Indonesian scams. As I mentioned earlier, the international nomenclature used to describe illegal immigrants as “undocumented migrants” was inappropriate for Indonesian illegals who were generally very well documented.

I also mentioned at some length, that in the Part B category of scams, most Indonesian illegals claimed that they never even knew that applications had been made for refugee status on their behalf by their Australian lawyers, migration agents or people smugglers. In this context, the Indonesians claimed that they thought they had applied for ‘work permits’ and that all the forms their agents asked them to sign constituted for the applicants, as I have mentioned at page 268, an incomprehensible fog of “Australian legal mumbo jumbo,” in some way related to their work permits. So what exactly was in the applications for refugee status lodged on behalf of Indonesian visitors in Australia? What were these applications claiming? I have already touched briefly on the content of some of these applications when explaining ‘The mass produced application scam’ at page 285. I mentioned there that there were two forms to this scam, one claiming an applicant’s involvement in events of persecution which never happened, and the other claiming a genuine history of poverty and hardship which however harrowing, did not constitute grounds for the grant of refugee status. I will now analyse the content of some of the rejected refugee applications lodged by Indonesians in Australia.
Methodology

With a rejection rate of 97% there was obviously something odd about refugee applications lodged by Indonesians in Australia. Despite the thousands of such applications rejected by the Department over the years, there had never been an across-the-board analysis of the content of these applications. It is true that most of these applications had each been analysed *individually* by the Department, the RRT and the Courts, but no study had ever been done into the commonality of these applications nor of the phenomenon of their collective rejection. In other words, what was so odd about Indonesian asylum applications as to induce a rejection rate as high as 97%? To answer this question, I needed to examine a significant number of refugee applications which had been lodged by Indonesians in Australia, and compare the content of each application, with that of all the others. While examining these applications, I also needed to answer two other questions relating to my thesis. These questions were:

(1) Since the whole purpose of these applications as we have seen, was to delay departure from Australia, who exactly was organising these delays? And,

(2) How was it done?

First I needed to find the applications. This would appear to have been an easy enough task; just look on the shelves in the file room. But in order to gauge how effective the delay tactics had been, I also needed some depth. So I confined my search to applications lodged prior to the change of Government on 2 March 1996.

The reason for this cut off date was that after the change of Government the various processing reforms which I have already described were introduced, and these reforms projected results which were different from results projected under the previous processing
system. Therefore, to avoid confusing results from two different systems, it was better to stick with one. Also, I needed space to gauge the length of the delays, and applications lodged prior to 2 March 1996 would give me that space. There was however, a location problem with the files. Basic information on each asylum seeker, irrespective of where it originated, was available on every Departmental computer screen. But the actual paper documents on which the asylum claims had been made, were scattered throughout the Department, and I needed to see these documents. Of the files which contained these documents lodged by Indonesians in Sydney, some were to be found in the Onshore Protection Unit in Sydney, others were in the RRT in Sydney, and when the file rooms at these locations were full, some files were sent to the Department’s headquarters in Canberra. When the file room there was full, some of the older inactive files were archived, and when the Department’s archived space was full, files deemed to be of no further interest to the Department were destroyed. So in practice, there was a constant movement of files. Not only that, but in each location the files were not stored in alphabetical or citizenship categories but in annual numerical order. That is, renumbering commenced at the beginning of each year with the first number, that is, number one, allocated to the first application received that year, and so on throughout the year until the beginning of the next year when the files would start at number 1 again. In practice it was not so bad, since all the file covers were colour coded - this year’s file covers might be coded red, last year’s yellow, and the year before that orange, and so on, until we ran out of colours and the rainbow would start all over again.

As a result of this colour coding, at each location it was easy enough to find the files of any particular year, but whatever the year there was still a systemic problem finding files relating to Indonesians, because of the Department’s non-discriminatory policy. In accordance with this policy, the Department’s file numbering system made no distinction between clients on the grounds of race, ethnic origin or nationality. Thus the files relating to refugee applicants from Indonesia were stored in the
same annual numerical sequence as the files relating to people of every other nationality.

Names were sometimes of assistance in locating applications lodged by Indonesians, but as most of the Indonesian asylum seekers were Moslems, they had Moslem names which were not easily distinguishable from the Moslem names of asylum seekers from Syria, Iraq, Afghanistan, Pakistan, and many other Moslem countries. Thus the only certain way to find files relating to refugee applications lodged by Indonesians, was to examine every file. There were thousands of files. So I examined all the files at Onshore Protection in Sydney, the RRT in Sydney, and the file room of Immigration headquarters in Canberra. In Canberra, there was also an archive problem with the cut off date, because files containing applications lodged earlier than 1994 had been archived. Eventually, I had to settle for a very small number of applications relating to Indonesians, and the end result of my file search was that I chose at random from amongst the files I found relating to Indonesians, a sample of 200 refugee applications. Of these I chose 100 from Sydney’s Onshore Protection Unit, 50 from the RRT Sydney registry, and 50 from the Department’s Canberra file registry. Out of this total of 200 refugee applications, six had been approved, and refugee status had been granted to these six Indonesian applicants. But as my research was confined to applications which had been rejected, I did not examine these six applications which had been approved. My sample was therefore confined to the remaining 194 refugee applications which had been rejected. In the following analysis of these applications, some caution should be observed when comparing categories within this sample. The reason for this caution is that while some category percentages may be high, the actual numbers in those categories of the sample may be low. Nevertheless, when the analysis was completed, I showed the results independently, to six of my colleagues who were assessors in the Sydney Onshore Protection Unit, and asked them to compare the results of this survey against their own experience in the Unit. Each in turn expressed no surprise at all, stating that based on their own experience as assessors
my findings were in accordance with what they would have expected. From my own personal experience in the Department, I was not surprised at the results either. So it is against this background then, that I examined these applications in the following manner:

The operative concept

In Australia, refugee status is decided following an application for a protection visa. This application is assessed against the United Nations Convention on Refugees and offers refugee status in Australia in accordance with the United Nations definition, to a person who:

owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.

The operative concept in the United Nations definition is therefore “a well founded fear of being persecuted.” What I was looking for were claims of persecution and it might have been expected that all applications for refugee status by Indonesians in Australia might have contained some indication that the applicants did indeed have a well founded fear of being persecuted if returned to Indonesia. Thus, in order that the claims for refugee status which I examined could be measured against the United Nations definition, I devised a persecution scale, and I assessed the claims in each application, against this persecution scale.

The persecution scale

In Table 1, under the heading “Grounds of Application” is a scale which shows the distribution of claims made in the applications which formed the sample for this analysis. The distribution is made into categories which scale the persecution claimed into degrees of gravity
from 1 to 10. Attached to this table are notes entitled for want of a better
description “Notes to accompany Table 1.” These notes show how the
categories of gravity were scaled, and the scale covers the whole range of
claims found in the applications of this sample. That is, from Category 1
(No claims at all) to Category 10 (Personal major injury harassment or
torture).

When constructing this scale, I used in ‘Notes to Accompany
Table 1’ some exact quotes from the applications as samples of the basis
of the claims which were made. For example, In Category 2. ‘General
economic hardship,’ applicants were making claims like ‘good jobs are
hard to find in Indonesia’ as the basis of their application for refugee
status. At the other end of the scale, in Category 10 ‘Personal major
injury harassment or torture’ no examples are given, simply because none
of the applications I examined made any claim that the applicant had been
constantly harassed or systematically tortured in any way. The distribution
therefore shows that there were no applications in this category.

Cross tabulation

All the items in Table 1 were cross tabulated against all the other
items in that table. Thus it was possible, for example, to analyse what sort
of claims were lodged by which migration agent, or the difference in
processing times for applications containing different categories of claims.

FINDINGS

A. The Indonesian applicants

Considering what we now know about all the fraud and scams and
malpractice and dishonesty involved in applications made under our
Migration Act, it is not surprising how the results of this survey panned
out. And what the anecdotal evidence has told us about groundless refugee applications so far, these figures will now confirm.

Status of applicants at lodgment

The majority of applicants (63%) waited till they became illegal before they applied for refugee status. Delay in applying obviously prolonged the applicant's stay in Australia giving them greater job opportunities.

Ethnic origin

37% of Indonesian applicants saw their Chinese ethnic origin as a basis of their claims, while 54% did not mention their ethnic origin.

Year of arrival

Whilst the majority of applicants (54%) had arrived in Australia within two years prior to lodgment of their applications, A significant minority (12%) had been in Australia illegally for more than ten years before making their applications. Five per cent of applicants had involuntarily applied for refugee status following their arrest.

B. The Australian lawyers and migration agents

Anonymous agents

Refugee application forms must be completed in English, and all those examined for this analysis were. However, as very few of the lately arrived applicants discovered in Compliance operations had sufficient English language skills to complete the application forms in English themselves, it was obvious that for them, someone else had written out their applications for them. The application form asks for the name of any
person who assisted the applicant to complete the application. Yet 37% of all applications examined did not name any lawyer, migration agent or other person as having assisted in completing the application even though many of these applications were in the same handwriting. Three distinct and separate sets of handwriting were found in this unnamed category.

Identified agents

Migration agents were named in the majority of applications (63%), and there were then 349 registered migration agents listed in the Sydney metropolitan White Pages. So it might have been expected that many of these agents might have been involved in assisting applicants to lodge the applications in this survey. Yet, of all the applications in which a migration agent was named as assisting these Indonesian applicants, 73% were lodged by the same agent. This same agent also lodged 40% of all the groundless applications in Category 1, and 43% of all the applications which made no specific claims of persecution (Categories 1 to 5).

Tactics used by migration agents

It might have been expected that if any of the applications examined had contained some genuine basis for claiming refugee status, then this would have been reflected in the tactics used by the migration agents. That is, that the genuine claims would have been succinctly and clearly stated, with the agents urging a quick decision so that their clients could get on with the business of settling permanently in Australia. Yet quite the opposite was apparent in the majority of applications examined. That is, it was clear that the purpose of most applications was not to achieve a quick approval, but to delay the inevitable rejection, and the applications show how this was done.

