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The people smugglers' business model

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Executive summary

- Since the late 1990s, people smuggling has been a key focus of political debate on irregular migration to Australia. Most recently, attention has turned to how to 'break the people smugglers' business model'. While there is continuing debate about how best to achieve this objective, the business model being referred to remains largely unarticulated, at least publicly.
- Examination of recent open source research and Australian case law reveals there is no single 'people smugglers' business model' that explains how people smugglers operate, either internationally or to Australia. However, certain themes are evident, including the predominance of fluid networks over more hierarchical organisations and the flexibility, adaptability and resilience of those involved. It appears that a variety of business models are employed (either explicitly or implicitly) and that they are constantly evolving.
- Some basic characteristics of maritime people smuggling from Indonesia to Australia can be discerned from open source information that can be used to outline some of the basic components of a common business model that seems to operate. However, there appear to be many variations on different components of the model. Further, the Indonesia to Australia leg is only part of a much longer journey, and Indonesia is not the only departure point for boats to Australia organised by people smugglers. Finally, while political and popular attention has focused largely on irregular maritime arrivals, people smuggling to Australia also occurs by air.
- The use of the singular terms 'the people smugglers' business model' or 'the people smuggling business model' gives the impression of a homogeneous market for which a single measure or 'one size fits all' solution might exist. The reality of a variety of business models operating at different stages of the supply chain between source countries and destination countries, including Australia, points to the need for a more tailored and considered approach. The points at which to intervene in order to 'break' a certain business model, and the most appropriate modes of intervention, will depend on the particular characteristics of that model.

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Introduction

[W]e have not secured the new laws that we need to enable the Government to ... break the people smugglers' business model: Julia Gillard, Prime Minister, following the defeat in the Senate of the Migration Legislation Amendment (The Bali Process) Bill 2012, which would have amended the Migration Act 1958 to allow offshore processing of 'irregular maritime arrivals'.¹

I know I say it a lot, because I mean it, but you've got to break the people smuggler's business model—and then you don't have to worry about the symptoms: Chris Bowen, then Minister for Immigration and Citizenship.²

The people smugglers' business model is continuing to thrive and there is still no offshore processing: Scott Morrison, Shadow Minister for Immigration and Citizenship.³

[I]t would actually start to really hit the people smugglers' business model: Christine Milne, Leader of the Greens.⁴

I laugh out loud when I hear it. Do they think there are men in suits sitting around boardroom tables somewhere devising strategies? ... There are no records or bank accounts. No spreadsheets or business plans: Ali Al Jenabi, convicted of people smuggling in 2004.⁵

Irregular and forced migration continues to pose challenges for governments around the world. At the end of 2011 the United Nations High Commissioner for Refugees was providing assistance to around 25.9 million people worldwide, 10.4 million of whom were refugees.⁶ The number of people who became refugees in 2011—800 000—was the highest for more than a decade.⁷ The number of irregular arrivals in Australia may be relatively small in global terms, but striking an appropriate

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1. J Gillard (Prime Minister), transcript of joint press conference, Canberra, 28 June 2012, viewed 3 July 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F2048153%22>
 2. C Bowen in M Gordon, 'Dogged Bowen up for the task', *Canberra Times*, 31 March 2012, p. 3, viewed 16 May 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F1538908%22>
The phrase has been retained under the current Minister for Immigration and Citizenship: B O'Connor (Minister for Immigration and Citizenship), *Abbott's plan will lure more people onto boats*, media release, 15 February 2013, viewed 19 February 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F2238896%22>
 3. S Morrison in G Jones and D Guest, 'No distress as asylum seekers "rescued"', *Daily Telegraph*, 6 July 2012, p. 2, viewed 9 July 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F1759247%22>
 4. A Kirk, 'Asylum seeker stalemate continues', interview with C Milne, *The World Today*, Australian Broadcasting Corporation (ABC), Radio National, 6 July 2012, viewed 11 July 2012, <http://www.abc.net.au/worldtoday/content/2012/s3540336.htm>
 5. R de Crespigny, *The people smuggler: the true story of Ali Al Jenabi, the 'Oskar Schindler of Asia'*, Penguin, Camberwell, Vic., 2012, p. 350. As explained in an author's note, the book was a collaboration between the author and Mr Al Jenabi, who worked closely together on it for over three years. The story is written in the first person as though being told by Mr Al Jenabi.
 6. United Nations High Commissioner for Refugees (UNHCR), *Global trends 2011*, UNHCR, 2012, p. 2, viewed 17 October 2012, http://www.unhcr.org/globaltrends2011/UNHCR%20Global%20Trends%202011_WEB_EMBARGOED.pdf
 7. Ibid.

balance between meeting the needs of people seeking protection and maintaining control of national borders is nonetheless a challenging proposition.⁸ Issues relating to unauthorised arrivals, particularly 'boat people' or 'irregular maritime arrivals' have troubled successive Australian Governments since the 1970s, when the first wave of boats carrying asylum seekers began arriving in the aftermath of the Vietnam War.⁹ The focus of these concerns, and the policies adopted to address them, have changed over the years, as has the political rhetoric.¹⁰ While political and popular attention has remained fixed upon irregular maritime arrivals, the focus of the debate has expanded beyond those arriving by boat to include the people who facilitate their journey.

As might be expected on such a complex and multi-faceted issue, Australian politicians find many aspects on which to disagree when it comes to managing irregular migration. However, while they disagree about how to go about it, Labor, the Liberal-National Coalition and the Greens all agree that people smuggling must be tackled.¹¹ The policy objective of both major parties is now to break the 'people smugglers' business model'. The Greens and Rob Oakeshott, the Independent Member for

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8. To put the Australian situation in context: 80 per cent of the world's refugees are hosted in developing countries, and 22 per cent in the 48 least developed countries; of the 441 260 claims for asylum lodged in 2011 across the 38 European and six other countries that currently provide monthly asylum statistics to the UNHCR, Australia accounted for just 11 500, or around 2.5 per cent: *Ibid.*, pp. 2, 10; UNHCR, *Asylum levels and trends in industrialized countries: statistical overview of asylum applications lodged in Europe and selected non-European countries*, UNHCR, 2012, p. 8, viewed 17 October 2012, <http://www.unhcr.org/4e9beaa19.html>
 9. J Phillips and H Spinks, *Boat arrivals in Australia since 1976*, Background note, Parliamentary Library, Canberra, updated 29 January 2013, p. 4, viewed 19 February 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fprspub%2F5P1X6%22> A number of terms are used to refer to people arriving in Australia without valid visas. DIAC tends to refer to unauthorised or irregular arrivals. The Glossary in the **Appendix** provides brief definitions of terms used in this paper. For further discussion of different terminology used (and sometimes misused) in discussions on irregular migration see J Phillips, *Asylum seekers and refugees: what are the facts?*, Background note, Parliamentary Library, Canberra, updated 11 February 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fprspub%2FHGNW6%22>
 10. The Phillips and Spinks paper referred to above outlines the historical and political context surrounding boat arrivals to Australia and the policy responses of successive Australian Governments. Developments up to and including 2001 are also outlined in A Schloenhardt, *Migrant smuggling: illegal migration and organised crime in Australia and the Asia Pacific region*, Martinus Nijhoff Publishers, Leiden, 2003 (see pp. 51–89).
 11. R McClelland and B O'Connor, *A secure and fair Australia*, Australian Labor Party policy document, Election 2010, pp. 6–7, viewed 13 December 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fparty%2F1CPX6%22>; Liberal Party of Australia and the Nationals, *Restoring sovereignty and control to our borders*, Coalition policy document, Election 2010, pp. 1–2, viewed 13 December 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fparty%2F4JOX6%22>; S Hanson-Young, *Greens make progress on amending Migration Act to cut mandatory sentence*, media release, 8 February 2012, viewed 13 December 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F1407527%22>; S Hanson-Young, *Blaming refugees for people smugglers' tricks not the solution*, media release, 5 June 2012, viewed 13 December 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F1691194%22>

Lyne, have been the latest to adopt this terminology.¹² Tony Windsor, the Independent Member for New England, used similar language when he urged the Greens to support offshore processing so as to 'bring about the demise of the people smugglers' businesses'.¹³

While discussions continue on how best to go about breaking the people smugglers' business model, those participating in the debate have not publicly articulated the business model to which they refer. This has significant policy implications, given that the first step in developing a response is defining the problem to be addressed.

This paper examines first some of the more recent international research, and second, relevant Australian case law and the more limited body of Australian research on people smuggling, to determine whether this business model can be identified. It does not seek to evaluate the appropriateness or efficacy of specific anti-people smuggling policies that have been or are currently being pursued by Australian Governments.

What is people smuggling?

The *United Nations Convention against Transnational Organized Crime* (UNTOC) and the accompanying *Protocol against the Smuggling of Migrants by Land, Sea and Air* (the UN Protocol) were adopted by the United Nations General Assembly on 15 November 2000.¹⁴ The purpose of the UN Protocol, which came into force generally on 28 January 2004 and in Australia on 26 June 2004, is to 'prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end, while protecting the rights of smuggled migrants'.¹⁵

Under the UN Protocol, migrant smuggling is defined as:

the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.¹⁶

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12. C Milne, op. cit.; R Oakeshott, *A small step towards action on asylum seekers, says Oakeshott*, media release, 25 July 2012, viewed 10 August 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F1801840%22>
 13. T Windsor, *Pragmatism killing boatpeople*, media release, 22 June 2012, viewed 3 July 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F1729360%22>
 14. United Nations General Assembly, '*United Nations Convention against Transnational Organized Crime*', Resolution 55/25, Fifty-fifth session, 15 November 2000, viewed 14 December 2012, <http://www.worldlii.org/int/other/UNGARsn/2000/75.pdf>
 15. *Protocol against the Smuggling of Migrants by Land, Sea and Air* done at New York on 15 November 2000 [2004] ATS 11 (entered into force on 28 January 2004) (UN Protocol), art. 2, viewed 5 March 2012, <http://www.austlii.edu.au/au/other/dfat/treaties/2004/11.html>
 16. *Ibid.*, art. 3.

The UN Protocol requires State Parties to criminalise such conduct.¹⁷ Under article 6, State Parties must also criminalise related conduct, including:

- production, procurement, provision or possession of fraudulent travel or identity documents for the purpose of enabling migrant smuggling (if it is done to obtain a financial or other material benefit)
- enabling a person who is not a national or a permanent resident to remain in a State without complying with the necessary requirements for legally remaining there through the use of fraudulent documentation or other illegal means (if it is done to obtain a financial or other material benefit) and
- organising or directing others to commit the offence of migrant smuggling.¹⁸

Facilitating the unauthorised entry of a non-national is only recognised as migrant smuggling at international law if it is undertaken for financial or other material gain. The definition intentionally excludes conduct engaged in for altruistic and humanitarian reasons.

While Australia's people smuggling offences are otherwise broadly consistent with the UN Protocol, they contain one significant departure in that they are not limited to instances where the conduct is undertaken for financial or other material gain.¹⁹

For the purposes of this paper the term people smuggling, more commonly used in Australia, is used to refer to conduct that falls within the offences required under article 6 of the UN Protocol.²⁰

What is a business model?

In order to determine the business model used by people smugglers it is necessary to identify broadly what constitutes a business model. There is no authoritative definition of the term 'business model'. While the term has come into frequent use, it is rarely explicitly defined.²¹ Managers interviewed on the topic for one study admitted they had never tried to define the term before or

17. Ibid., art. 6.

18. Ibid.

19. Commonwealth offences of smuggling people into Australia and into a foreign country (where there is a jurisdictional nexus with Australia) are contained in Division 12 of the *Migration Act 1958* and Division 73 of the *Criminal Code Act 1995* (Criminal Code) respectively. The offences in the Migration Act have never included an element of financial or material benefit. Those in the Criminal Code initially included such an element when they were enacted in 2002, but this changed with the enactment of the *Anti-People Smuggling and Other Measures Act 2010*. As at 19 December 2012, the Commonwealth Director of Public Prosecutions (CDPP) had not dealt with any charges under Division 73 of the Criminal Code. The agency's *2005–2006 Annual Report* incorrectly reported that a charge against Division 73 was dealt with that financial year: CDPP, email, 19 December 2012.

20. See **Appendix** for a glossary of other terms used throughout this paper.

21. H Chesbrough and R Rosenbloom, 'The role of the business model in capturing value from innovation: evidence from Xerox Corporation's technology spin-off companies', *Industrial and Corporate Change*, vol. 11, no. 3, June 2002, pp. 529–555; C Zott, R Amit and L Massa, 'The business model: recent developments and future research', *Journal of Management*, vol. 37, no. 4, July 2011, pp. 1019–1042.

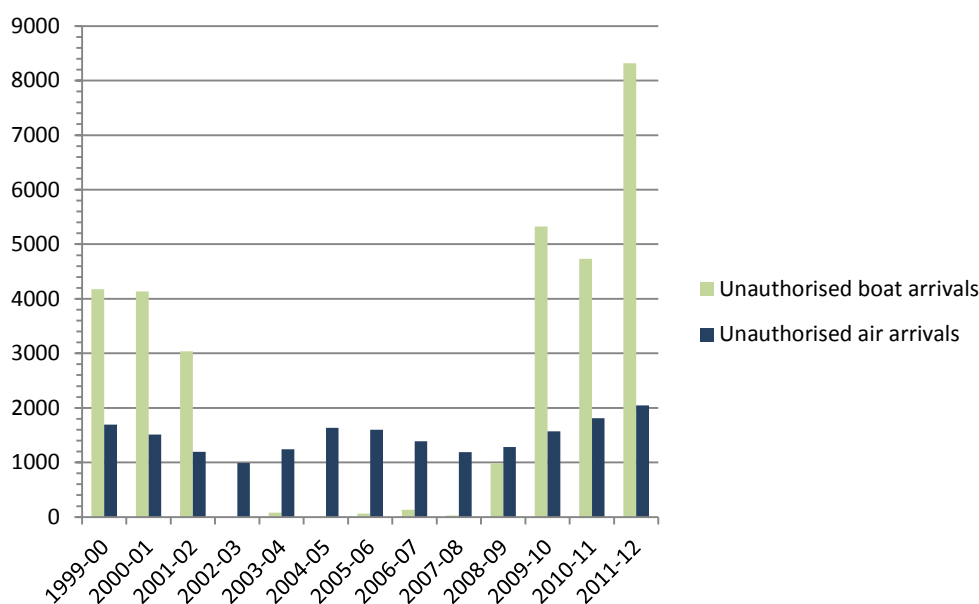
could not explain it clearly.²² While the academic literature offers a range of much more complex definitions, essentially a business model describes how an organisation does business. For the purposes of this paper, this is taken to include factors such as an organisation's structure and processes, how it interacts with competitors and customers and how it ensures its profitability.