I have already mentioned some of the delaying tactics which Australian lawyers and Migration agents used to enable their Indonesian clients to remain in Australia, and these included scams such as
manipulating the court system and manipulating the Ministerials. These two tactics occurred after the application had left the Department, when it was then in its appeal mode. But there were other tactics employed while the application was still at the Department awaiting its first rejection. In relation to these delaying tactics, I have already mentioned the mass produced application scam back on page 286 while addressing comments made by the Attorney-General on this issue (Ruddock 2005, p.4). I explained then that the mass produced application came in two forms, known in the jargon as ‘the real mass produced’ and ‘the false mass produced’ and both of these forms of the mass produced application were present among the applications which I examined, and I found this:

Elements of the real mass produced applications

The predominant feature of the real mass produced applications I examined was the verbal barrage. Typically, an application in this category would begin with an admission that the applicant was not really a refugee at all within the meaning of the Convention, but it would then launch into a great tale of woe concerning the hapless life of the applicant and the story would go on and on, sometimes for 16 to 22 pages. But nowhere amongst all this verbiage was there any claim of actual persecution. So the application was of course, predestined for rejection. However, all this verbage presented a daunting task for any assessor, given the then procedure of refuting every irrelevant claim before arriving at that rejection. Only on one such application did I see that the assessor had taken a short cut, and had written in the margin in her own handwriting “No Convention reason found. Application rejected.” On appeal, the RRT admonished her severely, for not stating her reasons more fully. It then launched into its own assessment which spread over five pages, but only to arrive at the same conclusion, which was that no Convention reason had been found. So the RRT upheld the assessor’s decision, but the whole process in the RRT took one year to finalise. In this, and all such applications I examined, the purpose was obviously to delay the rejection, and in all such applications, the agent achieved this
aim for his client.

Elements of the false mass produced applications

The applications in this category which I examined were typical of those I have mentioned previously, and one particular agent always made the same claim, irrespective of who the applicant was. As his applications were computer generated, the agent only had to change the applicant’s name for each application; otherwise each application was a verbatim copy of all the others. The claim always was that the applicant had been walking down the street upon his lawful occasions somewhere in Indonesia when he was suddenly set upon by a bunch of hoodlums who inflicted upon him minor property damage and minor injury to his person. The effect of including allegations like this in each application was to place these applications higher up the persecution scale. Because the claims lacked specific details, the assessor was obliged to ask for further information. The files in this category clearly showed the requests which the assessor had made for the applicant to supply further details so that the claims might be better explained. Sometimes, when presented with these requests the agent could delay action on the application for months on end by claiming that further details would be supplied “soon” or that he was “awaiting more information from Indonesia” which surprise, surprise, never arrived. Files in this category also showed assessors’ attempts to interview the applicants, with file notes reporting that applicants’ agents had requested different interview dates, or that the agent had “temporarily lost contact” with the applicant with a request for time to re-establish that contact, and so on. Inevitably, these files would contain a note from the assessor that all attempts to interview the applicant had failed, and that the assessor was about to “proceed to determine the application, based on the evidence contained in the file.” This was a euphemism for rejection, which was the only result then possible. But of course the evaded responses achieved their objective because processing time until final rejection for all applications in this category took from 18 months to two years.
The FOI diversion

I have not previously mentioned this method of delay in this thesis because it was not until I examined the applications in this sample that I realised its true significance. But it does indeed help to explain some of the processing delays which agents were able to achieve, and what the sample showed me was that one particular agent had turned this method of delay into an art form. It was his specialty, and it worked like this:

The exact details do not concern us here but briefly, the Commonwealth of Australia’s Freedom of Information Act (the FOI Act) allows applicants in Immigration matters to view certain documents on their personal files. A request to see these documents is made in writing. It is known in the jargon as "an FOI" and in the Department these requests were processed by the Parliamentary and Ministerial Liaison Office, known in the jargon as PML. This office was a sort of public face for that part of the Department which remained otherwise buried from public view by the bureaucracy. FOI requests received in the Department would be sent to PML who would then request the relevant file from whoever in the Department then had it. When the file arrived at PML, officers would then examine it and decide if the applicant was entitled to see the particular document he had requested, and if he was, they would then send him a photocopy of it. It was all so simple, yet sometimes it took months, and for this reason: PML received FOI requests continually, relating to all kinds of documents the Department held in its massive record system. Of course some requests were more involved than others. For example, while one applicant might only want to see a one page document, another might want to see every page of a 100 folio file. The larger the request, the longer it took to process, so, like every other Section in the Department, PML had its own processing queue.

In the ordinary course of events these requests would be processed in the order in which they were received. But then some requests were more urgent than others, with the result that PML was always getting
criticism from the Minister’s office, or requests from lawyers and agents to hurry up with this or that FOI. Therefore some FOI’s jumped the date of receipt queue to be processed faster than some of the others. Meanwhile, those which were not subject to an urgency plea just waited their turn in the queue. Clever lawyers and agents soon realised that a ‘non urgent’ FOI might wallow in the PML queue for weeks while all the urgent FOI’s jumped over it. So when seeking delayed rejection for groundless refugee applications the trick was to lodge an FOI and then let it lie in the queue undisturbed until it was processed by PML in the fullness of time. Like all other processes in the Department, FOI’s could easily be manipulated.

For example, having received a request from an assessor to supply more information, a migration agent might telephone the assessor ‘urgently’ explaining the difficulty in supplying the information requested, and at the same time asking for more time to supply it. The assessor would make a note of this conversation and place it on the application file. Since the file note might contain information which could be material to a decision which the assessor might eventually make, the agent would make an FOI request to see what the assessor had written on the note.

For this request and every other FOI like it, the file would have to physically travel from wherever it was in the Department to PML, then after PML processing, the file would be returned to its original location. So, in the case of FOI’s made in relation to applications for refugee status, the file containing the application and other documents relating to it, would travel between the Onshore Protection Unit (ONPRO) and PML and back again. For urgent matters, a PML officer could simply go and get the file. But in non urgent cases, the file might take days to complete the journey, while it waited in the file room for the scheduled courier service at one end, and while it waited for scheduled internal delivery to a particular officer at the other end. This process would be repeated for the homeward journey.

In relation to refugee applications, the effect of these FOI requests
was to take the refugee application temporarily out of its refugee processing queue and insert it into the FOI processing queue there to await processing of the FOI request. Following the PML process, the application would return to the ONPRO process where it would rejoin the refugee application queue, but at a position further from the front than it had previously been. Clever lawyers and migration agents playing for time so as to prolong the moment of rejection, would lodge several FOI requests on different occasions, in relation to the same refugee application. These serial FOI requests in relation to the same refugee application therefore moved the refugee application backwards down the ONPRO processing queue. This backwards motion would continue with every FOI request on the same file, until finally overcome by the forward momentum of the queue, and the decision to reject would occur at this point. But the FOI delays added to the overall ONPRO processing delays, sometimes considerably, and for one particular agent, the FOI diversion was his specialty.

Among the files I examined in this sample, I found several refugee applications which had been lodged by this one particular agent. By examining the dates on the movement schedules of each of these files, I could calculate the delays occasioned for each file during its FOI diversions. The file which caught my particular attention contained fifteen separate FOI requests in relation to the same refugee application. The sum total of the processing delays for this particular application from the FOI processing alone was nine and a half months. So it can be seen then, that the Freedom of Information diversions were a useful tool for agents to use in their endeavours to delay the inevitable rejection of groundless applications, thereby assisting their clients to remain longer in Australia.

The advantage of using an agent

Of all the applications I examined, only 8% were rejected in less than three months. The majority (53%) took more than a year to reach final rejection. Of these, 9% took more than two years. One lesson for
those applicants with no claims at all (Category 1) was that all the applications which had been rejected in less than three months had not had the assistance of a lawyer or migration agent. In other words, even for those applications which were groundless, no lawyer or migration agent had ever had one rejected in less than three months. Thus for illegal immigrants intent on a long stay in Australia there were obvious advantages in employing a lawyer or migration agent.

C. Processing delays

It was interesting to find that 53% of the applications which contained no Convention reasons at all (Category 1) took six to nine months to reject. But not only that, two of the application forms within Category 1 were completely blank, except for the names and addresses of the applicants. That is, they contained no grounds at all. One was quickly rejected, but the other blank application took two years to reject; one year in the Department and another year at the RRT. I questioned some assessors at Onshore Protection about the blank form which took two years to reject. They said there were plenty more like this one, which took just as long to reject. The reason they gave was that at the time these applications were lodged, there was no process in place to fast track groundless applications. Each application went into the same processing queue, to be assessed in the order in which it had been lodged, irrespective of the grounds it contained, even if it contained no grounds at all. Of course the Ruddock reforms put an end to this nonsense, but this was the way these applications were assessed before these reforms were introduced. Apart from these blank forms, it was apparent that the more exaggerated the claims, the longer the applications took to reach final rejection. For example, the majority of claims of general discrimination (54% of those claims in Category 3) took from 12 to 18 months to reject, while of those making a general non specific claim of personal harassment (Category 5) 70% took from 18 months to two years to reject. Applications within the Categories of 1 to 5 inclusive, constituted 84% of all the
applications examined. And what is significant in this 84% is that not one of these applications made any claim of the actual personal persecution of the applicant. So, in terms of the United Nations Convention, they were doomed to fail from the moment they were lodged. Yet, as we have seen, there was purpose in lodging these applications if the reason was to give the applicants a ‘lawful’ opportunity for working for a few years in Australia.

D. Departures

The whole purpose of arresting illegal immigrants, and rejecting any groundless claims they might make to remain in Australia is to enforce them to depart. But the reality is that in spite of our ‘controlled’ immigration policy, and the bureaucratic monolith of the Immigration Department behind it, only half of the Indonesians whose rejected applications which I examined, had actually departed Australia. The survey clearly showed that if these Indonesians did not want to go home, they just did not go. In this context, Table 1 shows that 61% of the rejected applications which I examined were still involved in appeals and had not yet reached the final rejection stage at the time that I examined them in 1996. Of these, 42% were still in the Onshore Protection Unit, 53% were at the RRT awaiting an appeal decision, and 5% were with the Minister, awaiting his decision. On 24 July 1998, I revisited the sample to see what had become of those Indonesians whose applications I had examined back in 1996. Of these, 6 had been granted residence in Australia, and I have already mentioned them. Of the remaining 97%, 18% were still involved in the appeal process, 42% had lost their appeals and had departed Australia, and the remaining 34% had also lost their final appeals but had absconded and were still in Australia illegally, the same status they had held years before they first lodged their refugee applications. In December 1999 on the eve of my retirement from the Department, I again revisited the sample to find that 48% of my original applicants were still in Australia, and of these, 29% were still involved in
some form of appeal, while 71% had absconded and were still living in Australia as illegal immigrants. That is, for one reason or another, and five years after they had lodged their groundless refugee applications, only 52% had returned to Indonesia.

**Conclusion**

This survey was important for many reasons. First it confirmed that none of the applications for refugee status contained any credible claims within the meaning of the United Nations Refugee Convention. Secondly, it showed that the purpose of these applications was not to obtain refugee status, but to delay enforced departure from Australia. Thirdly, it showed how enforced departure was delayed, and fourthly, it showed who was instrumental in causing these delays. In this context it is significant that of the 349 registered migration agents then listed in the Sydney metropolitan White Pages, 73% of all the applications in which an agent was named were lodged by only one agent. Of even greater significance is the fact that of all the Indonesians named in these rejected refugee applications, 46% had evaded enforced departure and were still in Australia five years after the original lodgment of their applications. This suggests that at the end of the 20th Century our ‘controlled’ immigration policy was not very well controlled at all.
CHAPTER FIVE

Interviews with Indonesian illegal immigrants

Introduction

During my research into illegal immigration from Indonesia I was able to interview many Indonesian illegal immigrants who were, at the time of interview, in Immigration custody. Some of these Indonesians were failed asylum seekers and some were not. Of those who were asylum seekers I could have cross referenced the material I obtained at interview with the information obtained during my examination of failed refugee applications (Chapter Four) but in fact I never did. The purpose of these interviews was only to ascertain how these Indonesians had come to Australia, and because unemployment benefits were unavailable to them I was also interested in learning how they were able to survive here if and when they were unemployed.

This information was generally not available in the applications I had examined because those applications had been lodged after these Indonesians had arrived in Australia, sometimes many years after, and their method of arrival from Indonesia and their employment details in Australia were usually not material to the nature of the refugee claims they made in their applications. My interviews with Indonesians in custody were therefore conducted independently of my examination of failed refugee applications, and there was no cross reference between the two surveys.

The significance of these interviews is that they reinforce the theory mentioned elsewhere in this thesis that the majority of Indonesian illegal immigrants in Australia were circular migrants who came here only to seek employment with the intention of eventually returning to Indonesia to settle. The interviews also disclosed the widespread use of people smugglers.
Methodology

I have already explained at some length in the Methodology section of this thesis how I came to be in a position to interview illegal immigrants in custody, so there is no need to repeat it all again here, other than to recap briefly. During the three year period from 1993 to 1996, hundreds of Indonesian illegal immigrants passed through the Villawood Detention Centre in Western Sydney, but there were only fifty such Indonesian illegals whom I interviewed during this period. These were those whom I had arrested myself, or who had been arrested by other Immigration officers in my presence, or who had been introduced to me by informants who had already explained to them the nature of this research project. It was only after I had established good rapport with these Indonesian illegals that I was ever able to interview them in sufficient depth to conduct this survey. So though there were many Indonesians in custody whom I would have liked to have interviewed, most were deported before I had an opportunity to do so. As a result, there were far more missed opportunities than there were interviews. Therefore, the sample for this survey is not random in the usual sense of the word although those Indonesians who thought they had been found by accident may well claim random selection. In fact, the majority had already been targeted for arrest beforehand because we already knew in advance who they were and where to find them and how long they had overstayed their visas. What I did not know was how they had come to Australia and how they had survived here if and when they had been unemployed. And this survey supplied these answers. So when interpreting my findings in relation to these interviews it is well to remember that though the percentages may be large, the sample was small, and it was not a random sample, but an opportunity sample. Nevertheless, I consider it to be a useful sample.

The interviews in this sample were conducted by way of a simple questionnaire (Appendix 1). The results are shown in Table 2.
At page 103 under the subheading “Surveys” in the Methodology section of this thesis I have described how both the Department and the Ethics Committee of the University had a controlling input into the format of the questionnaire, and the method by which the questionnaire was administered. There is no point in repeating all that here, except to add that when asking some of the questions, I already knew the answers. The questions whose answers I already knew were those where the information I sought was already available in the Department’s records. This information included that relating to visa issue and type (Questionnaire answer options 12 to 29) and those relating to length of stay in Australia before arrest (Questionnaire answer options 87 to 91). The purpose of asking questions whose answers I already knew was to test the accuracy of the other answers. My reasoning was that if I knew the respondent had truthfully answered the questions whose answers I already knew, then I was confident that he or she had truthfully answered the others questions. In any case, the questions themselves were so ordinary that there was little or no incentive to give untruthful answers and I had such a good rapport with the respondents that I seriously doubt that any of them harboured any deliberate desire to deceive me with false answers or to otherwise confuse the survey. In fact, the interview findings corroborated the results of my survey on rejected refugee applications and more or less matched everything my Indonesian regular informants had told me about illegal immigration from Indonesia. Thus there were only two surprises in the interview findings.

**FINDINGS**

Ethnic origin

The first surprise in the questionnaire findings was that all the respondents came from Java. Even those who claimed Chinese ethnic origin came from Java. Whilst Java contains roughly half the population of Indonesia, that is about 110 million of a total of the then population of 220
million, I was surprised that no one from the other ethnic groups of Indonesia, from the other 12,000 islands which make up the Indonesian archipelago, was represented in the sample. The other surprise was that 69% of the respondents chose to be interviewed in the English language.

Certain hypotheses can be drawn from these findings. The first is that the Javanese may view Australia as just another destination in their quest for lebensraum which they attain by way of spontaneous transmigration. They have done this in the outer islands of Indonesia, whence they spilled over into Malaysia as we have seen (page 44). There Malaysian authorities are quoted as having estimated that there were 350,000 Indonesians working illegally in peninsular Malaysia. All the evidence points to Australia as being just another terminus in the circular migration diaspora of the Javanese.

The circular nature of illegal immigration from Indonesia was evident from the survey into rejected refugee applications lodged by Indonesians in Australia (Chapter Four). In that survey all the evidence pointed to a modus operandi of delayed rejection as opposed to a quest for permanent residence. Circular migration evident in that survey was confirmed by the questionnaire in which only 15% of the Indonesian respondents stated that they came to Australia with the intention of settling here permanently. All the others stated an intention to stay temporarily in Australia with eventual plans of returning home to settle permanently in Indonesia.

The other hypothesis is that the Indonesians who take part in this cyclic migration to Australia are relatively well off in comparison to other Indonesians. They were certainly not the Indonesian equivalent of the ignorant peasantry of the Triad clientele. The high incidence of English speakers amongst the questionnaire respondents is evidence of this. It is true that as the majority of the respondents (59%) had already been in Australia more than five years before they had been arrested, they may have picked up English after arrival in Australia, like my informant Rini
She spoke in preference to Indonesian an appalling brand of okker gutter English which could only have been learned in Australia. But, on the other hand, there were those like my informant Ratih who had previously worked as a receptionist in a big tourist hotel in Bali (page 73) and who spoke good English long before she arrived in Australia. Both these two informants were also respondents to my questionnaire.

Methods of arrival and survival

None of the questionnaire respondents had used the Triad method of ‘go now pay later’ to come to Australia. In fact I never knew any Indonesians who did. All the questionnaire respondents said they had used the pre-paid method. For example, 72% stated that they had paid their fares and other arrival expenses from their own savings earned in Indonesia. Eighteen per cent said their families had contributed, and only 8% had resorted to loans to finance their transit to Australia. The average cost of this transit for 43% of the respondents was around $4000, which confirmed other information I had obtained independently from my informants (page 66). Given the widespread poverty and the low wage base in Indonesia, only the relatively well off could have accumulated such amounts to fund their transit to Australia.

In this context my own observations in Indonesia led me to believe that the majority of Indonesians struggled just to keep body and soul together and to keep their families fed. Unlike most Australians who at least can afford a trip to Bali, I found that most Indonesians were in no position to fund a trip to Australia. So my questionnaire respondents were definitely not part of the poverty stricken majority of Indonesians. I would describe them as being motivated middle-class mobiles. Furthermore, the survey indicates that many of the respondents displayed a certain degree of initiative and independence by travelling alone to Australia without the assistance of people smugglers. For example, 25% of the respondents stated that it only cost them $500 to come to Australia which in those days
was the price of a one way air fare from Jakarta to Sydney. At this low price it would have been relatively easy for respondents to come to Australia and to stay here for a time if they had had family or friends to support them here, and 39% stated that they did. However, notwithstanding that they had paid their own transit fees to come to Australia most of the respondents had very little money on arrival. Only 8% said they had arrived with more than $4000, while 44% had less than $500 on arrival, hardly enough to sustain them for any length of time unless they intended to seek work here in violation of their visitor visas. Other information indicated that they did. All this suggests that the transit costs for these people must have consumed the greater part of the savings they had accumulated in Indonesia.

I was particularly interested in learning how these Indonesians had survived in Australia when unemployed or when between jobs. I knew that some had resorted to shoplifting in order to live, because they had come into our custody directly from police custody following arrest for shoplifting. I had made provision for this at Question 67 of Appendix 1, but I was prohibited by the Department and also by the University Ethics Committee from asking this question or recording anything in answer to this question even if the respondents had volunteered the information themselves (page 105). So the questionnaire results do not record any such information. Nevertheless, when asked how they had survived when unemployed in Australia 87% stated that they relied on their own savings or support from their family here in Australia. Only 13% resorted to other methods of support including loans.

The use of people-smugglers

The majority of the respondents (61%) said they had employed agents including touts to facilitate their transit to Australia, and 43% said that this had cost them from $2000 to more than $4000. My previous information was that the going rate was $4000 (page 66). This fee supplied an Indonesian passport, an Australian visa, accommodation in a
‘safe house’ in Australia after arrival and until a job was found, and a
‘permit to work in Australia.’ The ‘work permit’ as I have already described
was in reality a groundless application for refugee status, for which a
bridging visa was issued, and it was the bridging visa which gave
permission to work.

I was curious to know how Indonesians who wanted to come to
Australia to work here were able to make contact with the people
smugglers who would arrange this for them. My informants had told me
that people smugglers had touts in the street outside the Australian
Embassy in Jakarta. The reason the touts were there I was told, was
because that is where Indonesians interested in working abroad would go
to inquire about the possibilities of obtaining ‘temporary work visas’ for
Australia, only to be told that there was no such thing.

Leaving the Embassy dejected and forlorn, so the information went,
these disappointed Indonesians were easy targets for the people
smuggler’s touts. The touts would accost these Indonesians in the street
outside the Embassy, with offers of an alternate method for obtaining a
visa with work opportunities in Australia. Interested Indonesians would
then be taken to a people smuggler who would explain the process.