Background on people smuggling to Australia

Despite the political and media attention on boat arrivals, Australian Government agencies are open about the fact that people smugglers are involved in facilitating the passage of people to Australia by air as well as by boat.²³

As with many other types of crime, quantifying the extent of people smuggling presents difficulties. The number of unauthorised arrivals by air and boat recorded for the years 1999–00 to 2011–12 is illustrated in the graph below. It can be seen that the number of boat arrivals has varied considerably over that period, while the number of air arrivals has been more stable, with the number of unauthorised arrivals by air and boat both at their highest in 2011–12.

Graph: Number of unauthorised arrivals by boat and air 1999–00 to 2011–12



Sources: J Phillips and H Spinks, *Boat arrivals in Australia since 1976*; Migrant Smuggling Working Group (MSWG), 'Statistics and other data', MSWG website, viewed 14 December 2012, <http://www.law.uq.edu.au/migrantsmuggling-statistics>; Department of Immigration and Citizenship, *Annual*

22. G George and AJ Bock, 'The business model in practice and its implications for entrepreneurship research', *Entrepreneurship Theory and Practice*, vol. 35, no. 1, January 2011, pp. 83–111.

23. Australian Federal Police (AFP), 'People smuggling', AFP website, viewed 18 October 2012, <http://www.afp.gov.au/policing/human-trafficking/people-smuggling.aspx>; DIAC, *Annual report 2008–09*, Commonwealth of Australia, 2009, pp. 100, 107, 112, viewed 18 October 2012, <http://www.immi.gov.au/about/reports/annual/2008-09/pdf/annual-report-2008-09-complete.pdf>

report 2011–12, Commonwealth of Australia, 2012, viewed 14 December 2012,

<http://www.immi.gov.au/about/reports/annual/2011-12/pdf/index.htm>

Note: There is some inconsistency in the inclusion or exclusion of crew members from the figures for boat arrivals in different years. These are detailed in the notes to Appendix B of the Phillips and Spinks paper.

However, while official figures on unauthorised arrivals are of some use as a proxy measure, they cannot be relied upon to accurately reflect the extent of people smuggling for several reasons:

- they represent only the arrivals that have been detected by authorities (this seems to be most relevant to arrivals by air for the reasons outlined below)
- they do not take account of offshore disruptions or losses at sea and
- not all unauthorised arrivals necessarily make use of people smugglers.

While there have been exceptions, unauthorised boat arrivals in Australia tend to be overt, while unauthorised arrival by air involves covert methods, often with the use of false documentation (this holds true whether smugglers are involved or not).²⁴ Therefore, the ratio of detected to total unauthorised arrivals may not be the same across boat and air arrivals. The different modes of arrival and associated methodology also affect the scale of smuggling. Those being smuggled by air travel alone or in small numbers alongside a large number of other passengers on commercial flights. The number of people smuggled by boat is restricted only by the size of the boat used. Particularly where no attempt is made to arrive covertly, many more people can be transported in a single instance of smuggling by boat than would be the case for smuggling by air.²⁵

Boat arrivals and transit routes

As noted above, not all unauthorised arrivals to Australia engage the services of people smugglers to get here. However, in the case of arrival by boat, at least among the more recent arrivals, it seems that the vast majority do. For example, in 2009–10, all of the 5255 'irregular maritime arrivals' interviewed by the Department of Immigration and Citizenship reported that they had paid agents to arrange their or their families passage to Australia.²⁶

Most people smuggled to Australia by boat begin their journey in the Middle East or South Asia, in particular Iraq, Iran, Afghanistan or Sri Lanka. Those travelling from the Middle East typically make

24. Schloenhardt, op. cit., p. 34; J Hunyor, 'Don't jail the ferryman: the sentencing of Indonesian "people movers"', *Alternative Law Journal*, vol. 26, no. 5, October 2001, pp. 223–228, viewed 29 March 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2F7DI56%22>

25. United Nations Office on Drugs and Crime (UNODC), *Migrant smuggling by air*, Issue paper, UNODC, 2010, p. 36, viewed 10 April 2012, http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Issue-Papers/Issue_Paper_-_Migrant_Smuggling_by_Air.pdf

26. Senate Standing Committee on Legal and Constitutional Affairs, Answers to Questions on notice, Immigration and Citizenship Portfolio, Additional Estimates 2010–11, 21–22 February 2011, Question 140, viewed 18 October 2012, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/estimates/add_1011/diac/index.htm

their way here via South East Asia; from Sri Lanka people are sometimes brought directly, but are otherwise also routed through South East Asia.²⁷ The routes can be complex—the judgment in *R v Chaudhry* details the route taken by two Afghani men smuggled on vessels that Mr Chaudhry was involved in organising. Both travelled on their own to Pakistan, where smugglers organised their onward journey to Indonesia by air via Thailand, Hong Kong and Singapore, as well as the final leg from Indonesia to Australia.²⁸ A common and less complex route for Hazaras coming from Afghanistan and Pakistan is a flight to Malaysia (for which smugglers organise tickets and travel documents), followed by a boat to Indonesia and another to Australia.²⁹ While travellers from Afghanistan require a visa to enter Malaysia, those from many other Middle Eastern nations, including Iraq and Iran, do not require a visa for short visits, making Malaysia an attractive transit country for smugglers bringing people from that region to Australia.³⁰

Unauthorised boats have sailed directly from other countries including Malaysia, Sri Lanka and even China.³¹ However, for most people smuggled to Australia by boat, the last leg of the journey is from Indonesia to Australia. Australia is the primary destination in the Asia Pacific region when it comes to smuggling by boat, with Indonesia the main transit country en route.³² Indonesia's prominence as a transit country stems not just from geography, although Indonesia's proximity to Australia, position on the path between source countries in the Middle East and Asia and Australia and the archipelagic nature of the country itself, are factors. Additional factors include the levels of corruption among Indonesian police, military and other officials, the limited capacity of its law enforcement and security forces and the time taken for Indonesia's Parliament to enact laws criminalising people smuggling, with laws only passed in April 2011.³³ Further, while many people smuggled to Australia

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27. A Houston, P Aristotle and M L'Estrange, *Report of the Expert Panel on Asylum Seekers*, Australian Government, August 2012, viewed 13 August 2012, p. 76, <http://expertpanelonasylumseekers.dpmc.gov.au/report>
 28. *R v Chaudhry* (Unreported, District Court of Western Australia, Deane DCJ, 7 April 2006).
 29. United Nations Office on Drugs and Crime (UNODC), *Crime facilitating migration from Pakistan and Afghanistan*, UNODC, December 2009, pp. 64–66.
 30. Immigration Department of Malaysia, 'Visa requirement [sic] by country', Immigration Department of Malaysia website, viewed 18 October 2012, <http://www.imi.gov.my/index.php/en/main-services/visa/visa-requirement-by-country>. Afghan nationals had previously been able to apply for a visa on arrival in Malaysia, but from 16 August 2010 they are required to obtain a visa in advance: Ministry of Foreign Affairs, Malaysia, 'Visa requirement', Consulate General of Malaysia, Perth website, viewed 21 November 2012, http://www.kln.gov.my/web/aus_perth/requirement_foreigner
 31. Houston and others, op. cit., p. 76; Schloenhardt, op. cit., pp. 148–151. Instances of people smuggling by boat from China are outlined below in the section on Australian prosecutions of organisers and facilitators.
 32. UNODC, *Smuggling of migrants by sea*, Issue paper, United Nations, 2011, pp. 18–19, viewed 11 April 2012, http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Issue-Papers/Issue_Paper_-_Smuggling_of_Migrants_by_Sea.pdf
 33. J Bruni, 'Border crossing: people smuggling into Australia', *Jane's Intelligence Review*, vol. 22, no. 12, December 2010, pp. 42–46, viewed 10 July 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2F407977%22;> T Lindsey, 'Australia, Indonesia and the boat people', *Diplomat*, vol. 1, no. 1, April-May 2002, pp. 20–23, viewed 10 July 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2F3YV66%22;rec=0;> A Missbach and F Sinanu, "'The scum of the earth'? Foreign people smugglers and their local counterparts in Indonesia', *Journal of Current Southeast Asian Affairs*, vol. 30, no. 4, 2011, pp. 57–87, viewed 15 October 2012,

also pass through Malaysia, the higher living costs there encourage most to move quickly on to Indonesia.³⁴ While welcoming some positive developments in 2010 and 2011, human rights organisations have also raised concerns about Malaysia's treatment of asylum seekers and refugees, particularly with respect to lack of work rights and vulnerability to arrest and punishment.³⁵ Such conditions could also provide an impetus to continue on to Indonesia.³⁶

As noted above, smuggling to Australia by boat tends to be overt. While Australia has a long coastline and an extensive search and rescue area, it also invests heavily in border protection. Civil surveillance of Australia's borders began in the late 1960s and has expanded significantly since.³⁷ For example, at around the same time as penalties for people smuggling were significantly increased by the *Migration Legislation Amendment Act (No. 1) 1999*, and similarly in response to the detection of covert arrivals on the east coast in 1999, a Coastal Surveillance Task Force was established and charged with making recommendations on strengthening coastal surveillance systems and procedures.³⁸ The Task Force recommended a \$124 million package of measures, all of which the Government accepted.³⁹ Those measures and others introduced since by Australian Governments have made it difficult for boats to reach Australia undetected.

In addition, a significant majority of unauthorised arrivals to Australia by boat are found to be refugees and granted protection either here or in another country.⁴⁰ That is, their purpose for travelling to Australia is to seek asylum—they have no interest in disappearing undetected into the community. This has implications for the methodology used to smuggle people to Australia by boat. Australian authorities regularly render assistance to people smuggling boats that have sought help

[http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2F1939825%22;K Salna, 'Indonesia passes laws to combat people smuggling', *Canberra Times*, 8 April 2011, p. 6, viewed 10 July 2012, <http://search.proquest.com/docview/1020506097>.](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2F1939825%22;K%20Salna%2C%20Indonesia%20passes%20laws%20to%20combat%20people%20smuggling%2C%20Canberra%20Times%2C%208%20April%202011%2C%20p.%206%2C%20viewed%2010%20July%202012%2C%20http%3A%2F%2Fsearch.proquest.com/docview/1020506097)

34. Missbach and Sinanu, op. cit., pp. 77–78.

35. UNHCR, '2012 UNHCR country operations profile – Malaysia', UNHCR website, viewed 22 November 2012, <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e4884c6>; Amnesty International, *Malaysia: abused and abandoned: refugees denied rights in Malaysia*, Amnesty International, 16 June 2010, viewed 22 November 2012, <http://www.amnesty.org/en/library/info/ASA28/010/2010/en>

36. While reports indicate that conditions are comparatively better in Indonesia, there have been some concerns raised about treatment of some asylum seekers there also. See for example M Brown, 'Asylum seekers allegedly abused in Indonesia', *Lateline*, transcript, ABC, 8 March 2012, viewed 21 January 2013, <http://www.abc.net.au/lateline/content/2012/s3449246.htm>

37. Border Protection Command (BPC), 'Overview', BPC website, viewed 19 October 2012, <http://www.bpc.gov.au/site/page5792.asp>

38. Prime Minister's Coastal Surveillance Task Force, *Report*, June 1999, viewed 19 October 2012, <http://pandora.nla.gov.au/pan/67639/20070205-0000/www.pmc.gov.au/Coastal%20Surveillance%20report.pdf>

39. J Howard (Prime Minister), *\$124 million boost for the fight against illegal immigration*, media release, 27 June 1999, viewed 19 October 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FRYA06%22>

40. Phillips, op. cit., pp. 8–10; M Crock and D Ghezelbash, 'Do loose lips bring ships? The role of policy, politics and human rights in managing unauthorised boat arrivals', *Griffith Law Review*, vol. 19, no. 2, 2010, pp. 238–287, viewed 17 August 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2F347879%22>

as they near Ashmore Islands or Christmas Island.⁴¹ Reports in July 2012 of people smugglers advising boat captains and passengers to call the Australian Maritime Safety Authority for assistance soon after leaving Indonesian ports led the Opposition to claim that the Gillard Government's policies had led to the Australian Navy 'acting as a water taxi service for people smugglers'.⁴²

Air arrivals

This form of smuggling generally relies on the use of false or forged documents such as passports and visas, which are either used to deceive immigration officials on arrival or destroyed en route, with the passenger reporting to authorities on arrival in order to claim asylum. As commercial passenger flights are used as the mode of transport, those being smuggled do not need to be accompanied once they have obtained the forged or false documents through smugglers (although they sometimes are).⁴³ There may not therefore be anyone who physically smuggles the person in the same way as generally occurs for smuggling by boat or over land borders. However, the provision of false and forged documents or the organisation of travel for a person who does not have a legal right of entry fall within the broader people smuggling related offences required under article 6 of the UN Protocol (and included among the offences in the Criminal Code and the Migration Act).

The clandestine nature of smuggling by air and the attention on maritime people smuggling mean that we know less about smuggling people to Australia by plane, but there have been some instances reported. *The Australian* covered the case of a Sri Lankan man smuggled to Australia in April 2009. The man was reportedly given two options by a Malaysian people smuggler—US\$15 000 to travel by boat or US\$40 000 to travel by plane on false documents. His money bought him a false Canadian passport containing a forged Australian visa, which he disposed of on the plane before

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41. Media releases issued by the Minister for Home Affairs and Minister for Justice distinguish between boats 'intercepted' by vessels operating under the control of Border Protection Command and those to which assistance is rendered by vessels operating under the coordination of the Australian Maritime Safety Authority Rescue Coordination Centre: Minister for Home Affairs and Minister for Justice, 'Media releases', Minister for Home Affairs and Minister for Justice website, viewed 4 July 2012, <http://www.ministerhomeaffairs.gov.au/Mediareleases/Pages/default.aspx>
 42. T Abbott (Leader of the Opposition), *Transcript of the Hon. Tony Abbott MHR joint doorstep interview with Mr Craig Laundy, Liberal candidate for Reid*, Sydney, 12 July 2012, viewed 22 November 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F1829854%22>
See for example B Packham and L Wilson, 'Asylum calls "use navy like NRMA"', *The Australian*, 5 July 2012, p. 1, viewed 22 November 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F1760354%22>
and P Maley and P Alford, 'Smugglers' distress call rescue tactic', *The Australian*, 12 July 2012, p. 1, viewed 22 November 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F1772674%22>
 43. UNODC, *Migrant smuggling by air*, op. cit., pp. 4–11; Migrant Smuggling Working Group (MSWG), 'Migrant smuggling by air', MSWG website (last updated 5 September 2012), viewed 15 October 2012, <http://www.law.uq.edu.au/migrantsmuggling-air>

claiming asylum on arrival in Perth.⁴⁴ A woman reportedly pleaded guilty in 2010 to people smuggling offences relating to the provision of fraudulent documents to enable two Iraqi men to enter Australia in contravention of immigration laws.⁴⁵ Most recently, four men were charged in Australia and one person arrested in Thailand following an investigation by the Australian Federal Police (AFP) in cooperation with police in Malaysia, Indonesia and Thailand for their alleged involvement in a people smuggling syndicate responsible for planning and facilitating the entry of numerous people to Australia.⁴⁶ Thai police reportedly found up to 20 Iranian and United Arab Emirates passports that had been partly altered and equipment to make false documents, which they believe were being made in order for people of Middle Eastern origin to be smuggled from Thailand and Malaysia to Australia by plane and boat.⁴⁷

People smuggling as a business: international research

Much of the international research refers to people who are smuggled or seeking the services of people smugglers as irregular migrants or simply migrants. Where it has not been possible to determine whether the people referred to also include asylum seekers or refugees, the author has used the term irregular migrant when describing or referring to such research.