I tried to test this information during a visit to Jakarta. I stood
outside the Australian Embassy amongst the throng of Indonesians
gathered there, expecting to see the touts at work. But I did not see any
touts nor did I hear any touts sprucing to other Indonesians about work
permits for Australia. I was certainly accosted there, but only by street
prostitutes, transvestites and an endless stream of hawkers, all offering a
variety of services, but none connected with travel to Australia. When I
returned to Australia I told one of my informants that my attempt to meet a
people smuggler’s tout in Indonesia had been unsuccessful. “Well,
Malcolm,” she said, “you don’t exactly look like an Indonesian in search of
work in Australia, so why would the touts approach you?. Let me try.”
And some months later, she did. She telephoned me from Jakarta to say
she had been accosted by a people smuggler’s tout while leaving the Australian Embassy. Pretending that she was interested in travelling to Australia the tout took her to a narrow back alley where a people-smuggler was openly advertising on a sign outside his dingy office “Work migration to Australia.” She gave me the details of the offer he made to her and the costs involved and so on, all of which matched the information which I had previously received about Indonesian people-smugglers.

So, contact with an Indonesian people-smuggler was easy enough to arrange, for anyone who did not look like an Australian that is. The system would be somewhat different now, because since the bombing of the Australian Embassy in Jakarta, no casual visits by Indonesians are allowed, and all visa application inquiries and lodgment are made off the premises in “approved” travel agencies. If the touts are still operating and I expect that they are, then they would be operating elsewhere in Jakarta. How many people-smugglers were operating in those days in this manner in Jakarta I was never able to determine. But on page 97 of this thesis I have explained how I inadvertently stumbled across the Australian end of the people-smuggling operation which was organised by the same smuggler my informant had met in Jakarta.

What still puzzles me is how could a people-smuggler obtain an Australian visa for an Indonesian who would otherwise be refused the visa if he had applied for that visa personally, without the aid of the people-smuggler? On that same visit to Jakarta I went inside the Embassy in search of an Immigration colleague who was working there in the visa section. He was snowed under with work and did not have much time to talk with me, but I inquired about the heaps of visa applications on his desk. There were three separate piles. One he said was for rejection, another for approval, and the third was for interviews where he would decide whether to approve or reject. Who had predetermined the pile to which each application would be allocated? The locally engaged Indonesian staff, he said. There were too many applications for him to vet personally.
Could there have been a connection between the Indonesian people-smugglers and the Indonesian staff in the Australian Embassy? I have no proof if there was: But there was scrutiny, because 53% of the questionnaire respondents said they had been interviewed by Australian Immigration officers in the Australian Embassy prior to visa issue. They had obviously passed muster, one way or another because they were not illiterate poverty-stricken peasants like the Triad clientele, so they could have presented as middle-class bona fide travellers with sufficient funds to sustain a visit to Australia. However, the results show that they did not have much money left by the time they arrived in Australia.

In this context 44% of respondents stated they had less than $500 on arrival in Australia. If this were the case they could easily have been refused entry here if Immigration officers at Sydney airport had known. But here again these Indonesians must have presented as bona fide tourists with sufficient funds to sustain their holiday in Australia, even though they couldn’t. So, given what we then knew about the propensity for Indonesian tourists to lodge groundless refugee applications for the purposes of obtaining work in Australia there was an obvious policy failure here.

It could have been overcome by the procedure known in the jargon as ‘cherry picking’ in which visitors of a certain profile standing in the queue awaiting Immigration clearance were selected for bona fide interview. They were taken aside in a friendly manner to an adjoining interview room where their documents and assets could be more closely examined. Profile management was governed by whatever profile was the target. For example, if we were targeting Thai prostitution smuggling rackets in Australia, the profile was a group of pretty Thai girls, usually travelling with an older woman minder (the typical Asian “Mama-San”) who held their passports and did all the talking for them. The girls would have no English, no money, and usually no luggage, except for a small shoulder bag, since like my informant Rini, they would be working naked, and they were forbidden to leave the brothel they would be assigned to so they did
not need many clothes.

Travelling on tourist visas, the girls would be asked to show what assets they had to sustain themselves during their holiday in Australia, without having to work in Australia illegally. If they had no assets, that was reason enough to refuse entry. They would then be sent back to Thailand, either on the return flight of the same aircraft they arrived on, or if that was already fully booked, on the next available flight thereafter. At first this tactic worked, but the Thai people-smugglers were a lot smarter than we were. They provided the girls with ‘assets’, that is, money in a bank account. After several episodes of refused entry, subsequent Thai prostitute arrivals were routed through Singapore. There each girl was supplied with a pass-book bank account containing A$10,000. The deposit of this amount in each pass-book was made one day before visa issue in Singapore, and the pass-book was attached to the visa application as ‘proof’ that each girl had sufficient assets to support her holiday in Australia. On arrival in Sydney airport the ‘Mama-San’ would explain to officers at immigration control that she was a tour guide for the girls who were on a holiday in Australia and each girl with her $10,000 would pass the assets test. But during subsequent brothel raids usually conducted long after the visas had expired, we came across some of these pass-books. Each contained only two entries. A deposit of $10,000 one day before visa issue in Singapore, and a withdrawal of $10,000 one day after arrival in Australia, which was usually less than one week later. Where had all the money gone? I asked one Thai girl. She had given it back to the people-smuggler to be used again as ‘assets’ for the next Thai prostitute. It was a neat form of recycling, just like the Triad had used for its Business Migration Program.

Like the Triad’s clients, the Thai prostitution rackets operated on the ‘go now, pay later’ scheme with ‘contracts’ and enforcers. As soon as the girls had paid off their contracts, they were free to leave or stay in their assigned brothel. In the meantime, there was no danger that the girls would abscond with their $10,000. So, their ‘asset’ plan worked well for
them. The reason why I mention this matter here is that according to my Indonesian questionnaire respondents, they were not part of any ‘go now, pay later’ plan. All my Indonesian respondents said they had to pay up front before departing Indonesia. They had no enforcers, because there was nothing to enforce, as there were no debts to pay off. The Indonesian people-smugglers provided after arrival services (like lodging the application for refugee status etc) but these services had already been paid for, prior to arrival in Australia. Also, the Indonesian people-smugglers had no contract or obligation to provide ‘assets’ for their clients to survive an assets test on arrival. So, if my respondents had spent most of their savings on paying off the people-smugglers before departing Indonesia as 44% of them seem to have done, they would have been vulnerable to an Immigration assets test on arrival. But according to my respondents, not one of them was interviewed by Immigration officers on arrival. If they had been, at least some would have failed the asset test, and would have been refused entry.

Conclusion

If the answers to the questionnaire at Appendix 1 as analysed at Table 2 are an indication of the circumstances of other Indonesian illegal immigrants in Australia during the same period, then one conclusion which can be drawn from these interviews is that early detection would have saved years of policy problems and millions of dollars in litigation costs. It is easy to be wise in hindsight, but by 1997 asylum seekers from Indonesia were outnumbering asylum seekers from any other country (DIMA 1997d) yet the rejection rate for their refugee applications lodged by Indonesians that same year was 99.5% (DIMA 1997a, p.48). An analysis of failed refugee applications lodged by Indonesians in Australia (Chapter Four) concluded that all the evidence pointed to the fact that the Indonesians who lodged these applications were not seeking refugee status, but were instead seeking work opportunities in Australia. They achieved this goal as we have seen, by using as their main tool, various
methods of administrative, and judicial delay. I have previously explained how various policy changes were introduced to preempt these procedural delays, and that these policy changes took years to implement and came at some considerable cost. But what the Table 2 interview analysis has shown is that much of the subsequent visa abuse which the policy changes were designed to combat could have been prevented at very little cost if the Department had intervened with enforcement action, earlier in the immigration process. That is, when the Indonesians who subsequently lodged refugee applications first arrived at Sydney airport. It is clear that the 53% of the respondents to my interview questionnaire who were interviewed by Australian Immigration officers prior to visa grant in Indonesia, must have given the officers no cause to show why their visas should not be granted. These people presented themselves to our officers in Jakarta as credible students or visitors, unlikely to overst ay their visas, or to work illegally in Australia in violation of their visa conditions. Yet when responding to the questionnaire, 55% of the respondents stated that their purpose for coming to Australia was to make money, and return to Indonesia. That is, they came here to work in violation of their visa conditions. The intention of working in Australia may not have been obvious at the time these Indonesians were interviewed in Indonesia, nor when the visa applications were assessed for of the other 47% who were not interviewed before visa issue. But the intention of working in Australia would have been apparent for those 44% of respondents who had less than $500 in their possession when they arrived. This intention could have surfaced if these people had been interviewed on arrival, that is by cherry picking from the profile in the arrival queues. This profile might not have been as easy to spot as that of the Thai prostitutes. But there was a profile, nevertheless, which can now be drawn from the information supplied by these respondents.

For example, 78% of respondents were travelling alone. That is, they either had no immediate family of their own or their wives and families were back in Indonesia. And 61% had no friends or family in Australia. In other words, they were loners in a profile inviting a cherry pick. If they
had been selected for arrival interview, we can assume that at least 50% would have failed the arrival assets test and they could have been refused entry; the same form of action which was later to be used for the Tampa precedent and the Pacific Solution. That is, for people suspected of attempting to abuse our immigration processes, the most effective deterrent was to refuse them entry before they could begin the abuse process. These interviews have shown that for Indonesian illegal immigrants intending to work illegally in Australia, their “Tampa” could have been at Sydney Airport.
RESEARCH CONCLUSION

The sub-title of this thesis is “an examination of methods used to circumvent Australia’s controlled visa entry system,” and the reason for this sub-title is that during the period covered by this thesis, the real threat of illegal immigration from Asia into Australia did not come from boat-people in creaking leaking vessels, but from the abuse and misuse of Australian visas by incoming airline passengers. Talcott (2002, p. 7) has stated that people-smuggling by air is a quiet, chronic problem which has received relatively little attention from politicians, journalists and scholars compared to the sudden and highly dramatic arrival of a ship. It is true that the occasional arrival of an unauthorised boat into our northern approaches with unvisaed ‘asylum seekers’ aboard was the most dramatic example of people smuggling, and one which created sensational media coverage and evoked all manner of criticism and debate. But the greatest danger to the orderly implementation of our immigration policy has been our inability to control illegal immigration by air.