Relationship to organised crime

There is no universally accepted definition of organised crime, with different definitions emerging to suit the different needs of governments, law enforcement and academics, as well as international and supranational organisations.⁴⁸ The UNTOC does not define organised crime directly, but does define 'organised criminal group' to mean:

a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.⁴⁹

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44. S Neighbour, 'Refugees pay \$40,000 to come by plane', *The Australian*, 24 November 2009, p. 2, viewed 17 October 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2FR4AV6%22>
 45. B Kontominas, 'Iraqi refugee pleads guilty to people-smuggling charges', *Sydney Morning Herald*, 29 July 2010, viewed 17 October 2012, <http://www.smh.com.au/nsw/iraqi-refugee-pleads-guilty-to-peoplesmuggling-charges-20100728-10w2y.html?skin=text-only>
 46. AFP, *Four men charged in Australia for alleged international people smuggling syndicate*, media release, 27 March 2012, viewed 15 October 2012, <http://www.afp.gov.au/media-centre/news/afp/2012/march/four-men-charged-in-australia-for-alleged-international-people-smuggling-syndicate.aspx>
 47. Z Daniel, 'Six arrested in multi-nation people smuggling operation', *AM*, transcript, ABC, 28 March 2012, viewed 15 October 2012, <http://www.abc.net.au/am/content/2012/s3465202.htm>
 48. Schloenhardt, 2003, op. cit., pp. 93–97.
 49. *United Nations Convention against Transnational Organized Crime* done at New York on 15 November 2000 [2004] ATS 12 (entered into force on 29 September 2003), art. 4, viewed 5 March 2012, <http://www.austlii.edu.au/au/other/dfat/treaties/2004/12.html>

This definition is potentially quite broad, requiring only a small number of people and including groups that form to facilitate a single offence. The UNTOC does not provide any guidance on the intended interpretation of the term 'period of time', and the notes on the preparation of the treaty shed little light on the matter. However, the definition clearly distinguishes a number of characteristics: there is some form of structure to the group, the actors are working together with a common criminal aim, and the purpose for which they do so is the acquisition of some form of material benefit.⁵⁰ Essentially, a criminal organisation is an illicit business—and can therefore be expected to operate according to some kind of explicit or implicit business model.

Level of organisation and organisational structure

Researchers have reached different conclusions on the extent to which people smuggling involves organised criminal groups, perhaps reflecting the variation that exists. There have been claims that people smuggling is a highly organised activity becoming established as a branch of 'international gangster syndicates'⁵¹, or under the control of an 'international mafia'.⁵² At the other end of the scale there are those who, without necessarily denying the existence of professional smugglers, focus on the role of family and social networks in irregular migration.⁵³

The extent to which international criminal organisations are involved is likely to vary considerably across different regions of the world. For example, some research has pointed to the involvement of drug cartels smuggling people across the Mexico-US border, but studies conducted in Europe and Africa have not found evidence of similar links.⁵⁴ Smuggling ventures of varying sizes and levels of organisation have also been found operating side by side within the same region or market.⁵⁵ The

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50. The definition of serious and organised crime used in the *Australian Crime Commission Act 2002* is somewhat different. It requires the participation of as few as two offenders and does not refer to the profit motive, but does refer to offences that involve substantial planning and organisation and sophisticated methods and techniques: *Australian Crime Commission Act 2002*, viewed 18 October 2012, <http://www.comlaw.gov.au/Details/C2012C00508>. For the purposes of offences in Division 390 of the *Criminal Code Act 1995*, a criminal organisation is an organisation of two or more people, the aims or activities of which include facilitating the engagement in conduct, or engaging in conduct, constituting an offence against any law that is, or would if committed be, for the benefit of the organisation: *Criminal Code Act 1995*, viewed 22 November 2012, <http://www.comlaw.gov.au/Details/C2012C00776>
 51. J Salt and J Stein, 'Migration as a business: the case of trafficking', *International Migration*, vol. 35, no. 4, December 1997, pp. 467–494 and p. 472, viewed 5 March 2012, <http://onlinelibrary.wiley.com/doi/10.1111/1468-2435.00023/pdf>
 52. R Balint, *Troubled waters: borders, boundaries and possession in the Timor Sea*, Allen & Unwin, Crows Nest, 2005, p. 142. See also H McCulloch, 'Assessing the involvement of organised crime in human smuggling and trafficking', *Resource Material Series No. 62: Work Product Of The 122nd International Training Course*, United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, Tokyo, February 2004, pp. 55–59, viewed 3 April 2012, http://www.unafei.or.jp/english/pdf/RS_No62/No62_09VE_McCulloch2.pdf
 53. As outlined in UNODC, *Smuggling of migrants: a global review and annotated bibliography of recent publications*, United Nations (UN), New York, 2011, pp. 10–11, viewed 5 March 2012, http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Smuggling_of_Migrants_A_Global_Review.pdf
 54. *Ibid.*, p. 68.
 55. S Webb and J Burrows, *Organised immigration crime: a post-conviction study*, Research report 15, Research, Development and Statistics Directorate, Home Office, London, July 2009, p. iii, viewed 29 March 2012,

methodologies of different studies can also impact on the findings, with research based on field interviews more likely to reveal smaller scale, less organised crime and research based on law enforcement data more likely to provide information on more organised criminality.⁵⁶ However, there seems to be an emerging consensus that people smuggling tends to operate on the basis of an 'enterprise model', involving large numbers of smaller, flexible criminal networks, organisations or individuals interacting where necessary.⁵⁷

This debate over the structure and operation of smuggling organisations mirrors broader debate on the nature of criminal organisations in general. One side characterises criminal organisations as having centralised, pyramid-like structures akin to corporations, while the other sees them as loosely structured, flexible and adaptable networks.⁵⁸ A third school has concluded that in fact there is no single model of organised crime—rather criminal organisations take a range of different forms and sizes and differ in geographical reach and the range and diversity of operations.⁵⁹ Though here too, recent Australian analysis seems to point towards the network model as becoming more prevalent.

The Australian Crime Commission (ACC) has found that fluid networks of individuals collaborating as opportunities arise are more common in Australia than more hierarchical groups defined by membership criteria, and notes that this structural shift is also increasingly apparent in Europe.⁶⁰ Operating under more fluid and decentralised structures allows criminal organisations to adapt to changes in the market and challenges posed by competitors, law enforcement and governments.⁶¹ In the people smuggling context, researchers have observed loose networks or chains made up of many smaller units. The advantages of this model are obvious:

It is the flexibility and adaptability offered by these that ensure the continuing activity and success of the larger operation since, even if one link along the chain should break, it can be immediately replaced without risking the disintegration of the whole.

<http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/horr15/horr15-report?view=Binary>

56. F David, 'Organised crime and trafficking in persons', *Trends and Issues in Crime and Criminal Justice*, no. 436, AIC, Canberra, March 2012, p. 5, viewed 27 March 2012, http://www.aic.gov.au/documents/F/3/2/%7BF32BB053-07A7-4698-BED7-47DA99F09BBD%7Dtandi436_001.pdf
57. UNODC, *Global review*, op. cit., p. 3 and pp. 67–68; Webb and Burrows, op. cit., p. 3 and 21; M Neske, 'Human smuggling to and through Germany', *International Migration*, vol. 44, no. 4, September 2006, pp. 121–163, viewed 6 March 2012, <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-2435.2006.00382.x/pdf>; A Icduygu and S Toktas, 'How do smuggling and trafficking operate via irregular border crossings in the Middle East? Evidence from fieldwork in Turkey', *International Migration*, vol. 40, no. 6, December 2002, pp. 25–54, viewed 3 July 2012, <http://onlinelibrary.wiley.com/doi/10.1111/1468-2435.00222/pdf>; UNODC, *Organized crime involvement in trafficking in persons and smuggling of migrants*, Issue paper, UNODC, 2010, pp. 33–34, viewed 14 May 2012, http://www.unodc.org/documents/human-trafficking/FINAL_REPORT_06052010_1.pdf
58. Schloenhardt, 2003, op. cit., pp. 113–14.
59. Ibid., pp. 114–15.
60. Australian Crime Commission (ACC), *Organised crime in Australia 2011*, Commonwealth of Australia, 2011, p. 29, viewed 27 March 2012, <http://www.crimecommission.gov.au/sites/default/files/files/OCA/2011/oca2011.pdf>
61. ACC, *Organised crime groups*, Crime profile series, Commonwealth of Australia, April 2011, p. 4, viewed 27 March 2012, <http://www.crimecommission.gov.au/sites/default/files/files/crime-groups.pdf>

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Because of the large number of smugglers on the route, the smugglers in the country of destination are unaware of the smugglers in the country of departure . . . smugglers are acquainted only with the smugglers from whom they receive migrants and those to whom they hand over migrants. They have no chances of meeting and relating to other smugglers who make up the remaining pieces of the larger chain. This can cause the chain to become disrupted momentarily, but the missing link is quickly replaced and, since forward and backward linkages are usually not known to each other, they are not put at risk by any depositions to the police when apprehended.⁶²

Schloenhardt, recognising the diversity of smuggling operations, has drawn on his own earlier research and that of others to identify three broad categories of people smugglers:

- **amateur smugglers**— those who provide a single, isolated service, such as using their own vehicle or vessel to transport irregular migrants or asylum seekers across borders if an opportunity arises (while the individuals are not themselves members of larger organisations, they may have been hired by transnational criminal organisations to undertake the particular task)
- **international smuggling networks**—large criminal organisations operating internationally that have the ability to provide a door to door service from origin to destination country and respond to the full range of irregular migrants' needs, such as the provision of false documents and accommodation and support in transit countries. These networks use routes well-tested by other transnational criminal activities and may themselves engage in a variety of criminal activities in addition to people smuggling and
- **small groups of organised smugglers**—occupying a middle ground between the above two categories, this category comprises small, organised groups that specialise in transporting irregular migrants from one country to another.⁶³

Involvement in other crime types

Whether those involved in people smuggling are also involved in other forms of transnational organised crime could have a bearing on the business model employed. For example, criminal groups involved in smuggling of both people and illicit goods could maximise their profits by undertaking dual purpose journeys. There is a lack of consensus on whether, and to what extent, this occurs. As with the question of the involvement of large scale criminal organisations, the answer may differ depending on the region or smuggling route being examined.

Webb and Burrows, who interviewed 45 prisoners convicted in the United Kingdom of people smuggling and people trafficking offences (25 of whom had been involved in smuggling), received

62. Icduygu and Toktas, op. cit., p. 46.

63. Schloenhardt, 2003, op. cit., pp. 115–16.

mixed responses. While some interviewees were 'adamant that drug smuggling was a completely separate operation involving different networks', others reported 'cross-commodity smuggling', in particular of drugs, guns, explosives and fake documents.⁶⁴ Icduygu and Toktas, working in Turkey, interviewed a 'guide' who stated that the people smuggling and drug smuggling businesses do not mix, but that other cross-commodity smuggling does occur:

Drug smugglers are not interested in the smuggling of people because for them that is small business . . . all other smugglers, like myself, smuggle everything including people. I am going to start again the smuggling of people and of diesel oil . . . We bring Mercedes car parts, diesel fuel, or whatever is needed.⁶⁵

There is some evidence from North Africa of drug smugglers taking up people smuggling, and it was a trend observed by participants in a United Nations Office on Drugs and Crime (UNODC) Expert Group Meeting on smuggling of migrants by air held in December 2009.⁶⁶ The paper resulting from the Expert Group Meeting states that people smuggling is considered to be equally profitable, but less risky, because while irregular migrants can transport themselves, drugs must be physically carried.⁶⁷ This explanation makes sense in relation to smuggling by air, but less so in relation to sea and land based smuggling, where irregular migrants are usually accompanied. Further, while migrants would not be accompanied by those making the most profit from the operation, the same holds true for the task of carrying drugs.

A series of research projects undertaken in Europe under the banner of a European Science Foundation Collaborative Research Project did not uncover any empirical evidence of people smugglers also smuggling drugs or weapons.⁶⁸ In the Australian context, there is no hard evidence that people smugglers are bringing irregular migrants or asylum seekers and drugs to Australia concurrently, though a number of people associated with attempted people smuggling have also attracted law enforcement attention in relation to drug trafficking.⁶⁹ It is worth noting in this context that overt people smuggling (typically used to smuggle people to Australia by boat) is incompatible

64. Webb and Burrows, op. cit., p. 22.

65. Unnamed Turkish male in Icduygu and Toktas, op. cit., p. 39. See 'Typologies of people smuggling roles' below for a description of the role played by a guide.

66. UNODC, *Migrant smuggling by air*, op. cit., p. 8; UNODC, *Smuggling of migrants into, through and from North Africa: a thematic review and annotated bibliography of recent publications*, UN, New York, 2010, pp. 41–42, viewed 10 April 2012, http://www.unodc.org/documents/human-trafficking/Migrant_smuggling_in_North_Africa_June_2010_ebook_E_09-87293.pdf

67. UNODC, *Migrant smuggling by air*, op. cit., p. 6.

68. F Heckmann, 'Towards a better understanding of human smuggling', *IMISCOE Policy Brief*, no. 5, November 2007, p. 3, viewed 11 April 2012, <http://dare.uva.nl/document/104560>

69. T McInerney, 'People smuggling – an inhuman trade', *Platypus*, no. 68, September 2000, pp. 2–7, viewed 29 March 2012, http://parlinfo.aph.gov.au/parlInfo/download/library/jrnart/IIC56/upload_binary/iic566.pdf;fileType=application%2Fpdf#search=%22library/jrnart/IIC56%22; J Lawler (Chief Executive Officer, ACC) Senate Legal and Constitutional Affairs Legislation Committee, Attorney-General's portfolio, Supplementary Budget Estimates 2012–13, 16 October 2012, p. 43, viewed 17 October 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Festimate%2F0e2bb940-ccdc-4a20-b4e0-b3e6031771e8%2F0005%22>

with other forms of smuggling, such as that of drugs and weapons, which are always covert in nature. While this would seem to make it less likely for cross-commodity smuggling to be undertaken concurrently in some cases, it does not mean that the same criminal organisations are not involved in both people smuggling and smuggling of illicit goods at the higher organisational level.