Unauthorised boat arrivals used to be a problem, but that problem was solved by the Tampa Precedent and the Pacific Solution (p.123). That solution continues to be as Mary Crock (2002, p. 3) has stated, “a debate with no end in sight,” but there is no denying that it stopped the boats from coming. Yet in the twenty year period covered by this thesis the main reason why Australia had an illegal immigration problem at all was because of our inability to prevent the misuse of Australian visas from amongst the endless stream of apparently innocent airline passengers arriving through our official immigration control points in our own international airports.

In all this time we had inadequate defence against forged documents, recycled identities, fabricated qualifications, and very efficient but nefarious people-smuggling organisations which had no discernable form or substance. Yet these organisations managed to enshrine fraud and forgery and visa abuse as an established pathway to successful
migrant settlement in Australia.

It was not as though illegal immigration by visa abuse had suddenly crept up on us unnoticed, because we saw it all coming. We saw the Chinese sweat shops (p. 130), the Chinese peasant farmers (p.132), the overcrowded Chinese doss houses (p.149) and all the other manifestations of an uncontrolled Chinese migrant wave. Uncontrolled by the Government that is, because it was extremely well controlled by the Triad, through the organised misuse of student and business migration visas. All the while there was no policy initiative to prevent this uncontrolled influx of Chinese illegal immigrants until it was all too late and the only policy option remaining then was to grant them all permanent residence in Australia. And who would have thought that a system of Indonesian ‘guest workers’ in Australia could have been successfully organised through the manipulation of our own Immigration processing system and our own court administration and by misuse of our protection visa regime? Similarly, we saw chain migration coming from the misuse of spouse visas in scams so clever and convoluted that we even had names for them - the brother/sister exchange (p. 212); the Indian rope trick (p. 215); the double bangers (p. 218); and the mail order bride (p. 221). Yet the marriage racket, said by Sheehan (1998, p. 214) to be the biggest immigration scam of all time, continues to this day.

Despite the overall failure to bring this systematised visa misuse under control, there were nevertheless, some clever policy adjustments by both Labor and Coalition governments which were designed to overcome entrenched Immigration enforcement difficulties, and although Australia’s immigration policy during the twenty years covered by this thesis was basic mediocrity, there were indeed some rare glimpses of policy brilliance. Parkin and Hardcastle (1999, p. 498) have noted that most of the time among political leaders in Australia there has been a strong bipartisan consensus about immigration, and we have seen this bipartisan consensus operating in the longitudinal approach to this entrenched problem of visa misuse. In this context Peter John (1998, p.
26) has stated that policy change generally, is limited to minor variations in a pattern of continuity. So, although there was a change of government during this twenty year period it is significant that the policy changes which did occur were variations to a pattern of continuity within a bipartisan consensus in relation to immigration issues. For example, in 1986 when the Labor Government altered the Australian-born birthright which halted the practice of organised baby-dumping (p.178), the incoming Coalition Government in 1996 not only adopted these changes, but also cemented them into the new Citizenship Act which came into operation in 2007. Also, in 1994, the Coalition accepted the major Labor Party amendments to the Migration Act which saw the introduction of mandatory detention of illegal immigrants and the introduction of the bridging visa regime (Hansard, House of Reps, 24 March 1994, p. 2169).

The Labor Party has not always agreed with some of the policy initiatives of the Coalition Government, for example, the excision from the Migration Zone of all the islands in the Torres Strait, but by and large, there has been bipartisan consensus on most immigration issues, and one of the best examples of bipartisan policy development is seen in the evolution of criteria designed to prevent abuse of the spouse visa regime.

It began during the previous Labor administration when there were no Regulations under the Migration Act and when the policy was that an applicant for a spouse visa satisfied the preconditions of the Act “solely by having a legal marriage to an Australian citizen or resident. There are no other legal preconditions” (p. 196). This sole precondition was cemented into law in 1986 when the Federal Court decided that all that was required was “the existence of a legally valid marriage between the applicant and an Australian party” (p. 197). In those days there were policy criteria in place for assessing the bona fides of marriages (GORSH 1987) but as the criteria were policy based and not law based, the courts took no notice of them. Then in 1989 the Labor Government produced the Migration Regulations.
The introduction of these Regulations was a major undertaking, akin to what it might be like trying to codify the reserve powers of the Crown. Actually, the first edition of the Regulations in 1989 was such a complete muddle that it was almost incomprehensible, and in order that some sense could be made from them, the Regulations were amended over the next few years no fewer than fifty times. In the beginning, at the rate of once every fortnight. By 1993 the amendments themselves were so unfathomable that they were reorganised and consolidated into a separate volume, and by this time they were beginning to be better understood. This is noted without malice or criticism and with some admiration for the architects of the Regulations who had an almost impossible task to perform. The immediate effect of these Regulations, was to convert policy into law which the Courts then had to enforce. This meant that the established policy of bona fides testing of marriages had become law. But the marriage racket continued nevertheless, for reasons I have explained, so the Labor Government produced a fairly considered policy response, when it brought in the two year rule (p. 209) for onshore marriages, by which permanent residence was not granted until two years after the spouse application was made, and only then if the marriage was “genuine and continuing”. There was also a five year ban on a subsequent marriage sponsorship. The immediate effect was an 18% reduction in the number of onshore spouse applications (DIMA Annual Report 1991-92, p. 60). So this policy initiative was obviously successful, but only up to a point, because the two year rule only applied to onshore marriages, so the marriage racketeers moved their operations offshore, and this was the situation when the government changed in 1996. But in relation to these immigration marriages, policy development continued unabated as though there had been no change in government. The incoming Coalition government accepted the Regulations and developed them further, first by extending the two year rule to include offshore marriages (p. 236), and later by introducing the ‘twice-in-a-lifetime’ rule (p. 237); a good example of Parkin and Hardcastle’s (1999, p.498) premise that there has been strong bipartisan consensus in immigration issues.
The Regulations are the perfect example of this bipartisanship in policy development. Originally produced by the Labor Administration, continued under the Coalition, modified from time to time as circumstances required and now available on the internet for the whole world to see; they are a truly architectural masterpiece of subordinate legislation.

Yet, people-smuggling by visa misuse continues to this day, although we have seen that even the most complicated Immigration issues were solved by the simplest of solutions. For example, organised baby-dumping was terminated by a momentous although a fairly simply worded alteration to our Citizenship Act (p. 189), and the onshore/offshore visa application scam was stopped when the appropriate Migration Regulation was amended with the insertion of just two words (p. 263). But in the Citizenship Act amendment, the Labor Government decided to allow babies born of illegal parents to become Australian citizens automatically on their tenth birthdays, if they have not departed Australia since birth. What possessed them to make this concession, and what possessed the Coalition to continue it? Because, instead of preventing baby dumping forever, the 10 year rule instead spawned its own dynamic of visa abuse and administrative and judicial delay which continues to this day. So in the final analysis it has to be said that although the concept of the 1986 amendment to the Citizenship Act was a brilliant policy response, it did not eliminate the problem completely, and to this extent, it was a policy failure.

Similarly, notwithstanding the combined policy inputs of both Labor and Liberal governments over the past twenty years, no policy increment was completely effective against the specialised marriage rackets. The twice-in-a-lifetime rule has caused a problem for the Indian rope trick (p. 215), but it did not stop the brother/sister exchange (p. 212), or the double bangers (p.218), and it certainly did not stop the mail order brides (p. 221). All it did was to slow down their migration chains, and to this day for uneducated, unskilled, intending migrants, who cannot meet the requirements of any other visa category, the contrived marriage is still their
best option. Small wonder then that by 2003 Saunders (2003) was reporting that the incidence of contrived marriages was increasing.

What had gone wrong? As in the earlier restrictive increments, the policy stopped short of the finishing line. In this context, both governments had missed the point. And the point is that if marriage is an avenue for illegal immigration, and according to Sheehan (1998, p. 214) it is the biggest immigration scam of all time, then the avenue could have been blocked at the termination of the marriage. That is to say if a marriage is the sole basis for migration, then the migration could have been made to cease if the marriage ceased. The rationale for this is that if a visa was granted on the basis of marriage, and the marriage no longer exists, then the basis of the visa no longer exists. In practical terms, at the formal termination of the migrant marriage, that is, at the first divorce, the onus could have been put on the foreign marriage partner to show cause why his or her spouse visa should not then lapse. This means that in the absence of cause, then the foreign partner should on the termination of the migration marriage, return to the home country. Now there may very well be good reasons why this should not happen, for example, because of the interests of children, or because of integration into the Australian community, or contribution to the Australian economy and so on. But in blatant cases of contrived marriages, there should be no reasons. Alternately, a prohibition of spouse sponsorship by a spouse who had already been sponsored, would be enough to terminate the marriage racket, for as I have previously mentioned (p. 193) the significance of the marriage racket is the chain migration which follows the contrived marriage. Like a bicycle, a contrived marriage is chain driven, and the essence of defeating the marriage racket is to break the chain. The critical point in the chain is the spouse visa of the second foreign marriage partner. Prohibit it, and no chain could follow. Without this chain there never could have been a brother/sister exchange, an Indian rope trick, or the family chain of a mail order bride. They never could have happened.

A significant policy initiative occurred when the Courts which had
been one arm of delay methodology mentioned in this thesis were all but eliminated from migration decision making on 2 October 2001 when The Migration Amendment (Judicial Review) Act No.134 of 2001 came into operation. The amendment did not deny access to the Courts but it did limit the grounds for judicial review of migration matters. But these reforms, as the name of the Act implies, only relate to litigation. That is, they refer only to contrived delays in relation to matters before the Courts. They do not refer to delays while the matters are still to be decided by the Department. We have seen how significant delays could be contrived at this stage of the processing, before they even got into court. For example, by requesting further time to submit more details (p. 319) or by pursuing one or more FOI diversions (p. 320). Then there were all the time consuming processing matters connected with the computer generated mass produced applications (pp. 285-308).

As I mentioned at page 307, the real culprit in these delays was the written application. So notwithstanding all the Ruddock reforms which have been introduced so far, the contrived delay will always be part of the groundless refugee application for as long as applicants are permitted to embellish their claims with irrelevancies which have little or no bearing on “a well founded fear of persecution,” and to deliver these irrelevancies in computer generated mass produced submissions in writing. Yet, there would be small room for contrived delays at the initial assessment of the refugee application if this assessment were conducted in a Magistrate’s Court or some similar tribunal as I have suggested, with all the evidence and argument given verbally, and recorded by the Court or tribunal.