Profits

An extensive review of recent literature on people smuggling published by the UNODC in 2011 concluded that it is 'almost impossible' to find accurate figures of the fees for people smuggling and found that there was a lack of rigour in the collection of such figures.⁷⁰ Beyond the lack of rigour, difficulties emerge because there are so many variables involved and also because the profits are likely to be laundered by smugglers, making them difficult to distinguish from legitimate profits. Payments are also not always disbursed in a single transaction, which makes estimating the total cost more difficult.⁷¹ One method known to be used to disguise payments is the use of remittance services, which accept payment in one location and arrange an equivalent payment to someone in another location overseas.⁷² These services can be used to facilitate payments for people smuggling and other crimes without any money directly changing hands, making it more difficult to trace. For example, a UNODC case study of Hazara migration to Australia found that a portion of the profits was routinely directed back to investments in Dubai.⁷³

The Government has recently increased regulation of the remittance sector in response to concerns raised by law enforcement agencies about the role it could have in facilitating payments to people smugglers and other criminals.⁷⁴ The *Combating the Financing of People Smuggling and Other Measures Act 2011* introduced several measures to provide for more stringent regulation of the sector by Australian Transaction Reports and Analysis Centre, Australia's anti-money laundering and counter-terrorism financing regulator.⁷⁵

70. UNODC, *Smuggling of migrants: A global review*, op. cit., p. 85.

71. UNODC, *A short introduction to migrant smuggling*, Issue paper, UNODC, 2010, p. 26, viewed 4 April 2012, http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Issue-Papers/Issue_Paper_-_A_short_introduction_to_migrant_smuggling.pdf

72. Australian Transaction Reports and Analysis Centre (AUSTRAC), *Typologies and case studies report 2011*, Commonwealth of Australia, 2011, pp. 37–39, viewed 19 October 2012, http://www.austrac.gov.au/files/typ_rpt11_full.pdf

73. UNODC, *Crime facilitating migration from Pakistan and Afghanistan*, op. cit., p. 68.

74. B O'Connor, 'Second reading speech: Combating the Financing of People Smuggling and Other Measures Bill 2011' House of Representatives, *Debates*, 9 February 2011, pp. 135–137, viewed 23 October 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2011-02-09%2F0021%22>

75. These changes were followed by amendments to the more detailed Anti-Money Laundering and Counter-Terrorism Financing Rules, which set out regulated entities' specific compliance obligations. The Rules are available on AUSTRAC's website: http://www.austrac.gov.au/aml_ctf_rules.html

In terms of the variables involved in the fee itself, the amount paid by an irregular migrant or asylum seeker to be smuggled to another country will depend on:

- the type and range of activities covered by the payment, such as the form of transport used and whether false documentation and/or bribes to corrupt officials are included
- the distance to be travelled and whether the person purchases a door to door service or pays different smugglers for different legs of the journey
- the nature of the risks and the countries involved
- whether a family or group discount applies and
- whether the price includes a guarantee, whereby the smuggler undertakes to provide subsequent attempts free of charge if the first is unsuccessful.⁷⁶

It also seems that the profits derived from people trafficking are sometimes combined with those of people smuggling in estimates, or even mistakenly referred to as profits of people smuggling.⁷⁷

Despite the shortcomings of the available data, the scale and growth of people smuggling suggests that the activity is lucrative. Some specific examples of the costs reported for particular journeys or routes include⁷⁸:

- fares from Turkey of \$1370 for a boat to Italy, \$980 for a boat to Greece or \$50 to travel over land to Bulgaria⁷⁹
- between \$4900 and \$15 700 paid by 'irregular maritime arrivals' who arrived in Australia in 2009–10 (countries of origin not specified)⁸⁰

76. UNODC, *A short introduction to migrant smuggling*, op. cit., p. 26; Schloenhardt, 2003, op. cit., p. 157; V Bilger, M Hofmann and M Jandl, 'Human smuggling as a transnational service industry: evidence from Austria', *International Migration*, vol. 44, no. 4, September 2006, pp. 59–93, viewed 14 March 2012, <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-2435.2006.00380.x/pdf>; *R v Olong* (Unreported, Supreme Court of the Northern Territory, Southwood J, 2 September 2008); *R v Asfoor* (Unreported, District Court of Western Australia, Deane DCJ, 29 January 2004). Where bribes are required, they may be covered by the smuggling fee, but may also be paid directly by passengers: *R v Al Jenabi* (Unreported, Supreme Court of the Northern Territory, Mildren J, 21 September 2004).

77. For example, Amnesty International Australia states that the trade in people smuggling and trafficking is estimated to be worth \$10 billion per year: Amnesty International Australia, 'People smuggling', Amnesty International Australia website, viewed 28 February 2013, <http://www.amnesty.org.au/refugees/comments/29469/>. The International Organisation for Migration (IOM) states in a 2003 report that 'Migrant smuggling is now a ten billion US\$ a year growth industry', however the footnote refers the reader to a report by the United States Department of State on trafficking in persons: IOM, *World Migration 2003: challenges and responses for people on the move*, IOM, 2003, p. 60, viewed 11 April 2012, http://publications.iom.int/bookstore/free/WMR_2003.pdf

78. Where amounts were provided by the source in a currency other than Australian dollars, the amount was converted to an approximate amount in Australian dollars as at 10 July 2012 using the XE Universal Currency Converter: <http://www.xe.com/>.

79. Bilger and others, op. cit., p. 83.

- fares from Turkey of \$14 700 to the US, \$11 750 to Australia, \$7850 to the UK or \$3900–\$5900 to European destinations (reported by an intermediary who claimed that he dealt with approximately 1000–1200 people per year)⁸¹
- fares to travel from Afghanistan or Pakistan to Australia by air of between \$11 750 and \$14 700, or a combination of flights and then a boat from Indonesia of between \$4900 and \$7850⁸²
- between \$11 750 and \$17 650 for an all-inclusive fare from Afghanistan or Pakistan to Australia using a combination of air and boat travel⁸³
- between \$590 and \$2450 for a boat from Indonesia to Australia (with most paying \$1475–\$2450), and considerably more for the whole passage from Pakistan or the Middle East⁸⁴
- between \$1750 and \$8750 to travel from India to Australia by boat⁸⁵
- \$12 000 from Kabul to Christmas Island, Australia⁸⁶ and
- fares to the UK ranging from as little as \$750 from France to as much as \$75 000 from China.⁸⁷

As well as differing according to the variables outlined above, these estimates are from different points in time ranging from 2000 to 2012. They are included here to illustrate the variability of costs and estimates rather than as figures from which an accurate average cost can be deduced.

In the Asia Pacific region, Schloenhardt suggested in 2003 that, based on a range of reported prices, smuggling from Indonesia to Australia, Burma to Thailand and Indonesia to Malaysia, all of which tend to be overt, does not generate large profits. He asserted that it was covert smuggling across the Pacific to North America, from the Middle East to South East Asia and from China to Australia's east coast that brings in the 'big money'.⁸⁸ However, it should be noted that while the fares charged from

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80. Senate Standing Committee on Legal and Constitutional Affairs, Answers to Questions on notice, Immigration and Citizenship Portfolio, Additional Estimates 2010–11, 21 February 2011, Question 141, viewed 3 July 2012, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/estimates/add_1011/diac/index.htm
 81. Icdygu and Toktas, op. cit, p. 42. An intermediary would fall within the recruiter category of the typology outlined in the following section.
 82. K Koser, 'The economics of smuggling people', *Refugee Transitions*, no. 23, Summer 2009, pp. 10–13, viewed 16 May 2012, <http://www.gcsp.ch/New-Issues-in-Security/Publications/Faculty-Publications/Journal-Articles/The-Economics-of-Smuggling-People-Article-by-Khalid-Koser>
 83. UNODC, *Crime facilitating migration from Pakistan and Afghanistan*, op. cit., p. 32 and p. 64.
 84. McInerney, op. cit.
 85. A Hodge, 'Sri Lanka asylum voyage foiled', *The Australian*, 5 June 2012, p. 8, viewed 3 July 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F1690662%22>
 86. R Skelton, 'People smugglers operate as "open secret"', *Sydney Morning Herald*, 29 January 2011, p. 9, viewed 16 May 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F517114%22>
 87. Webb and Burrows, op. cit., p. 24.
 88. Schloenhardt, 2003, op. cit., p. 158.

China to Australia may be significantly higher than those for passage from Indonesia to Australia, the low cost of the operations themselves and the number of people transported this way may mean the profits for organisers of the Indonesia to Australia route are high. In a paper on smuggling by sea, the UNODC states:

The logistical simplicity of migrant smuggling by sea can mean significant profits for smugglers involved. Even at the low-cost end of sea smuggling market, low risk of detection for smugglers, combined with a high number of people who can be smuggled at once, and the lack of need for falsified or fraudulent documents, means that profits are relatively high.⁸⁹

This appears to hold true for people smuggling ventures operating to Australia, where the number of people smuggled on a single boat is regularly 100 or more and payments to crew represent only a small fraction of the fees charged.⁹⁰ Examples of crew payments from some recent cases involving smuggling by boat from Indonesia include:

- the equivalent of approximately \$220 to a crew member for a boat carrying 53 passengers, where the seven passengers who gave evidence stated that they had paid \$8000–10 000 to organisers in Iraq or Iran and Indonesia
- IDR 5 million each (equivalent to approximately \$500) to two crew members for a boat carrying 36 passengers and
- IDR 1–3.5 million (equivalent to approximately \$100–350) to three crew members for a boat carrying 50 passengers.⁹¹

The cost of the vessels used for journeys from Indonesia also appears to be much lower. A case of covert smuggling from Hong Kong to Australia in 1999 involved two vessels—a freighter to transport passengers from Hong Kong to Australian waters, and a second to transport them from the freighter to shore. The cost of the freighter is not mentioned in the relevant judgment, but the second vessel was apparently large, powerful and fitted with sophisticated navigational equipment, and was purchased for \$40 000.⁹² In contrast, while not citing specific costs, when sentencing Mr Al Jenabi for

89. UNODC, *Smuggling of migrants by sea*, op. cit., p. 36.

90. Media releases available on the website of the Minister for Home Affairs indicate that between 1 January and 30 June 2012, 15 of the 61 suspected irregular entry vessels intercepted in Australian waters carried between 100 and 175 people each (excluding crew where a separate figure was available). A boat carrying 211 people arrived on 9 August 2012: J Clare (Minister for Home Affairs), 'Media releases', Minister for Home Affairs and Minister for Justice website, viewed 4 July 2012, <http://www.ministerhomeaffairs.gov.au/Mediareleases/Pages/default.aspx>

91. *R v Ambo* [2011] NSWDC 182 (25 November 2011) at [10], viewed 19 October 2012, <http://www.austlii.edu.au/au/cases/nsw/NSWDC/2011/182.html>; *R v Mahendra* [2011] NTSC 57 (29 July 2011) at [4]–[5], viewed 19 October 2012, <http://www.austlii.edu.au/au/cases/nt/NTSC/2011/57.html>; *Bahar v R* [2011] WASCA 249 (15 November 2011) at [6]–[13], viewed 19 October 2012, <http://decisions.justice.wa.gov.au/Supreme/supdcsn.nsf/PDFJudgments-WebVw/2011WASCA0249/%24FILE/2011WASCA0249.pdf>

92. *R v Chen* (Unreported, District Court of New South Wales, McGuire J, 21 January 2000).

smuggling people from Indonesia, Mildren J stated that the vessels used were 'wooden fishing boats of small value, obviously chosen for their cheapness and expendability'.⁹³

Typologies of people smuggling roles

The UNODC has developed a typology that outlines the various roles involved in the people smuggling process, based on a number of such typologies developed by researchers.⁹⁴ In setting out the typology, the UNODC recognised that there may be a range of actors performing a range of roles, and emphasised that the typology does not imply that people smuggling networks conform to a particular structure. Small scale operators may perform most or all roles themselves, while there would be more division of labour in larger smuggling groups.⁹⁵ The following is a brief summary of the UNODC's typology.

- The **coordinator or organiser** has overall responsibility for a smuggling operation, and may direct other participants. A coordinator may organise a full smuggling operation alone, or work as part of a chain with other coordinators.
- **Recruiters** are responsible for promoting smuggling services and establishing links between smugglers and those wishing to be smuggled, and may also collect initial transportation fees. Recruiters are generally not affiliated with a particular smuggler.
- **Transporters or guides** carry out the operational aspects of people smuggling by guiding irregular migrants and asylum seekers en route and accompanying them across borders, using their local knowledge. Irregular migrants and asylum seekers may be handed from one guide to another for different stages of their journey. Guides may be affiliated with a larger network or provide services on a contract basis.
- **Spotters, drivers, messengers and enforcers** perform ad hoc jobs such as providing information about police or border checks or keeping migrants under control during an operation.
- **Service providers and other suppliers** provide services to a range of smugglers on a contract basis and are paid a share of the profits for their role in the smuggling process. For example, they may provide a means of transportation, accommodation for irregular migrants and asylum seekers en route, false identification or travel documents, or money transfer services.
- **Others** involved in people smuggling may include corrupt public officials who accept bribes for facilitating the process and those who knowingly perform legal services that nonetheless assist

93. *R v Al Jenabi*, op. cit.

94. The UNODC credits the typology developed by Schloenhardt as being one of the most influential. Schloenhardt's more detailed typology is outlined in Schloenhardt, 2003, op. cit., pp. 121–124.

95. UNODC, *Smuggling of migrants: a global review*, op. cit., pp. 69–71.

people smugglers (for example, a taxi driver who transports irregular migrants or asylum seekers for a normal fee).⁹⁶

Much of the published research and commentary on people smuggling refers generically to migrant smugglers or people smugglers rather than distinguishing between the different roles elaborated above. These generic terms have been retained where it was not clear to the author which role/roles references were intended to cover.

Attempts to elaborate models of people smuggling

For years, attempts have been made to develop models to explain organised crime. These have included concepts based on the perpetrator or types of offences, theories that define organised crime by the association of offenders and the division of labour among them and, most recently, economic theories.⁹⁷ Economic approaches to organised crime take as their starting point that the same rules that apply to legitimate businesses—for instance those concerning supply, demand, return on investment and maximising economic gain—apply equally to illegal activity. Current international and domestic approaches to countering organised crime, particularly those relating to confiscation of criminal assets and preventing money laundering, are premised on this economic model. These measures target profits in order to remove the incentive to engage in organised crime and aim to prevent funds derived from organised crime from being reinvested in further criminal activity or being disguised as legitimate funds.⁹⁸

Viewing people smuggling through the lens of an economic theory of organised crime, it can be argued that the activity is an attractive and successful illegal market principally because:

- the number of people in need of asylum is high, and the demand for international migration for economic or other reasons is growing
- the restrictions on authorised entry imposed by developed countries mean that demand outstrips the legal supply, creating the demand for alternative, illegal or irregular means of migration and

96. Some typologies also include money launderers or money laundering as an additional role or function. See for example UNODC, 'Organized crime involvement', op. cit., p. 47 and Schloenhardt, 2003, op. cit., p. 121–4.

97. Schloenhardt, 2003, op. cit., pp. 93–7 and 100–112.

98. For example, the economic approach underpins the Financial Action Task Force's International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, provisions in a range of treaties including the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* and related domestic laws such as the *Proceeds of Crime Act 2002* and the money laundering offences in the *Criminal Code Act 1995*. It is also evident in the general approach to combating organised crime domestically, for example: Australian Government, *Commonwealth organised crime strategic framework: overview*, Commonwealth of Australia, 2009, and internationally, for example: UNODC, *The globalization of crime: a transnational organized crime threat assessment*, UNODC, Vienna, 2010.

- the risks of detection and arrest attached to people smuggling are relatively low compared to other forms of organised crime.⁹⁹

The three models of people smuggling outlined below each draw to some extent on economic analyses of the activity in order to explain how and why it is carried out.

Salt and Stein: Migration as a business (1997)

People smuggling was first conceptualised as a migration business by researchers working at the Migration Research Unit at University College London during the 1990s.¹⁰⁰ Salt and Stein looked at international immigration as a global business with legitimate and illegitimate sides, and attempted to formulate a model that explained the structure and operation of the illegitimate side. The model presents people smuggling (and trafficking) as an intermediary system facilitating movement between origin and destination countries. Smugglers and traffickers are conceived as the illegitimate counterparts to intermediaries such as recruitment consultants and travel agencies operating on the legitimate side of the migration business.¹⁰¹

The researchers looked at people smuggling in terms of inputs, processes and outputs. The key inputs are irregular migrants and asylum seekers, the final output is insertion into society in the destination country and smugglers link the two by performing a series of roles along routes covering origin, transit and destination countries.¹⁰² They set out three stages of the smuggling process that they see as equally applicable to small and large organisations:

- mobilisation—‘recruitment’ of potential irregular migrants and asylum seekers and organisation of the planned smuggling
- en route—the stage of transporting irregular migrants and asylum seekers, including roles such as couriers, trouble-shooters with local knowledge of border crossings and provision of accommodation and
- insertion and integration—where those smuggled may be assisted with finding accommodation and work.¹⁰³

99. Schloenhardt, 2003, op. cit., pp. 111–13.

100. K Koser, ‘Smashing the people smugglers’ business model’, *The Interpreter*, Lowy Institute for International Policy, 3 November 2011, viewed 14 May 2012, <http://www.lowyinterpreter.org/post/2011/11/03/How-to-smash-the-people-smugglers-business-model.aspx>; UNODC, *Smuggling of migrants: a global review*, op. cit., p. 7.

101. Salt and Stein, op. cit., pp. 467–470. It is worth noting here that there is not always a clear distinction between legal and illegal businesses. For example, some travel agents in Pakistan operate legitimate businesses but are also involved in facilitating people smuggling: K Koser, ‘Why migrant smuggling pays’, *International Migration*, vol. 46, no. 2, 2008, pp. 3–26, viewed 24 October 2012, <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-2435.2008.00442.x/pdf>

102. Salt and Stein, op. cit., p. 477.

103. Ibid. The final stage of the process appears to apply mainly to economic migrants entering covertly.

Salt and Stein suggest that smaller organisations may operate only within part of the system, while larger organisations would look after all stages and may have centralised systems of planning and management in place.¹⁰⁴

Through the development of the model, Salt and Stein were able to identify a number of characteristics of people smuggling as a business, many of which are in common with other forms of criminal enterprise. They found that planning and information gathering were critical to the success of operations. Smuggling organisations take advantage of systemic weaknesses, exploit legislative loopholes and draw on both general information about which countries are easier to enter illegally and specific information about required documentation and what times borders have lower numbers of control staff. They also found that division or dispersal of labour was an important protection, so that mistakes or criminal investigations are likely to expose only small parts of an organisation. The smugglers were very responsive to change and demonstrating greater flexibility, organisation and speed of response than the governments and law enforcement agencies seeking to shut down their operations. Finally, they found that people smugglers were increasingly operating in ways akin to legitimate businesses, such as providing potential 'clients' with brochures advertising the cost of transport to different countries.¹⁰⁵

Neske: Three types of people smuggling (2006)

Neske has identified three types of people smuggling: individual smuggling with a high degree of self-responsibility, visa smuggling as a pure service and pre-organised, stage-to-stage smuggling.¹⁰⁶ In the first type, individuals travel independently for most of their journey, using smugglers only for certain stages, such as border crossings. The second type involves the fraudulent procurement of legitimate visas for irregular migrants who then make the journey to the destination country themselves and, once there, disappear into the community to remain there illegally. It includes instances where someone in the destination country issues invitations for a fictitious business or tourist trip in order for irregular migrants to obtain visas to that country. Both of these types of smuggling are primarily used by people illegally migrating for work, with the second type a safer and therefore more expensive option.¹⁰⁷

In the third type, pre-organised, stage-to-stage smuggling, irregular migrants and asylum seekers are accompanied by smugglers for almost their entire journey. In contrast to the first type, the irregular migrants and asylum seekers themselves do not engage local smugglers along the way. Rather, what Neske called 'stage coordinators', each of whom coordinates a leg of the journey, negotiate with one another as irregular migrants and asylum seekers work their way along the chain. Neske found that the coordinators were usually people of the same ethnic background as those being smuggled, and

104. *Ibid.*, pp. 476–477.

105. *Ibid.*, pp. 477–485.

106. Neske, *op. cit.*, pp. 138–147. Neske also details three sub-types of organised, stage-to-stage smuggling based mainly on differences in the origin of stage coordinators, migrants and their family members, but states that the main principles are valid across these sub-types.

107. *Ibid.*, pp. 138–144.

that they had responsibility for geographical areas. Two aspects were found to characterise the relationships between coordinators and service providers (those to whom particular roles are outsourced, as per the typology detailed earlier in the paper).

Service providers are guided by market actions and motivated only by financial profit, and a different ethnic background or lack of knowledge prevent advancement to a coordinating role. If particular coordinators and service providers cooperate successfully over a period of time the relationship develops into something akin to that between a legitimate business and its regular customers. Neske found that among some groups of service providers there was a single 'service coordinator' who maintained contact with stage coordinators, and that that person would receive a total payment from the stage coordinator for distribution across the various service providers (taking a larger cut for him or herself for the coordinating role).¹⁰⁸

Among the cases examined by Neske there was very little evidence of mafia-style international criminal organisations. However, there was evidence of organisation between stage coordinators pointing towards a 'geographically loose but socially tight' migration network.¹⁰⁹ Neske points to a number of disadvantages associated with large-scale organisations as compared to a network model to explain the absence of a more hierarchical and tightly controlled structure, in particular, the expense involved in carrying out all of the services required over long routes, often covering several thousand kilometres, and the lack of flexibility afforded by such a model. While large organisations need to look after their members even in times of low demand and where changes of route or methods are required, having only a few central decision makers and contracting external providers to perform operational tasks reduces expenses and facilitates adaptability.¹¹⁰

Bilger, Hofmann and Jandl: People smuggling as a transnational service industry (2003)

Based largely on interviews with irregular migrants and asylum seekers who had been smuggled to Austria, and supplemented by a range of other techniques, Bilger and others have conceptualised people smuggling as a transnational service industry that links smugglers with those seeking their services. This conceptualisation arose from the researchers' observations of large numbers of 'suppliers' (smugglers) and 'clients' (irregular migrants and asylum seekers) operating in market-like conditions.¹¹¹ However, they point out that the people smuggling industry cannot be understood as being fully competitive in an economic sense due to a number of peculiarities, the key one being that it is an illegal activity. The illegality of people smuggling is seen to account for the industry's other unusual characteristics, namely the high level of secrecy, the compartmentalisation of different operators and the lack of information made available to irregular migrants and asylum seekers.¹¹²

108. *Ibid.*, pp. 144–147.

109. *Ibid.*, p. 156.

110. *Ibid.*, pp. 144–145.

111. Bilger and others, *op. cit.*, pp. 59–67.

112. *Ibid.*, pp. 64–65.

Bilger and others draw on economic theory relating to market behaviour under imperfect information, and an analogy to the used car industry, to examine the implications of the lack of information available to irregular migrants and asylum seekers for how the people smuggling industry operates. Where both good and bad products of a particular type are available, but buyers are unable to distinguish between the two due to imperfect information (but sellers can, as with used cars), this drives down the price of both good and bad products to the point where sellers of the good product withdraw and only the bad product remains available for a lower price. This market failure can be overcome by sellers of the better product signalling the higher quality of their products to potential buyers in ways that the sellers of poor products of the same type cannot, such as offering warranties.¹¹³

The researchers found that the need to protect information about their business led to people smugglers using a variety of methods to signal their trustworthiness to 'potential clients' (those wishing to migrate outside authorised channels or seek asylum). They used payment systems designed to minimise the risk to clients, such as using intermediaries who passed on parts of the fee only as stages of the journey are completed, offered guaranteed services, whereby further smuggling attempts are free of charge if the first is unsuccessful and built up their reputation and trust.¹¹⁴ As smugglers cannot openly advertise their services in the same way as a legitimate business, they build their reputations on information about their success rate spread by irregular migrant and asylum seeker networks.¹¹⁵

Bilger and others also outlined a number of other features of the people smuggling industry:

- smuggling hubs have become established that allow for collection and regrouping in order for irregular migrants and asylum seekers to be passed on from one organisation to another for the next leg of their journey
- competition generally took place only between those operating out of the same hub or along the same leg of a smuggling route, with cooperation more likely between operators looking after the preceding or subsequent legs
- irregular migrants and asylum seekers were not in direct contact with organisers, but rather with intermediaries
- both small-scale and larger smuggling networks were involved in the people smuggling industry, with small-scale operators tending to look after all aspects of an operation themselves and larger organisations employing a sophisticated division of labour and

113. *Ibid.*, pp. 65–66.

114. *Ibid.*, pp. 66–67 and pp. 83–86.

115. *Ibid.*, pp. 83–86.

- there is a considerable pool of individuals in both source and transit countries willing, due to a lack of other economic opportunities, to take on the role of guides—those who transport or accompany irregular migrants en route and across borders.¹¹⁶

Bilger and others argue that the existence of large numbers of willing guides could be seen as a major structural precondition for the smooth functioning of the people smuggling industry:

It is the guides who run the highest risk of being apprehended, because they are the ones to carry out actual trans-border movements. But since they can be replaced quite easily and their knowledge with regard to the higher organizational levels is fairly limited, their loss does not really have a sustained weakening effect on the organizational or network structure.¹¹⁷

The researchers considered that people smuggling has distinctive features that distinguish it from other transnational criminal activities such as people trafficking or the smuggling of illicit goods. In particular, they point to the importance of reputation and trust in the 'smuggler-client' relationship as a defining characteristic of people smuggling in comparison to other crime types. This is because, unlike people trafficking or smuggling of illicit goods, irregular migrants themselves are the clients—what is being purchased is the transport itself (a service), not the 'goods' being transported.¹¹⁸ This feature may also prove to be a weak point in the system. The importance of reputation in the people smuggling industry means that smugglers must somehow convey to potential 'clients' the high quality and reliability of their service in order to compete with other smugglers operating in the same area or along a particular route. However, the exposure afforded by the revelation of even minimal information puts smugglers at risk of detection by law enforcement.¹¹⁹

Impact of border protection policies on the *modi operandi* of people smugglers

The literature review conducted by the UNODC in 2011 found that while most experts and academics agreed that anti-smuggling policies were legitimate and necessary, the research pointed to some anti-smuggling and border control policies having a range of unintended consequences.¹²⁰ Research into smuggling across the Mexico-US border and from Albania, Morocco and West Africa has found that stricter border controls can result in changes to routes or smuggling methods that pose greater risks to irregular migrants' safety.¹²¹ Increased surveillance can also lead to increasing professionalism among smugglers and the replacement of small-scale networks by larger, more sophisticated networks.¹²² Finally, effective immigration control, by limiting legal migration opportunities and making unauthorised entry more difficult, can increase both the demand for, and

116. *Ibid.*, pp. 64–79.

117. *Ibid.*, p. 79.

118. *Ibid.*, p. 87.

119. *Ibid.*, pp. 86–87.

120. UNODC, *Smuggling of migrants: a global review*, op. cit., pp. 86–88.

121. *Ibid.*, p. 68, p. 79 and pp. 86–88.

122. UNODC, *Smuggling of migrants: a global review*, op. cit., p. 87.

costs of, smuggling services.¹²³ The same measures have also contributed in some cases to the establishment of an alternative 'low-cost segment' of people smuggling where operators knowingly offer cheaper but riskier services that endanger the health and lives of those who take up such services.¹²⁴ This is not to say that these and other anti-smuggling and border control policies did not also achieve their stated objective, at least in the short term.¹²⁵ It is also not possible to know what could otherwise have occurred had governments taken different actions, or not intervened at all. However, these findings highlight the need for anti-smuggling measures to be both carefully crafted and regularly monitored to avoid perverse outcomes that can make the problem more difficult to address in the longer term.

Not one business model, but many

Having examined different aspects of people smuggling as a business, including three of the key models developed by researchers, it is clear that there is no single 'people smugglers' business model' that explains how people smuggling operates. However, certain themes do emerge from the research:

- there are a variety of business models employed by organisers based on their particular circumstances and the services sought by irregular migrants and asylum seekers
- while there are a variety of organisational structures adopted by people smuggling groups, fluid networks appear to be more widespread than hierarchical organisations
- people smuggling is primarily motivated by profit¹²⁶
- organisers and people smuggling groups are flexible, adaptable and resilient and
- while some characteristics distinguish people smuggling from other markets, it does operate according to the usual market forces and adopt practices common in legitimate businesses, such as advertising their services to potential 'clients'.

These themes point to the fact that people smuggling shares many characteristics with other types of organised crime and crime in general, and also with legitimate markets. This indicates that economic analyses of crime may prove useful in further examination of the problem, although they

123. Ibid., p. 88.

124. Heckmann, op. cit., p. 7.

125. For example, the authors of the research referred to on smuggling across the Mexico—US border concluded that the US policies they examined succeeded in making irregular migration from Mexico to the US more difficult: RT Guerette and RV Clarke, 'Border enforcement, organized crime, and deaths of smuggled migrants on the United States – Mexico border' *European Journal on Criminal Policy and Research*, vol. 11, no. 2, 2005, pp. 159–175, viewed 21 January 2013, <http://search.proquest.com/docview/222824164/13BC5AE2F4B6607F532/3?accountid=42418>

126. Those involved in people smuggling sometimes claim to have more altruistic motives. Even where that is the case, they have usually profited from their involvement, which detracts from any claims to be 'modern-day Oskar Schindlers'. This issue is examined further in the section on Australian prosecutions of organisers and facilitators below.

should perhaps be applied with a certain degree of caution due to peculiarities of the people smuggling market. Beyond the usual limitations of standard economic theory to predict human behaviour¹²⁷, the choices made by asylum seekers need to be understood in the context of the particular circumstances they face and the constraints those circumstances impose.¹²⁸ For example, Koser, an expert on forced migration, has pointed out that people fleeing for their lives are more concerned about reaching safety than finding the best value for money.¹²⁹

Further, while people smuggling may be usefully examined as a market, it should not be surprising to find that there is not a particular business model adopted by people smuggling groups. Legal markets such as tourism and telecommunications accommodate a variety of businesses that operate according to different business models and offer an array of services. The services offered by those businesses differ according to price, level or quality of service and a range of other parameters in order to meet the varying requirements of their customers. Similarly, the people smuggling market accommodates a range of groups that are organised in a variety of ways and offer different services. As Koser explains:

Smugglers will deliver a service that suits the depth of your pocket. If you cannot afford to go to the USA, they will take you to Australia. If you cannot afford to fly, which is the safest way of travelling, they will make it cheaper and will do a combination of flight and boat. This is a business. You are a customer and they will find a way to get your money.¹³⁰

So, do the same conclusions apply to the Australian context? And, if they do, where does this leave the mission to break the people smugglers' business model? These are the questions to which the final sections of this paper are addressed.