To get to the essence of a protection visa application, for example, all the Magistrate would need to do would be to ask “What is the basis of your refugee claim?” or “Why are you claiming refugee status in Australia?” Even if led through the reasoning by a lawyer or migration agent, it can hardly be supposed that the Magistrate would take days or months to decide the issue, and in particular, it can hardly be supposed that in the verbal equivalent of the ‘real’ mass produced written
application a lawyer could spend days in court leading a refugee applicant down a pathway of irrelevancy. The Magistrate would be constantly interjecting with instructions to get to the point. Nor is it likely that in the verbal equivalent of a ‘false’ mass produced written application the lawyer could successfully lead a witness through a chain of events which never happened. For these groundless claims, there would be little fodder in a Magistrate’s court to feed the methodology of delay. Yet this was the main reason for illegal immigration from Indonesia. It was the intrinsic delays in the processing of protection visa applications which encouraged Indonesians to come to Australia for the purposes of obtaining temporary work opportunities here, and in the process, to misuse our protection visa system. Just as breaking the chain will collapse the marriage racket, so also eliminating the delay will collapse the Indonesian racket. So, taking the claims examined in Chapter Four of this thesis as an example, if such claims had to be presented before a Magistrate or a tribunal orally, then it is likely that 97% of the refugee applications lodged by Indonesians in Australia would never have been made.

I have shown that Illegal immigration into Australia is sourced from many countries in the world and that organised illegal immigration takes many forms. It can range from a “go now, pay later” method of mass migration organised by well established people-smugglers, down to a simple conspiracy between a married couple that the wife should double as a mail order bride to an unsuspecting Australian husband. The methodology in illegal immigration is also wide ranging and varies from the tenacious tentacles of a triad or the labyrinthine machinations of the Indian rope trick, down to a solitary bar-girl sitting on a bar-stool looking attractive and available, waiting to snare an Australian husband.

This study of illegal immigration into Australia, has demonstrated that there are many forms of illegal immigration which still continue unabated despite various policy initiatives which have been implemented over the years. Yet in all its forms, illegal immigration into Australia conforms with Lee’s migration principles that not every person who
migrates intends to remain, and that every act of migration involves an origin, a destination, and an intervening set of obstacles and “the overcoming of the intervening set of obstacles by early migrants lessens the difficulty of the passage of later migrants and in effect pathways are created which pass over intervening obstacles as elevated highways pass over the countryside” (Lee 1969, p. 292). We have seen how the people-smugglers have obliged by creating the pathways.

For twenty years I watched it happen, and the culprits in all this time have been those very few lawyers who pursued groundless applications through the courts knowing they could not win. It was not until Philip Ruddock became Immigration Minister in 1996 that meaningful policy initiatives were introduced to take the immigration initiative away from the illegal immigrants (and their lawyers) and restore some semblance of order to Australia’s controlled migration program. But in all this time the greatest culprit of all has been the written arguments attached to the application form which have allowed this river of exaggerated and spurious claims to clog the processing system at all levels of assessment and appeal. The basic immigration assessment system had not changed in twenty years, despite the enormous advances in technology since then. In this post modern age of technology, there is no logical reason why the refugee application form cannot be a single sheet of paper containing nothing other than the applicant’s basic details, with all the supporting argument delivered for initial assessment verbally to a magistrate or some other similar tribunal. The court or tribunal could record the proceedings as they happen, devoid of all irrelevancies.

Finally, looking back with twenty years of hindsight, and taking as a model the remedial methods mentioned throughout this thesis, I conclude that it would not have taken much initiative to have included along the policy implementation continuum, methodologies designed to test the academic results and the classroom attendance of migrant students, surveil the premises of the English language schools, monitor the investments of business migrants, break the chain in marriage chain
migrations, and delete the delays in processing protection visas for Indonesians. Because of policy failures to do all this, it was not surprising that during this twenty year period Australia had a continuing problem with illegal immigration from Asia.
BIBLIOGRAPHY

Note: Frequently used abbreviations:

DIMA = Department of Immigration and Citizenship.

The Department has had several name changes, one of which was The Department of Immigration and Multicultural Affairs, which was its name when most of the research for this thesis was done. The acronym for this name, DIMA, is used throughout the references for publications by the Department irrespective of the Department’s name as at the date of publication.

SMH = The Sydney Morning Herald.


Ali, C.M. 1985, The emergence of Pakistan, Research Society of Pakistan, University of Punjab, Lahore.


Australian Citizenship Act 1948.


Chumbairux, 1986. (see: Re Vatchai Chumbairux)


Dhillon, FFC 8 May 1990 (unreported).

DIMA 1987, *Grant of resident status handbook*, AGPS, Canberra.


DIMA 1994, *Estimates of overstayers by visa category and country of citizenship*, Department of Immigration and Ethnic Affairs, Entry Branch, April, Canberra.

DIMA 1995, *Fact Sheet No. 6 People in Australia illegally*, Department of Immigration and Ethnic Affairs, Canberra.


DIMA 1996c, Report. (Classified)


Fox, J.J. 1998, ‘Reefs and Shoals in Australia – Indonesian relations: Traditional Indonesian fishermen’ in *Episodes, Australia in Asia*. Eds A. Milner and Mary Quilty, Oxford University Press.


Marriage Act 1961 (Cwlth)


Migration Litigation Amendment Act No. 134 of 2001 (Cwlth).

Migration Act 1958 (Cwlth).

Migration Regulations 1989 (Cwlth).

Migration Regulations 1994 (Cwlth)


Niesche, N. & Garran, R. 2001, ‘How Downer hit the phones and found a life raft’, The Australian, 3 Sept., p.3.


Procter, N. 2005, ‘Providing emergency mental health care to asylum seekers at a time when claims for permanent protection have been rejected’, in International Journal of Mental Health Nursing, 14 (1) p. 2-6.


Re Vitchai Chumbairux v Minister of Immigration & Ethnic Affairs [1986] FCA 317 (17 September 1986)


Republic of Indonesia, Nationality Act 1958.


SIGCARM 1995, The Secretariat of Inter-Government Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia, Illegal Aliens, a report presented to IGC.

Singe, J. 1979, *The Torres Strait*, University of Queensland Press, Brisbane.


The Intelligence System

Aim: To locate an illegal immigrant

Methodology: By collection, evaluation, collation and analysis of raw information.

SOURCES OF INFORMATION

- Community
- Police
- Department records
- Other official records
- Informants
- Observation

COLLECTION

Reliability of information

A. Completely reliable.
B. Usually reliable.
C. Fairly reliable.
D. Not usually reliable.
E. Unreliable.
F. Uncertain.

Validity of information

1. Confirmed.
2. Probably true.
3. Possibly true.
4. Doubtful.
5. Improbable.
6. Uncertain.

Discard all unreliable information.

Remainder of information accumulates

Decision Required

1. Exact time to visit.
2. Exact place to visit.
3. Resources required.

Information Required

1. Name
2. Department file No.
3. Immigration status.
4. Home address.
5. Other people there.
6. Disposition.
7. Workplace address.
8. Plan of workplace.

ANALYSIS

TARGET

The Analysis identifies the illegal immigrant sufficiently to ground a search warrant in which he becomes a target for arrest.
NOTES ON THE INSIDE COVER
OF AN INDONESIAN PASSPORT

enlarged for the purposes of this thesis. See paragraph 3 (English translation below) for an explanation of loss of Indonesian Nationality.

UNTUK PERHATIAN PEMEGANG PASPOR INI

1. Paspor ini adalah dokumen milik Negara.
2. Kecuali pejabat yang berwenang, dilarang mencoret atau melakukan perubahan apapun atas tanda / cetakan yang terdapat dalam paspor ini.
3. Harap diperhatikan Undang-Undang Nomor 62 tahun 1958 tentang Kewarganegaraan RI khususnya pasal 17K tentang Kehilangan Kewarganegaraan RI sebagai berikut:

   Lain dari untuk dina negara, selama 5 tahun berturut-turut bertempat tinggal di luar negeri dengan tidak menyatakan keinginannya untuk tetap menjadi warganegara sebelum waktu itu lampaui dan seterusnya tiap-tiap dua tahun kehilangan itu harus dinyatakan kepada Perwakilan RI dari tempat tinggalmnya.

   Bagi warganegara RI yang berumur dibawah 18 tahun, kecuali apabila ia sudah pernah menikah, masa jenuh tahun dan dua tahun tersebut jelas mutasi bertakta pada hari tanggal ia mencapai umur 18 tahun.

4. Untuk kepentingan dan kenyamanan anda:
   a. Agar meminta visa dan keterangan terlebih dahulu dari Perwakilan Negara Asing yang akan dikunjungi.
   b. Apabila paspor ini hilang, rusak atau cacat, agar segera melapor pada:

   - Kantor Polisi terdekat dan Kantor Imigrasi yang mengeluarkan paspor tersebut.
   - Kantor Polisi setempat dan Kepala Perwakilan RI terdekat dalam hal kehilangan itu terjadi di luar negeri.

CAUTION FOR PASSPORT HOLDERS

1. This passport remains the property of the Government of the Republic of Indonesia.
2. Deletion, correction, alteration, amendment by writing or printing in the passport is prohibited, except by an authorized official.
3. Please pay attention to Law Number 62 of 1958 on the Nationality of the Republic of Indonesia, specifically article 17K on the Loss of the Nationality of The Republic of Indonesia as follows:

   Other than for state service, staying abroad (overseas) for 5 years successively, without expressing his (her) desire to retain his (her) Indonesian nationality prior to the expiry of that period and ever after, that desire must be expressed every two years to the Representative of the Republic of Indonesia from his (her) place of residence.

   For the nationals of the Republic of Indonesia below the age of 18 years, unless he (she) has been married once, the five-year-period and the two-year-period mentioned above shall be effective as of the date he (she) reaches the age of 18 years.

4. For your interest and convenience:
   a. You should first apply for a visa and obtain information from the Representative of the Foreign Country you will be visiting.
   b. If this passport is lost, damaged or mutilated, please report immediately to:

   - The nearest Police office and the Immigration office which has issued the passport concerned.
   - The local Police office and the nearest Representative of the Government of the Republic of Indonesia if the loss occurred abroad.
KONSULAT JENDERAL REPUBLIK INDONESIA
CONSULATE GENERAL OF
THE REPUBLIC OF INDONESIA
VISA AND PASSPORT SECTION

TO WHOM IT MAY CONCERN
No:9202/125/UM/IM

This is to confirm that
Mr Tangan Diperpanjankan
Place / date of birth
Bali, Indonesia,
07 February 1935

In accordance with Article 17 (K) Law No. 62/1958 regarding the Indonesian Citizenship, he has lost his Hawaiian Nationality.