Application to the Australian context

As noted above, most research on people smuggling has focused on Western Europe and North America. While there is a body of literature on people smuggling in the Asia Pacific region, including to Australia, it is limited and some of it dates as far back as 2000.¹³¹ There have been hundreds of people convicted in Australia of people smuggling offences, but the vast majority have been crew members of vessels used for smuggling (who would be categorised as transporters or guides in the

127. See for example D Ariely, 'The end of rational economics', *Harvard Business Review*, July–August 2009, pp. 78–84.

128. H Crawley, *Chance or choice? Understanding why asylum seekers come to the UK*, Refugee Council, January 2010, pp. 20–21, viewed 22 January 2013, <http://www.refugeecouncil.org.uk/Resources/Refugee%20Council/downloads/rcchance.pdf>; A Jakubowicz, 'Cognitive dissonance and sunk cost: the psychology of seeking asylum', *The Conversation*, 28 November 2012, viewed 21 January 2013, <http://theconversation.edu.au/cognitive-dissonance-and-sunk-cost-the-psychology-of-seeking-asylum-10994>

129. Koser, 2011, op. cit. While not all people who use the services of people smugglers are in such a situation, a significant portion of those travelling to Australia are. See, for example, J Phillips, op. cit.

130. Koser, 2009, op. cit., p. 12.

131. For example, the most comprehensive work, Schloenhardt's *Migrant smuggling: illegal immigration and organised crime in Australia and the Asia Pacific region*, dates back to 2003.

typology outlined earlier in the paper).¹³² A much smaller number of organisers (coordinators or organisers according to the typology) and facilitators (primarily recruiters) have been convicted, and many of them for offending that occurred in 1999 and the early 2000s. In addition, non-publication orders have been made in relation to several of the more recent cases. This means that information drawn from prosecutions of organisers and facilitators is likewise somewhat dated. However, the publicly available information, some of which has informed the preceding sections of this paper, indicates that some of the characteristics of people smuggling identified above also apply to people smuggling to Australia.

Australian prosecutions of organisers and facilitators

Recent changes to the prosecutions database of the Commonwealth Director of Public Prosecutions (CDPP) have allowed the agency to specifically identify people smuggling organisers and facilitators (as distinct from captains and crew of boats) in its records. All organisers and facilitators prosecuted since 2008 are identified but earlier records may be incomplete.¹³³ As at 2 October 2012, the CDPP's database recorded 14 organisers and 12 facilitators as having been convicted of people smuggling, some on multiple counts.¹³⁴ The CDPP made judgments relating to 18 individuals available to the author for analysis (including one organiser and one facilitator not identified in its database). Of the remaining cases, judgments relating to five individuals are the subject of non-publication orders and judgments relating to the remaining five individuals were unavailable.¹³⁵ Unfortunately, the non-publication orders relate to the most recent convictions, which took place between August 2010 and September 2012. The judgments examined relate to offending that took place between 1998 and 2003 for which convictions were obtained between 1999 and 2008. All of the judgments concern maritime people smuggling.

Circumstances

Convictions of three individuals related to two boats that arrived from Vietnam where the court accepted that there was no profit motive. Had Australia enacted offences in line with the UN

132. As at 12 December 2012, 317 people had been convicted of people smuggling offences for smuggling by boat since September 2008: Australian Customs and Border Protection Service, *Maritime people smuggling statistics*, by email, 14 December 2012. The number of crew members facing prosecution can be expected to drop significantly following a direction made by the then Attorney-General under subsection 8(1) of the *Director of Public Prosecutions Act 1983* on 27 August 2012. The direction provides that the Commonwealth Director of Public Prosecutions must not institute, carry on or continue to carry on a *prosecution* for an offence under section 233C of the *Migration Act 1958* against a crew member unless

- the person has committed a repeat offence or may be convicted of a repeat offence in the same proceedings
- the person's role in the people smuggling venture extended beyond that of a crew member or
- a death occurred in relation to the people smuggling venture:

Attorney-General's Department, *Director of Public Prosecutions — Attorney-General's Direction 2012*, 27 August 2012, Commonwealth of Australia gazette, no. GN 35, 5 September 2012, pp. 2318–9, viewed 17 September 2012, [http://gazettes.ag.gov.au/portal/govgazonline.nsf/9D1E1C89BC410DE5CA257A7000018549/\\$file/GN%2035.pdf](http://gazettes.ag.gov.au/portal/govgazonline.nsf/9D1E1C89BC410DE5CA257A7000018549/$file/GN%2035.pdf)

133. CDPP, email, 23 October 2012.

134. CDPP, List of PSM organisers as at 02 10 2012 (with names removed), by email, 23 October 2012.

135. CDPP, email, op. cit.

protocol, no convictions would have resulted. Mr Nguyen and Mr Tran used Mr Tran's fishing boat to take them, their families and other relatives and friends to Australia in 2003 in order to seek asylum after being tipped off that police were looking into their activities as part of an anti-government group.¹³⁶ Mr Dinh and another man brought themselves and 29 others to Australia by boat in 2001, apparently to seek asylum, after the group raised the money between them to purchase a boat and supplies.¹³⁷ As it was accepted in these cases that those convicted did not act for financial or other material gain, they have not been analysed further.

Of the 15 remaining individuals convicted, seven seem to have been asylum seekers themselves at some stage, and most were drawn into people smuggling while in Indonesia or Malaysia:

- Mr Al Jenabi (an organiser) and Mr Kadem (a facilitator) were both drawn into people smuggling in Indonesia while en route to Australia from Iran, and both at least initially in order to get themselves and their families to Australia
- Mr Daoed (an organiser) became involved in people smuggling in Indonesia after travelling there from Iraq—the judge accepted that it was not until he found himself in Indonesia and facing a particular set of circumstances that he turned to people smuggling
- Mr Asfoor (an organiser) and his brother, born to Palestinian refugee parents, became involved in people smuggling in Indonesia after an unsuccessful attempt to travel to Australia by boat independently¹³⁸
- Mr Al-Hashimy (a facilitator) became involved in people smuggling in Malaysia while en route to Australia from Iran—he and his family came to Australia on the boat to which his conviction relates and the rest of his family were granted protection visas
- Mr Seriban (an organiser), a Turkish Kurd, arrived in Australia on a boat from Indonesia in 1995 and was granted citizenship in 1998 and
- Mr Wah (an organiser) came to Australia from China with his family in 1980 'apparently to escape Communist China' and was granted citizenship in 1997.¹³⁹

136. *R v Nguyen, Tran and Lai* (Unreported, District Court of Western Australia, Yeats DCJ, transcript, 5–6 May 2004 The CDPP advised in an email of 19 October 2012 that Mr Lai was acquitted.

137. *R v Dinh and Lam* (Unreported, District Court of Western Australia, O'Sullivan DCJ, 28 February 2003). The CDPP advised in an email of 19 October 2012 that the prosecution against Mr Lam was discontinued.

138. Mr Asfoor had also applied to Australia and New Zealand to be accepted as a refugee. Having not received a response after some time, he flew to Perth on a false passport and sought to claim asylum on entry. As a decision was still pending on his application, he was returned to Jakarta: *R v Asfoor*, op. cit.

139. *R v Al Jenabi*, op. cit.; *R v Kadem* (Unreported, District Court of Western Australia, Healy DCJ, 10 October 2001); *R v Daoed* (Unreported, Supreme Court of Queensland, McMurdo J, 14 July 2005); *R v Asfoor*, op. cit.; *R v Al-Hashimy* (Unreported, District Court of Western Australia, Jenkins DCJ, 1 April 2003); *R v Seriban* (Unreported, Supreme Court of the Northern Territory, Angel A/CJ, 27 January 2006); *R v Wah* (Unreported, District Court of New South Wales, Hock J, 6 July 2001).

It seems possible that if better or more timely pathways to protection had existed for Mr Al Jenabi, Mr Kadem, Mr Daoed, Mr Asfoor and Mr Al-Hashimy, they may not have become involved in people smuggling.¹⁴⁰ This does not excuse their subsequent conduct—for example, Mr Asfoor was convicted of seven counts of people smuggling for conduct engaged in over the course of two years and the judgment indicates he failed to take up opportunities to travel to Australia during that time.¹⁴¹ However it does highlight one of the complexities facing governments trying to put an end to people smuggling. Other cases are quite different. The judge who sentenced Mr Ayoub (a facilitator) following his conviction on two counts of smuggling five or more people to Australia stated that he had clearly travelled from Pakistan to Indonesia with the specific intention of setting up a people smuggling operation there.¹⁴²

Routes

The routes used are either the Middle East and South Asia to Australia via South East Asia or directly from China and Hong Kong to Australia. Where people were smuggled from the Middle East, the people convicted were not necessarily involved in organising the whole journey, but rather one of the legs. Some of them had contacts in other countries organising the leg before and/or after the one they looked after.

- The passengers on the boats that Mr Al Jenabi organised generally flew into Malaysia on false passports obtained in the Middle East. Some of them had Mr Jenabi's details before leaving the Middle East, but it was not suggested that he organised their transport to Malaysia or Indonesia. They were generally met at the airport and taken to a flat or hotel where they stayed until they had visas to enter Indonesia. They then flew to Jakarta, where they were met by associates of Mr Al Jenabi and taken to hotels before being flown to Kupang or Maumere or Flores Island or taken by train to Surabaya, from where they boarded boats to Australia.¹⁴³
- The two passengers who gave evidence in the prosecution of Mr Chaudhry (an organiser) were originally from Afghanistan. They travelled to Pakistan, where they met with Mr Chaudhry, who organised their travel from Pakistan to Indonesia via Thailand, Hong Kong and Singapore on (presumably false) documentation he arranged for them. Mr Chaudhry gave them instructions on what to do on arrival in Indonesia, where they were met by an associate of his brother, Mr Ayoub, who operated from Indonesia. They stayed in hotels for some time, and were then transported by bus and/or boat to the coast, where they boarded boats to Christmas Island.¹⁴⁴
- The man that Mr Al-Hashimy helped smuggle to Australia made his own way from Iraq to Iran, where he met with people who arranged a false passport for him and a flight to Malaysia. He was

140. Asylum seekers becoming involved in people smuggling en route as a way to finance their onward journey was also reported by irregular migrants and asylum seekers interviewed in Austria: Bilger and others, *op. cit.*, p. 77.

141. *R v Asfoor*, *op. cit.*; *R v Asfoor* (Unreported, District Court of Western Australia, Martino DCJ, 31 March 2006). Mr Asfoor was convicted on 12 counts in 2004. A retrial resulted in conviction on seven counts in 2006.

142. *R v Ayoub* (Unreported, District Court of Western Australia, Nisbet J, 16 December 2004).

143. *R v Al Jenabi*, *op. cit.*

144. *R v Chaudhry*, *op. cit.*

told that someone (Mr Al-Hashimy, under an alias) would meet him there and organise the rest of his journey to Australia. Mr Al-Hashimy met the man at Kuala Lumpur airport and took him to some villas where other people were also staying. Mr Al-Hashimy told the man the next day that he would go to Indonesia by boat and took payment of US\$1000. He told the man to contact Mr Ayoub once he reached Indonesia so that he could be sent to Australia, and organised a taxi to take the man to the departure point, where he boarded the boat. The man did contact Mr Ayoub once in Indonesia, and was smuggled to Australia by boat.¹⁴⁵

- Mr Chen (an organiser) was the main Australian contact for a venture involving the covert passage of 69 passengers from Hong Kong to Australia organised by a criminal group based in Hong Kong or China. The passengers were hidden in living quarters between the steel hull of a freighter and its internal bulwarks. Mr Chen, along with a Hong-Kong based associate, purchased a large vessel that was to be used to transport the passengers from the Hong Kong freighter to Port Hacking, on the coast of New South Wales.¹⁴⁶

Overt and covert forms of smuggling

The judgments relate to both overt and covert forms of smuggling to Australia. Six individuals were convicted with respect to four instances of covert smuggling from China and Hong Kong from 1999–2000 using different methods. For example, Mr Chen and an associate were both convicted for their part in the case outlined above. In addition to organising for the passengers to be transported to shore, they had organised vans, drivers and accommodation so that the passengers could be hidden once in Australia. Australian authorities had earlier located a large number of false identity documents in the luggage of one of Mr Chen's Hong Kong associates when he and several others visited Australia during the planning stage. This is what led them to place Mr Chen under surveillance and uncover the venture.¹⁴⁷

In another case, Mr Lin (a facilitator), the third mate on a commercial ship travelling from the Fujian province of China to Sydney, was approached by a man in China who asked him to take 'a few friends' on the journey. Mr Lin was offered US\$3000 for each person he took, to be paid on his return to China. Mr Lin met the man at a wharf before the boat departed, and hid three people in the cargo bay of the ship. He was told to call the man when he arrived in Australia for instructions on what to do next. Instead, the ship's captain discovered the hidden passengers and alerted Australian authorities.¹⁴⁸

Eleven individuals were convicted for people smuggling involving overt boat arrivals from Indonesia, though Mr Al-Hashimy and Mr Chaudhry were convicted for their involvement in organising or

145. *R v Al-Hashimy*, op. cit.

146. *R v Chen*, op. cit.; *R v Chen* [2000] NSWCCA 267 at [5], 14 July 2000, viewed 22 October 2012, <http://www.austlii.edu.au/au/cases/nsw/NSWCCA/2000/267.html>

147. *R v Chen*, 21 January 2000, op. cit.

148. *R v Lin* (Unreported, District Court of New South Wales, Viney J, 1 February 2000).

facilitating earlier legs in the overall journey of asylum seekers to Australia that involved covert methods.

Other aspects of methodology

Passengers on the boats organised by Mr Asfoor and Mr Chaudhry were moved around to different hotels and houses while waiting to depart Indonesia so as to avoid being detected by authorities.¹⁴⁹ Payment of bribes to officials in Indonesia is mentioned in four of the judgments. Bribes were paid to immigration officials, police and Navy officers in order to facilitate the entry, stay or exit from Indonesia of passengers smuggled to Australia by Mr Al Jenabi. The bribes usually came out of the smuggling fee, but were sometimes paid by the passengers themselves, such as those paid to immigration officials at Jakarta airport.¹⁵⁰ Local authorities who detected one of the boats organised by Asfoor were paid to 'leave and go away'.¹⁵¹ US\$750 of the US\$2000 paid in Indonesia by one of the men smuggled by Mr Chaudhry was paid to an immigration official on arrival at Jakarta airport.¹⁵²

Payments

Payment methods are not outlined in all of the judgments, but the details that are available indicate variability. Passengers on the boat organised by Mr Olong (an organiser) paid US\$1700–3500 to travel from Indonesia to Australia, with some family groups negotiating a group fee. Most passengers were required to pay the full amount before departure, but at least one person negotiated to pay a deposit up front and the balance later.¹⁵³ Passengers on the boats from Indonesia to Australia organised by Mr Asfoor were required to pay the full fee before departure.¹⁵⁴ The men smuggled from Pakistan to Indonesia by Mr Chaudhry paid an all-inclusive fee for the complete journey to Australia. US\$2000 of the total (US\$6000 for one and US\$7000 for the other) was paid on arrival in Indonesia. At least for one of the men, the remaining amount was left with a friend to be paid upon his arrival in Australia.¹⁵⁵

Motivations

The motivations behind offenders' involvement in people smuggling are considered in the judgments. The profit motive featured strongly in covert smuggling from China and Hong Kong to Australia. For example, MGuire J stated bluntly that Mr Chen's motivation was 'greed, pure and simple'.¹⁵⁶ The picture is more mixed when it comes to people convicted of organising or facilitating boats of asylum seekers through South East Asia. In *R v Al-Hashimy*, Jenkins DCJ concluded that

149. *R v Asfoor*, 2004, op. cit.; *R v Chaudhry*, op. cit.

150. *R v Al Jenabi*, op. cit.

151. *R v Asfoor*, 2004, op. cit.

152. *R v Chaudhry*, op. cit.

153. *R v Olong*, op. cit.

154. *R v Asfoor*, 2004, op. cit.

155. *R v Chaudhry*, op. cit.

156. *R v Chen*, 21 January 2000, op. cit.

Mr Al-Hashimy acted for personal gain, stating that he was not satisfied that there was any altruistic or humanitarian motive.¹⁵⁷ In *R v Chaudhry*, *R v Asfoor* and *R v Seriban*, the judges recognised that the offenders may have held a degree of genuine concern for those they were involved in smuggling, but concluded that their primary motivations were financial.¹⁵⁸ Of Mr Seriban, Angel A/CJ stated:

It is apparent that the present offending involved four relatives of the prisoner and that his motives in part were to assist family. Nonetheless, it is also clear that his work over an extended period in Indonesia was motivated by profit rather than humanitarian reasons. His misleading some of the passengers as to their future and putting them on unsafe boats is inconsistent with a humanitarian motive.¹⁵⁹

In *R v Al Jenabi*, Mildren J concluded that the primary motive of the man sometimes referred to as the 'Oskar Schindler of Asia' was to get members of his family to Australia. However, he also pointed to the fact that Mr Al Jenabi nonetheless profited financially from his involvement, and that he travelled to Thailand to arrange for the smuggling of Iraqis and Iranians to Australia after the last of his family members had arrived in Australia. He concluded that Mr Al Jenabi was also motivated by profit, stating that the two motivations were not necessarily inconsistent.¹⁶⁰

When considering the motivations and culpability of convicted organisers and facilitators, judges also took account of on-board conditions. Little detail is provided with respect to the Hong Kong and Chinese boats, but information is provided for many of the voyages from Indonesia. When Australian authorities boarded the boat Mr Olong was involved in organising, they were faced with 'an overpowering stench, rubbish littering the decks, stifling heat and numerous people who were ill', though at least the vessel was seaworthy and there was adequate food and water on board.¹⁶¹ Mr Seriban was convicted for his role in organising four vessels, all of which had to be pumped frequently to prevent them sinking. None of the vessels had toilet facilities, three lacked life jackets, two ran out of drinking water during the journey (one on the second day of a three to four day journey) and one had no food on board. Passengers who travelled on one of the vessels were abandoned on a beach at Ashmore Island with no food or water.¹⁶² Around 350–400 passengers had initially boarded one of the vessels Mr Ayoub facilitated, the number being reduced to 198 only after the boat began to sink a short way from shore.¹⁶³ The conditions on board the SIEV X (SIEV stands for suspected irregular entry vessel), which capsized en route to Australia resulting in hundreds of people drowning, were so crowded that some of the passengers who initially boarded asked to leave and were able to return to Indonesia.¹⁶⁴ As members of the judiciary have observed, subjecting

157. *R v Al-Hashimy*, op. cit.

158. *R v Chaudhry*, op. cit.; *R v Asfoor*, 2004, op. cit.; *R v Seriban*, op. cit.

159. *R v Seriban*, op. cit.

160. *R v Al Jenabi*, op. cit.

161. *R v Olong*, op. cit.

162. *R v Seriban*, op. cit.

163. *R v Ayoub*, op. cit.

164. *R v Daoed*, op. cit.

people to these types of conditions is not consistent with a humanitarian motive or concern for the welfare of passengers.¹⁶⁵

The following sections draw together the information from these judgments with publicly available research on people smuggling to Australia to examine some of the parallels to the findings from international research.

Diversity

The diversity that exists among those involved in people smuggling globally also seems to exist at the local level, as does the tendency towards less connected, more fluid networks. In a recent report, the ACC stated:

Reporting indicates a continued threat to Australia from organised people smuggling and, to a lesser extent, independent ventures. Increasing numbers of irregular maritime arrivals are dealing with multiple agents from different supply chains to stage their travel to Australia. This indicates that organisers may be reducing the scope of their operations to focus on moving irregular maritime arrivals between key staging points, rather than guaranteeing their delivery from source countries to Australia.¹⁶⁶

The organisational structures employed by individuals involved in people smuggling are not outlined in detail in the judgments examined for this paper, which generally focus on the involvement of the individual facing conviction. However, the judgments provide some indication of the diversity that exists in the level of organisation and sophistication and the methods that have been used. Between them, Mr Chaudhry and Mr Ayoub provided an end-to-end service from Pakistan and Australia that involved the organisation of documentation, all transport including several international flights, and accommodation, and which appears to have been facilitated by the involvement of corrupt immigration officials.¹⁶⁷ Deane DCJ stated:

This is the type of operation which by its very nature cannot be conducted by one individual or even perhaps two or three people. Its extent both geographically and in terms of the number of persons who need to be dispatched to other locations clearly requires the efforts of a number of people performing different roles and a number of people coordinating their roles.¹⁶⁸

Others, such as Mr Olong and Mr Asfoor, looked after just the final Indonesia to Australia leg.¹⁶⁹ However, some people were apparently given Mr Asfoor's name and, on some occasions, his contact details, by organisers they dealt with earlier in their journeys from their countries of origin.¹⁷⁰ Mr Al-Hashimy looked after just the Malaysia to Indonesia leg, but the man he was convicted of

165. For example, *R v Asfoor*, 2004, op. cit.; *R v Chaudhry*, op. cit.

166. ACC, *Organised crime in Australia*, op. cit., p. 65. The report looked only at irregular maritime arrivals, not people smuggling more broadly.

167. *R v Chaudhry*, op. cit.; *R v Ayoub*, op. cit.

168. *R v Chaudhry*, op. cit.

169. *R v Olong*, op. cit.; *R v Asfoor*, 2004, op. cit.

170. *R v Asfoor*, 2004, op. cit.

smuggling was 'handed on' to him from a smuggler operating in Iran.¹⁷¹ These cases match the geographically loose but socially tight networks identified by Neske in his research on smuggling into Germany. The Chinese ventures operated using completely different methods, though there have been no recent detections of similar ventures.

The various differences among the available cases make it clear that there is not a single business model that underpins people smuggling to Australia, but a variety of them. The allegations made in a recent *Four Corners* program, if true, add further weight to this conclusion. The program alleged that people smugglers previously operating overseas have established themselves in Australia to take advantage of those who have been granted refugee status in Australia and are now willing to pay to have family members smuggled here from their home countries.¹⁷² Smugglers providing services through family members living in Australia would likely be operating under a different business model to those dealing directly with people wishing to be smuggled in source and transit countries. The model would need to be adapted to a smaller and probably less competitive market dealing with potential 'customers' in a better position to make an informed decision about engaging the services of a smuggler, with different methods used to identify and communicate with potential customers.

The existence of this development appears to have prompted one of the changes made to people smuggling legislation in 2010. The *Anti-People Smuggling and Other Measures Act 2010* introduced new offences for providing material support or resources to a person or organisation, reckless as to whether it will aid the person, organisation or anyone else to engage in people smuggling.¹⁷³ The offences are punishable by up to ten years imprisonment. In his second reading speech, the then Attorney-General listed a range of possible support, including financial services, equipment or transportation, to which the offence was intended to apply. However, he also made clear its application to people in Australia paying for relatives to be smuggled here:

The government is determined to reinforce the message that people should use authorised migration processes in seeking asylum and migrating to Australia, and in supporting others to come here. People in Australia should not support the life-threatening business of people smuggling by providing finance or other assistance.¹⁷⁴

Adaptability and resilience

The adaptability exhibited by people smugglers internationally has also been demonstrated by organisers and networks operating from Indonesia to Australia. For example, harsher penalties for people smuggling offences in Australia have led to the use of escort vessels so that the captain and

171. *R v Al-Hashimy*, op. cit.

172. Geoff Thomson, 'Smugglers' Paradise – Australia', *Four Corners*, transcript, ABC TV, 4 June 2012, viewed 6 June 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22emms%2Femms%2F249933%22>

173. The offences are at section 73.3A of the Criminal Code and section 233D of the Migration Act.

174. R McClelland, 'Second reading speech: Anti-People Smuggling and Other Measures Bill 2010', House of Representatives, *Debates*, 24 February 2010, pp. 1645–1647, viewed 23 October 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2010-02-24%2F0009%22>

crew members bringing people to Australia by boat, and in some cases the organisers of the boats, can be removed before the main vessel enters Australian waters.¹⁷⁵ For example, an organiser of significant interest to the AFP, known as 'Captain Bram', was on a boat when it crossed into the path of an Indonesian naval vessel in 2009. He had reportedly turned the boat back towards Indonesia after missing a planned rendezvous with a smaller vessel that had intended to pick him up and return him to Indonesia.¹⁷⁶

A joint Attorney-General's Department and AFP submission to a Senate inquiry indicates that Australia's policies on dealing with minors are known to organisers, who seek to exploit them:

A person's age affects where they are detained in immigration detention and criminal custody, whether they are removed to their country of origin, how they may be prosecuted, and what sentence they should receive. Some crew have indicated an awareness of these issues, for example advising DIAC or the AFP that they were told by the organisers of the venture to claim that they were minors and that they would then be returned to Indonesia, and there has been an increase in the number of people smuggling crew who claim to be minors.¹⁷⁷

A media release issued by the then Attorney-General on 18 June 2012 states that since 8 December 2011, 79 people smuggling crew have been removed to their country of origin because they were 'assessed to be a minor; given the benefit of the doubt by law enforcement authorities; or found by a court to be a minor'.¹⁷⁸

Peter Munro, a migration specialist who has also worked in law enforcement, has highlighted the resilience that Indonesian-based networks smuggling people into Australia have shown to interventions of the Australian and Indonesian authorities. He argues that while the Howard Government's 'Pacific Solution' halted the flow of irregular maritime arrivals in Australia, it did not dismantle the people smuggling infrastructure in Indonesia. Instead, the networks remained dormant for a number of years but were able to quickly resume operation from 2008 when conditions became more favourable, arguably due to the Rudd Government's dismantling of the

175. McInerney, *op. cit.*; *R v Asfoor*, 2004, *op. cit.*; *R v Mahendra*, *op. cit.* at [4]; L Murdoch, 'Smugglers profit, poor pay the price', *The Age*, 5 April 2010, p. 1, viewed 15 October 2012,

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2FM3CW6%22>

176. Murdoch, *op. cit.*

177. Attorney-General's Department and Australian Federal Police, Submission to Senate Standing Committee on Legal and Constitutional Affairs, *Inquiry into detention of Indonesian minors in Australia*, June 2012, p. 5, viewed 15 August 2012,

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/completed_inquiries/2010-13/indonesian_minors/index.htm. The crew on at least one of the boats organised by Asfoor were told to say that they were under 20 years of age if apprehended at Ashmore Reef: *R v Asfoor*, *op. cit.* While there may have been an increase in the use of this tactic, it has clearly been around for some years, given Mr Asfoor's convictions related to offending in 1999–2001.

178. N Roxon (Attorney-General), *Further results of people smuggling convictions review*, media release, 18 June 2012, viewed 3 July 2012,

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F1722529%22>

Pacific Solution.¹⁷⁹ He also points to the adaptability of those networks, which shift their operations across Indonesia to take advantage of vulnerabilities in local law enforcement.¹⁸⁰

Field interviews conducted in Indonesia in 2010 also indicated that people smugglers working in Indonesia may have incorporated the presence of the UNHCR into their operations. They have encouraged their 'clients' to contact the UNHCR and provided assistance with stories to present in order to obtain protection and assistance. The researchers point out that this gives those people a level of protection while they are in Indonesia and wins them time to prepare for the onward journey.¹⁸¹

People smugglers operating further up the chain and along different routes have demonstrated similar flexibility. People organising the movement of Afghan Hazaras from Pakistan to Australia adapted their route to incorporate transit through Malaysia in response to the introduction of a stricter visa regime in Indonesia. Their relationships with law enforcement have also become more important in the face of stricter visa requirements along the route.¹⁸²

A media release issued by the Australian High Commission in Sri Lanka in September 2011 claimed that the authorities of both countries had worked with others in the region to 'break the criminal syndicates behind the people smuggling business'.¹⁸³ However, there has been a significant increase in people smuggling from Sri Lanka to Australia in 2012.¹⁸⁴ This indicates that either those networks have regrouped and adapted or that new ones have formed in their place. It is worth noting in this context that while the Liberation Tigers of Tamil Eelam, which has been linked to people smuggling from Sri Lanka, was defeated in that country in 2009, its global funding networks have survived.¹⁸⁵ It

179. P Munro, 'People smuggling and the resilience of criminal networks in Indonesia', *Journal of Policing, Intelligence and Counter Terrorism*, vol. 6, no. 1, April 2011, pp. 40–50, viewed 1 June 2012,

<http://www.tandfonline.com/doi/abs/10.1080/18335330.2011.553180>

180. *Ibid.*, p. 46.