Therefore, no Indonesian Travel Documents whatsoever can be issued to him.

For The Consul General

Republic of Indonesia,

Drs. Aku Dibalasi
Vice Consul

CC : Minister of Justice
The Republic of Indonesia

20 November 1992

AUTHOR'S NOTE: In accordance with Departmental instructions and CDU Ethics Clearance that this thesis should identify no one, other than the author, the names and dates and other identifying material on this copy of this Certificate have either been altered or deleted.

This is a demonstration document only.
The 3,000 Indonesians we can’t send home

By SIGRID KIRK

An estimated 3,000 Indonesians who have overstayed visas or arrived here illegally are now stranded in Australia, unable to be deported because Indonesia refuses to accept them back.

The Department of Immigration is powerless to act because their passports have expired and Jakarta will not issue new ones.

And, according to a report by a high-ranking Indonesian official, the Australian Government is largely to blame for the overstayers being left effectively Stateless.

The impasse is the result of an Indonesian law which stipulates that any national who lives abroad for more than five years and who does not reaffirm his or her citizenship, automatically forfeits it. Some of the overstayers have been held at immigrant detention centres for up to a year while negotiations between Canberra and Jakarta continue.

One man, 37-year-old Susilo Singgah, has been separated from his pregnant wife who was deported to Indonesia last week.

Mr Singgah, who jumped ship in Sydney nine years ago, has been held at Villawood detention centre for eight months and says he does not know when he will see his wife again.

According to a report by the Indonesian Vice-Consul in Sydney, Mr Much Imran Santoso, the dilemma can be laid at the feet of the Australian Government.

He claims that it was at Australia’s behest that Indonesian authorities began refusing to issue passports to Indonesian overstayers in the early 1980s.

The policy was intended to encourage Indonesians to return home before their passports ran but has backfired badly.

Many ignored the new rule and the result was a steady increase in the number of Indonesian overstayers unable to get passports.

The policy was abandoned in October 1990, but for those who have been here for more than five years, the problem remains.

Mr Santoso says the Australian Government failed to consider the repercussions of the passport policy and had not taken into account Indonesian laws on citizenship and immigration.

"This shortsighted action taken by the Australian Government has resulted in about 3,000 Indonesians residing in Australia becoming Stateless, the full responsibility for which should only be borne by the Australian Government."

The report concedes that while the Indonesian Government has been indifferent in the past, it has a moral obligation to assist those who have lost their citizenship and to negotiate with Australia in an attempt to resolve the issue.

Mr Santoso suggests that the Government should grant overstayers temporary or permanent permission to remain and that those who fulfill the criteria be allowed to apply for citizenship.

But a Department of Immigration spokesman said: "We would reject the proposition that someone who has successfully evaded the authorities should be rewarded with citizenship."

"We strongly believe that any country has a responsibility to its own citizens. The fact that they are expatriates for a long time should not, in our view, mean they are deprived of citizenship."

The spokesman said the department had been involved in negotiations with the Indonesians and the United Nations High Comissioner for Refugees, but the issue was not resolved.

"We felt agreement had been reached late last year, but I can confirm we are continuing to experience problems."

"We will be continuing our discussions with the Indonesian Government to see if we can find some kind of solution."
Republic of Indonesia Nationality Act
No 62 of 1958

Article 18

Pasal 18.

Seorang yang kehilangan kewarganegaraan Republik Indonesia termakaud dalam pasal 17 huruf k memperoleh kewarganegaraan Republik Indonesia kembali jika ia bertempat tinggal di Indonesia berdasarkan Kartu Izin Masuk dan menyatakan keterangan untuk itu.

Keterangan itu harus dinyatakan kepada Pengadilan Negeri dari tempat tinggalnya dalam 1 tahun setelah orang itu bertempat tinggal di Indonesia.

My translation:

A person who lost Republic of Indonesia nationality because of article 17k can have that Republic of Indonesia nationality reinstated if his residence in Indonesia is based on an entry permit and he makes a declaration for this purpose.

This declaration must be made to the National Court from his place of residence within one year after that person is resident in Indonesia.
PERMANENT RESIDENCE – AUSTRALIA

REFUGEE CLASS ACTIONS!

If you have already been rejected by the Refugee Review Tribunal (RRT) you may join our class action by paying a low fee. Our newest class action is very easy to join and it is one of the biggest class actions in Australia.

More than 5000 people have already joined our class action during the past 2.5 years.

THERE IS NO PROBLEM even if your status is that of an illegal immigrant or if you have already been rejected at the level of Ministerial Review.

You have the opportunity to obtain a Bridging Visa and become legal. Please bring your refugee and your Refugee Review Tribunal decision.

FREE CONSULTATION
You have nothing to lose
Phone: xxxxxxxx

AUTHOR’S NOTE: In accordance with Departmental instructions and CDU Ethics Clearance that no one other than the author should be identified by this thesis, publication details have been omitted and identifying details have been erased.

My translation
### ILLEGAL IMMIGRATION FROM INDONESIA

**Statistical Analysis of Refused Applications for Refugee Status**

<table>
<thead>
<tr>
<th>Applicant</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>67</td>
</tr>
<tr>
<td>Female</td>
<td>33</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Status at Application</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Illegal but not detained</td>
<td>58</td>
</tr>
<tr>
<td>Illegal and in detention</td>
<td>5</td>
</tr>
<tr>
<td>Legally in Australia</td>
<td>37</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Ethnic origin</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chinese</td>
<td>37</td>
</tr>
<tr>
<td>Javenese</td>
<td>1</td>
</tr>
<tr>
<td>Sumatra</td>
<td>8</td>
</tr>
<tr>
<td>Not stated</td>
<td>54</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year of arrival</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prior to 1986</td>
<td>12</td>
</tr>
<tr>
<td>1986</td>
<td>4</td>
</tr>
<tr>
<td>1987</td>
<td>1</td>
</tr>
<tr>
<td>1988</td>
<td>11</td>
</tr>
<tr>
<td>1989</td>
<td>2</td>
</tr>
<tr>
<td>1990</td>
<td>3</td>
</tr>
<tr>
<td>1991</td>
<td>4</td>
</tr>
<tr>
<td>1992</td>
<td>1</td>
</tr>
<tr>
<td>1993</td>
<td>8</td>
</tr>
<tr>
<td>1994</td>
<td>19</td>
</tr>
<tr>
<td>1995</td>
<td>27</td>
</tr>
<tr>
<td>1996</td>
<td>8</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Lawyer or Migration Agent</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agent 1</td>
<td>46</td>
</tr>
<tr>
<td>Agent 2</td>
<td>1</td>
</tr>
<tr>
<td>Agent 3</td>
<td>1</td>
</tr>
<tr>
<td>Agent 4</td>
<td>3</td>
</tr>
<tr>
<td>Other agents</td>
<td>12</td>
</tr>
<tr>
<td>No agent named</td>
<td>37</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year of Lodgement</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991</td>
<td>2</td>
</tr>
<tr>
<td>1992</td>
<td>2</td>
</tr>
<tr>
<td>1993</td>
<td>3</td>
</tr>
<tr>
<td>1994</td>
<td>27</td>
</tr>
<tr>
<td>1995</td>
<td>50</td>
</tr>
<tr>
<td>1996</td>
<td>16</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Grounds of Application</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 No grounds claimed</td>
<td>12</td>
</tr>
<tr>
<td>2 General economic hardship</td>
<td>10.</td>
</tr>
<tr>
<td>3 General discrimination</td>
<td>50.</td>
</tr>
<tr>
<td>4 General property damage</td>
<td>2.</td>
</tr>
<tr>
<td>5 General personal harassment</td>
<td>10.</td>
</tr>
<tr>
<td>6 Personal minor property damage</td>
<td>3.</td>
</tr>
<tr>
<td>7 Personal minor harassment</td>
<td>6.</td>
</tr>
<tr>
<td>8 Relatives tortured or trauma</td>
<td>3.</td>
</tr>
<tr>
<td>9 Personal major property damage</td>
<td>4.</td>
</tr>
<tr>
<td>10 Personal major injury, harassment, or torture.</td>
<td>0.</td>
</tr>
</tbody>
</table>

**Total % = 100%**

**Duration of Application to All Avenues of Review Claimed**

<table>
<thead>
<tr>
<th>Period</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 3 months</td>
<td>8.</td>
</tr>
<tr>
<td>3 to 6 months</td>
<td>13.</td>
</tr>
<tr>
<td>6 to 9 months</td>
<td>15.</td>
</tr>
<tr>
<td>9 months to 1 year</td>
<td>11.</td>
</tr>
<tr>
<td>1 year to 18 months</td>
<td>27.</td>
</tr>
<tr>
<td>18 months to 2 years</td>
<td>17.</td>
</tr>
<tr>
<td>More than 2 years</td>
<td>9.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>N</th>
<th>Total (%)</th>
<th>100.</th>
</tr>
</thead>
<tbody>
<tr>
<td>50</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Status of Applications When Examined**

<table>
<thead>
<tr>
<th>Status</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finalised</td>
<td>39</td>
</tr>
<tr>
<td>Not then finalised</td>
<td>61</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Those not finalised were at:</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Onshore Protection Unit</td>
<td>42</td>
</tr>
<tr>
<td>Refugee Review Tribunal</td>
<td>53</td>
</tr>
<tr>
<td>Minister</td>
<td>5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

N=194  All % rounded  Ethics Clearance 79573
## ILLEGAL IMMIGRATION FROM INDONESIA

NOTES TO ACCOMPANY TABLE 1

(Statistical Analysis of Refused Applications for Refugee Status)

(Notes for) TABLE 1.

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>INDICATIVE STATEMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. No grounds claimed.</td>
<td>Two applications in this category were blank, containing nothing other than the applicant’s name and address. Other applications made claims not associated with Refugee Status, such as “Australia is a good place to live” or, “my children would be happier growing up here,” or, “the climate is better in Australia.”</td>
</tr>
<tr>
<td>12%</td>
<td></td>
</tr>
<tr>
<td>2. General economic hardship.</td>
<td>Applications in this category referred to the general economic problems in Indonesia, with statements such as “Good jobs are hard to find in Indonesia,” or “wages are too low in Indonesia;” or, “unemployment is a problem in Indonesia.” No claims of persecution were made.</td>
</tr>
<tr>
<td>10%</td>
<td></td>
</tr>
<tr>
<td>3. General discrimination.</td>
<td>Applications in this category contained claims of general discrimination against broad social groups such as “Indonesians discriminate against Chinese”, or, “Christians are discriminated against in Indonesia,” or, “life is difficult if you are a Christian in a Moslem country.” There were no claims of personal discrimination or persecution.</td>
</tr>
<tr>
<td>50%</td>
<td></td>
</tr>
<tr>
<td>4. General property damage.</td>
<td>Applications in this category contained generalised claims of property damage inflicted against certain social groups in Indonesia and contained statements such as “Sometimes during race riots in Indonesia, Indonesians will smash the windows of houses occupied by Chinese.” Or, “Many Christian churches have been destroyed during riots.” Or, “When there is trouble in the streets, cars are sometimes burned, and shops are sometimes looted.” In this category there were no claims of individual property damage or claims of individual persecution.</td>
</tr>
<tr>
<td>2%</td>
<td></td>
</tr>
<tr>
<td>5. General personal harassment.</td>
<td>This category contained the lowest degree of claims of harassment against the person but were of a generalised nature, with statements such as “When walking down the street, Moslems will sometimes jostle Christians or push them off the footpath.” Or, “Indonesians will often spit at Chinese.” There were no claims of any such harassment to the applicants in this category.</td>
</tr>
<tr>
<td>10%</td>
<td></td>
</tr>
<tr>
<td>6. Personal minor property damage.</td>
<td>This category contained claims of actual minor damage done to the applicant’s personal property, such as “they smashed my window” or, “they broke the headlight on my motor cycle.”</td>
</tr>
<tr>
<td>3%</td>
<td></td>
</tr>
</tbody>
</table>

(Continued)
ILLEGAL IMMIGRATION FROM INDONESIA
NOTES TO ACCOMPANY TABLE 1 (Continued)

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>INDICATIVE STATEMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>7. Personal minor harassment.</td>
<td>This category contained claims of harassment directed personally at the applicant, with statements such as “They spat at me.” Or, “They pushed me off the pavement.” Or, “They called me a Chinese pig.”</td>
</tr>
<tr>
<td>8. Relatives’ torture or trauma.</td>
<td>In this category, applicants claimed persecution, not of themselves, but of their relatives, with statements such as “The police arrested my father and tortured him for three days.” Or, “My uncle was taken away, and we never saw him again.” Because of such treatment of their relatives, applicants in this category usually claimed a well founded fear of persecution of themselves.</td>
</tr>
<tr>
<td>9. Personal major property damage.</td>
<td>This category contained claims of major damage to the applicant’s personal property, with statements such as “They burned my house down.” Or, “They repeatedly came into my shop and smashed everything so that eventually, I was forced to leave.” There were no claims of major injury to the person in this category.</td>
</tr>
<tr>
<td>10. Personal major injury</td>
<td>There were no rejected refugee applications in this category.</td>
</tr>
</tbody>
</table>

SOURCE OF MATERIAL

The sample in this analysis of refused applications for refugee status in Australia, came from 200 Department of Immigration files selected at random from among those files which contained applications lodged by Indonesians in Australia. Of these files, 100 were examined in the Department’s Sydney Onshore Protection Unit, 50 in the Department’s central registry in Canberra, and 50 in the Sydney registry of the Refugee Review Tribunal. Of this total of 200 applications, 6 were successful and were not examined. The remaining 194 applications which were rejected formed the basis of this analysis.

BASIS OF ANALYSIS

As the basis for a refugee claim is a “well founded fear of persecution” the value of each application in the sample was calculated by comparing its content against a scale devised to measure the degree of persecution claimed. The scale contained 10 separate categories in ascending order of gravity, and is more particularly described above. Each application was assigned to the category appropriate to its content.
## ILLEGAL IMMIGRATION FROM INDONESIA

### Indonesian illegal immigrants: Methods of arrival and survival

<table>
<thead>
<tr>
<th>ETHNIC ORIGIN</th>
<th>%</th>
<th>Unemployment Survival</th>
</tr>
</thead>
<tbody>
<tr>
<td>Java</td>
<td>70</td>
<td>Savings</td>
</tr>
<tr>
<td>Chinese</td>
<td>30</td>
<td>Loans</td>
</tr>
<tr>
<td>Others</td>
<td>Nil</td>
<td>Family</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sponged</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>GENDER</th>
<th>%</th>
<th>Social support in Australia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female</td>
<td>18</td>
<td>Family here</td>
</tr>
<tr>
<td>Male</td>
<td>82</td>
<td>Friends here</td>
</tr>
<tr>
<td></td>
<td></td>
<td>None</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>VISA</th>
<th>%</th>
<th>Reason for coming to Australia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Student</td>
<td>12</td>
<td>Make money</td>
</tr>
<tr>
<td>Visitor</td>
<td>86</td>
<td>and return to Indonesia</td>
</tr>
<tr>
<td>Other</td>
<td>2</td>
<td>Settle permanently here</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Visit relatives here</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Study</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Health reasons</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Other</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>I/V in Indonesia</th>
<th>%</th>
<th>If not self, at what cost?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>53</td>
<td>Less than $500</td>
</tr>
<tr>
<td>No</td>
<td>47</td>
<td>From $500 to $1000</td>
</tr>
<tr>
<td>I/V on arrival</td>
<td>%</td>
<td>From $1000 to $2000</td>
</tr>
<tr>
<td>Yes</td>
<td>0</td>
<td>From $2000 to $4000</td>
</tr>
<tr>
<td>No</td>
<td>100</td>
<td>More than $4000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>APPLICATION FOR VISA</th>
<th>%</th>
<th>Money on arrival</th>
</tr>
</thead>
<tbody>
<tr>
<td>Made by: Self</td>
<td>26</td>
<td>Less than $500</td>
</tr>
<tr>
<td>Agent</td>
<td>26</td>
<td>From $500 to $1000</td>
</tr>
<tr>
<td>Tout</td>
<td>35</td>
<td>From $1000 to $2000</td>
</tr>
<tr>
<td>Other</td>
<td>13</td>
<td>From $2000 to $4000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>More than $4000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Money origin</th>
<th>%</th>
<th>Length of stay in Australia before arrest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Own savings</td>
<td>72</td>
<td>Less than 1 month</td>
</tr>
<tr>
<td>Loan</td>
<td>8</td>
<td>From 1 to 6 months</td>
</tr>
<tr>
<td>Family</td>
<td>18</td>
<td>From 6 to 12 months</td>
</tr>
<tr>
<td>Other</td>
<td>2</td>
<td>From 1 to 5 years</td>
</tr>
<tr>
<td></td>
<td></td>
<td>More than 5 years</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Money on arrival</th>
<th>%</th>
<th>Language spoken at this interview:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than $500</td>
<td>44</td>
<td>English</td>
</tr>
<tr>
<td>From $500 to $1000</td>
<td>8</td>
<td>Indonesian</td>
</tr>
<tr>
<td>From $1000 to $2000</td>
<td>19</td>
<td>Other</td>
</tr>
<tr>
<td>From $2000 to $4000</td>
<td>21</td>
<td></td>
</tr>
<tr>
<td>More than $4000</td>
<td>8</td>
<td></td>
</tr>
</tbody>
</table>

N=50

SOURCE OF INFORMATION

50 Indonesian illegal immigrants in Immigration detention interviewed between 1/7/93 and 30/6/96.
ILLEGAL IMMIGRATION FROM INDONESIA

Questionnaire administered to 50 Indonesian illegal immigrants while they were in Immigration detention in Australia.

<table>
<thead>
<tr>
<th>1. ETHNIC ORIGIN</th>
<th>Interviewed on arrival?</th>
<th>Why come to Australia?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Java</td>
<td>Yes 32 [ ]</td>
<td>Make money and return to Indonesia 58 [ ]</td>
</tr>
<tr>
<td>Chinese</td>
<td>No 33 [ ]</td>
<td>settle here perm 59 [ ]</td>
</tr>
<tr>
<td>Sumatra</td>
<td></td>
<td>visit relatives 60 [ ]</td>
</tr>
<tr>
<td>Sunda</td>
<td></td>
<td>study 61 [ ]</td>
</tr>
<tr>
<td>Outer Islands</td>
<td></td>
<td>health reasons 62 [ ]</td>
</tr>
<tr>
<td>Others</td>
<td></td>
<td>other 63 [ ]</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. GENDER</td>
<td></td>
<td>When unemployed, how have you survived here?</td>
</tr>
<tr>
<td>Female</td>
<td></td>
<td>Savings 64 [ ]</td>
</tr>
<tr>
<td>Male</td>
<td></td>
<td>Loans 65 [ ]</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Family 66 [ ]</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Stealing 67 [ ]</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sponged 68 [ ]</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Other 69 [ ]</td>
</tr>
<tr>
<td>3. ARRIVAL</td>
<td></td>
<td>Why choose Australia?</td>
</tr>
<tr>
<td>Visa</td>
<td></td>
<td>Immigration easier 70 [ ]</td>
</tr>
<tr>
<td>No visa</td>
<td></td>
<td>Better pay 71 [ ]</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Frds &amp; rels here 72 [ ]</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Other 73, 74, 75 [ ]</td>
</tr>
<tr>
<td>If no visa,</td>
<td></td>
<td>Spouse and children?</td>
</tr>
<tr>
<td>Stowaway</td>
<td></td>
<td>Have none 76 [ ]</td>
</tr>
<tr>
<td>Ship deserter</td>
<td></td>
<td>In Indonesia 77 [ ]</td>
</tr>
<tr>
<td>Small boat</td>
<td></td>
<td>In Australia 78 [ ]</td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td>Elsewhere 79 [ ]</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(Not used) 80 to 86 [ ]</td>
</tr>
<tr>
<td>If visa</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. What social support did you have in Australia?</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>A loan 52 [ ]</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Family 53 [ ]</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Other</td>
<td></td>
</tr>
</tbody>
</table>

| 5. STAY               | Language at interview    |
|Less than 1 month 87 [ ] | English 92 [ ] |
|1 to 6 months 88 [ ]    | Indonesian 93 [ ]       |
|6 to 12 months 89 [ ]   | Other 94 [ ]            |
|1 to 5 years 90 [ ]     | (Spare codes) 95 to 99  |