181. A Missbach and F Sinanu, *op. cit.*, p. 74.

182. UNODC, *Crime facilitating migration from Pakistan and Afghanistan*, *op. cit.*, p. 64.

183. Australian High Commission Sri Lanka, *Sri Lankan convicted of people smuggling*, media release, 14 September 2011, viewed 23 October 2012, <http://www.srilanka.embassy.gov.au/clmb/110914PS.html>

184. See, for example, J Clare, 'Matters of public importance: asylum seekers', House of Representatives, *Debates*, 27 November 2012, pp. 13 472-13 474, viewed 28 November 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2a280591-bf99-4a04-9a9b-1b4c74ca6d9b%2F0065%22>; A Hodge, 'Dramatic mid-sea transfer ends freedom run', *The Australian*, 30 July 2012, p. 5, viewed 23 October 2012,

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F1813139%22> and 'Sri Lanka detains 98 on two fishing boats', *Canberra Times*, 27 August 2012, p. 2, viewed 23 October 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F1874841%22>

185. International Crisis Group (ICG), 'The Sri Lankan Tamil diaspora after the LTTE', *Asia Report no. 186*, ICG, Colombo/Brussels, 23 February 2010, p. i and pp. 5–7, viewed 28 November 2012, <http://www.crisisgroup.org/en/regions/asia/south-asia/sri-lanka/186-the-sri-lankan-tamil-diaspora-after-the-ltte.aspx>; Jane's World Insurgency and Terrorism, *Liberation Tigers of Tamil Eelam (LTTE)*, IHS Jane's, updated 2 November 2012, viewed 28 November 2012, <https://janes.ihs.com/CustomPages/Janes/DisplayPage.aspx?DocType=Reference&ItemId=+++1320761>

has also been reported that boats carrying Sri Lankans have been departing from India instead of Sri Lanka following increased enforcement activity by Sri Lankan coastal authorities.¹⁸⁶

Other similarities

Other international findings that apply in the context of smuggling to Australia include two interrelated characteristics—the dispersion of labour so as to protect those higher up in the chain, and the availability of a large pool of people willing to act as guides.

The pool of willing guides that Bilger and others identified as a key facilitator of the people smuggling market to Europe also exists in Indonesia. As noted above, those prosecuted for people smuggling in Australia tend to be poor Indonesian fishermen—some have been convicted previously for illegal fishing in Australian waters.¹⁸⁷ Australian researchers point to the stressed economic conditions in which these people live and the limited opportunities for them to break out of poverty. In such circumstances it is not difficult for smugglers to find people who are willing to act as crew on people smuggling boats, whether knowingly or otherwise.¹⁸⁸ While the amounts paid to crew (reported to be as low as \$32 dollars in at least one case) are insignificant compared to the amount earned by organisers, it is nonetheless much more than they could expect to earn legally.¹⁸⁹

Recruiting crew in this way also serves to protect those higher up in the chain from detection and prosecution, as they remain distanced from the actual transportation process. Further, the prosecution of crew members has limited impact on smuggling operations because they are essentially expendable and easily replaced.¹⁹⁰ This strategy is not unique to people smugglers, but is a characteristic of organised crime more broadly. The difficulty in targeting those higher up in criminal organisations is behind the increasing focus on targeting the proceeds of crime, as the then Attorney-General explained in 2009 when introducing the Commonwealth unexplained wealth laws:

186. A Hodge, 'Crusader begs his people to beware sea of false hope', *Weekend Australian*, 16 June 2012, p. 3, viewed 3 July 2012,

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F1716016%22>

187. *R v Karabi* [2012] QCA 47 (14 March 2012), viewed 28 November 2012,

<http://www.austlii.edu.au/au/cases/qld/QCA/2012/47.html>; P Lion, 'The illegal boat crews that keep returning', *Daily Telegraph*, 19 May 2012, p. 2, viewed 28 November 2012,

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F1643817%22>

; R Balint, 'Small fry: The story of a people smuggler', *The Monthly*, August 2012, viewed 28 November 2012,

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2F1822447%22>

188. Munro, op. cit., pp. 45–46; Hunyor, op. cit., p. 226; H Purdy 'People smugglers: the other "boat people"', *ANU Undergraduate Research Journal*, vol. 2, 2010, pp. 23–38, viewed 15 May 2012,

http://eview.anu.edu.au/anuuj/vol2_10/pdf/ch01.pdf. Some reports indicate crew members are not always aware of

what they are getting into. For discussion on crew members being misled about the purpose of their journey, see Australian Human Rights Commission (AHRC), *An age of uncertainty: inquiry into the treatment of individuals suspected of people smuggling offences who say they are children*, AHRC, July 2012, pp. 31–32, viewed 15 August 2012, http://www.hreoc.gov.au/ageassessment/report/an_age_of_uncertainty.pdf

189. AHRC, op. cit.

190. Munro, op. cit., pp. 45–46.

In many cases, senior organised crime figures who organise and derive profit from crime are not linked directly to the commission of the offence. They may seek to distance themselves from the offence to avoid prosecution or confiscation action.

Unlike existing confiscation orders, unexplained wealth orders will not require proof of a link to the commission of a specific offence and in that sense they represent a quantum leap in terms of law enforcement strategy.¹⁹¹

In line with international experience, negative unintended consequences have been identified as resulting from some of the border protection policies pursued by Australia and other countries in the region. For example, tighter immigration controls at Indonesian airports led to more people being smuggled from Malaysia to Indonesia via more dangerous sea routes.¹⁹² Temporary Protection Visas (TPVs), most recently introduced in Australia in 1999 and abolished in 2008, have also been criticised for creating greater demand for smuggling services that led to growth in the size and number of organisations involved in the activity. TPV holders were unable to apply for family to join them once they reached Australia.¹⁹³ A 'gradual but sustained increase' in both the proportion and absolute number of women and children among unauthorised boat arrivals from the Middle East to Australia was observed, with those who would otherwise have waited in their country of origin instead making the journey themselves.¹⁹⁴

Uniqueness of the Australian context

It is always worthwhile to see what lessons we can draw from the experiences of other countries. This paper has examined publicly available international and Australian research and relevant case law and found that there are some parallels between people smuggling at the international level and to Australia. However, there are limitations to such an approach. For example, it appears that there are regional variations in characteristics of people smuggling such as the level of organisation and extent of involvement in other crime types. Further, unlike countries in Europe and North America, which have been the focus of most research, Australia does not share a land border with any other country – a difference that has implications for the methodology employed by smugglers. Finally,

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191. R McClelland, 'Second reading speech: Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009', House of Representatives, *Debates*, 24 June 2009, pp. 6964–6967, viewed 12 July 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2009-06-24%2F0050%22>
192. S Hoffman, 'Looking back, looking forward: Australia, Indonesia and asylum seekers 1999-2009', in S Perera, G Seal and S Summers, *Enter at own risk? Australia's population questions for the 21st Century*, Black Swan Press, Perth, 2010, pp. 117-140, viewed 30 March 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fjrnart%2F483414%22>
193. For further information on TPVs, see Phillips and Spinks, op. cit., pp. 15–16.
194. Hoffman, op. cit., pp. 121–122. See also Crock and Ghezlbash, op. cit. An increase in women and children in the months immediately following the introduction of TPVs in 1999 has been confirmed by DIAC: M Bowles (Acting Secretary, DIAC) Senate Legal and Constitutional Affairs Legislation Committee, Immigration and Citizenship portfolio, Supplementary Budget Estimates 2012–13, 15 October 2012, p. 169, viewed 16 October 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Festimate%2Fa41a5fdb-967c-42a4-b0f4-6ac936ebb9dc%2F0002%22>.

with respect to the unauthorised boat arrivals that are the main focus of Australian attention on people smuggling, they are travelling to Australia to seek asylum, and most are successful. While rates fluctuate over time and across different populations, the final grant rates for irregular maritime arrivals who reached Australia during 2009–10 and 2010–11 were 90.8 and 84.2 per cent respectively as at 26 November 2012.¹⁹⁵ Local and regional circumstances and the different drivers of demand for people smuggling services must be kept in mind in the development of appropriate responses.

Conclusion

The research and case law examined in this paper makes clear that there is no single business model used by people smugglers, either internationally or even in the more limited context of smuggling to Australia. Instead, it indicates that a range of organisations and individuals are involved in the activity, and that the level and type of organisation and the degree of sophistication vary markedly. While all smugglers are selling a service or product that could be broadly defined as successful irregular entry to another country (whether it be a country specifically identified by the person to be smuggled or one presented as the best option by a smuggler), even the service varies considerably. Some smugglers offer a door-to-door, all inclusive service for journeys covering multiple countries, some service only one leg of such journeys, more and less expensive (and conversely less and more risky) options are available and a distinction can be drawn between covert and overt arrival.

Some basic characteristics of maritime people smuggling from Indonesia to Australia can be discerned from open source information that can be used to outline some of the basic components of a common business model that seems to operate:

- the 'clients' are people who wish to claim asylum in Australia
- the product or service provided is transport to Australia for the chance to claim asylum
- most commonly, this involves being transported to Ashmore, Christmas or the Cocos (Keeling) Islands on a fishing boat, with no attempt at covert entry
- profits are ensured through methods such as:
 - using low quality vessels with little safety equipment
 - taking large numbers of passengers in each voyage and

195. DIAC, *Asylum statistics—Australia. Quarterly tables—September quarter 2012*, DIAC, 2012, pp. 16–17, viewed 28 February 2013, <http://www.immi.gov.au/media/publications/statistics/asylum/files/asylum-stats-september-quarter-2012.pdf>. Caution must be exercised in interpreting these figures, as it can take some time for a final outcome to be determined. The recognition rates for the same cohorts for the September quarter 2011 were 83.8 and 58.2 per cent respectively: DIAC, *Asylum statistics—Australia. Quarterly tables—September quarter 2011*, DIAC, 2011, pp. 14–15, viewed 28 February 2013, <http://www.immi.gov.au/media/publications/statistics/asylum/files/asylum-stats-september-quarter-2011.pdf>

- recruiting poor, sometimes illiterate Indonesian locals who will accept relatively low rates to crew the vessel
- a relatively flat, networked organisational structure is employed
- recruiters or intermediaries between organisers and potential clients are drawn from asylum seeker communities, making it easier to establish contact with those communities
- organisers and intermediaries seem to cooperate with other organisers and intermediaries on the leg immediately before theirs and
- bribes may be paid to ensure smooth passage through Indonesia for asylum seekers and prevent apprehension of those involved in the people smuggling process.

However, there appear to be many variations on different components of this model, such as whether local travel, food and accommodation are provided, whether the recruiters are dealing directly with clients in Indonesia or family members in Australia and whether payment is required up front or may be made in instalments or on arrival in Australia. Further, the Indonesia to Australia leg is part of a much longer journey. There are smuggling organisations that provide just this final leg and others who provide an end-to-end service. While it is the most common final transit country, Indonesia is not the only departure point for boats to Australia organised by people smugglers—boats have arrived covertly from China and Hong Kong and overtly from other Asian countries (in 2012, Sri Lanka was a prominent departure point). Finally, while it receives far less attention, people smuggling to Australia also takes place by air.

Implications

The use of the singular terms 'the people smugglers' business model' or 'the people smuggling business model' gives the impression of a homogeneous market for which a single measure or 'one size fits all' solution might exist. The reality of a variety of business models operating at different stages of the supply chain between source countries and destination countries, including Australia, points to the need for a more tailored and considered approach.

Returning to an economic framework, attempts to break a people smuggling business model will fall within two broad categories—those that seek to impact on demand for smuggling services, and those that seek to impact the supply of those services. On the demand side, this includes measures that aim to deter asylum seekers and irregular migrants from engaging people smugglers to get to Australia (such as offshore processing and implementation of the 'no advantage' principle) and the provision of viable alternatives for asylum seekers. On the supply side, this includes making it more expensive to provide the service, for example by reducing the supply of cheap vessels, and measures that make it more difficult or risky to provide the service, such as reducing the pool of willing crew members and addressing official corruption.

The aim of all such interventions is to make a particular model unviable by transforming it from a high profit, low risk venture into one with low profits and high risks, but measures that are effective

against one model may not be effective, or even feasible, against another. Further, it is unlikely that any single measure will be effective on its own, and the practical limits on the extent to which Australia can influence the factors driving a market that exists largely outside its jurisdiction must be recognised.

When we hear about breaking the people smugglers' business model it tends to be in the context of measures designed to reduce demand by making Australia a less attractive destination for asylum seekers and irregular migrants, particularly through offshore processing.¹⁹⁶ But that represents only one possible mode of intervention, and in fact just one component of a layered approach to combat people smuggling that has been pursued by successive Australian Governments.¹⁹⁷

If Australia is to make real progress in undermining the business models employed (whether explicitly or otherwise) by those involved in people smuggling, it must continue to pursue a multi-faceted response to the problem. But each of the individual measures that comprise such an approach needs to be effectively targeted. Policy makers must tailor interventions based on a clear idea of which market and model they are seeking to influence, which aspects an intervention is intended to address, and how. Measures also need to take account of the potential for perverse outcomes to come about as supply and demand recombine in new ways in response to counter-measures. In the Australian context in particular, the impact of the circumstances facing asylum seekers and the limits of applying a purely economic framework to their decision making processes must also be taken into account.

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196. For example, the quotes from Julia Gillard, Chris Bowen and Scott Morrison in the introduction to this paper, as well as recent statements by the Minister for Foreign Affairs and the Liberal-National Coalition: B Carr, 'Second reading speech: Migration Legislation Amendment (The Bali Process) Bill 2012', Senate, *Debates*, 28 June 2012, pp. 4792–4796, viewed 17 August 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2F77c820b8-ec44-4d61-a787-9d81d07e3ff0%2F0020%22>; M Cash, 'Question without notice: Take note of answer: Asylum seekers', Senate, *Debates*, p. 5070, 14 August 2012, viewed 17 August 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2F19ff88af-cd37-4809-9f82-a1adc9aa5803%2F0041%22>; E Jones, 'Second reading speech: Migration Legislation Amendment (The Bali Process) Bill 2012', House of Representatives, *Debates*, 14 August 2012, pp. 8570–8571, viewed 17 August 2012, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2Fb3153d12-39f7-4135-bb56-f699ce3218b6%2F0083%22>
197. For information on the range of measures pursued by the Australian Government, see H Spinks, E Karlsen, N Brew, M Harris and D Watt, *Australian Government spending on irregular maritime arrivals and counter-people smuggling activity*, Background note, Parliamentary Library, Canberra, 5 December 2011, viewed 21 January 2013, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fprspub%2F1277010%22>; Attorney-General's Department, Answers to Questions on notice, Senate Standing Committee on Legal and Constitutional Affairs, *Inquiry into the Anti-People Smuggling and Other Measures Bill 2010*, 23 April 2010, viewed 21 January 2013, <https://senate.aph.gov.au/submissions/committees/viewdocument.aspx?id=51c6f917-4715-4479-a5dd-e089771af8b6>; Munro, op. cit., p. 47.

Appendix: Glossary of terms

Asylum seeker	A person who has sought safety from persecution or serious harm in a country other than his or her own and is awaiting a decision on an application for refugee status. ¹⁹⁸
Covert entry	Covert people smuggling operations aim to take people to a destination country clandestinely so that on arrival they may enter and establish themselves there undetected. ¹⁹⁹
Destination country	The final country to which a person seeks entry, or has entered.
Economic migrant	A person who has left his or her country of origin to settle in another country in order to improve his or her quality of life. ²⁰⁰
Forced migration	Migratory movement in which an element of coercion exists, whether the threat arises from natural or man-made causes, including movements of refugees, people displaced within their own country and people displaced by events such as earthquakes, floods, famines and nuclear disasters. ²⁰¹
Irregular migrant	A person who lacks legal status in the country he or she is in or seeking to enter, due to unauthorised entry, a breach of a condition of entry or the expiration of a valid visa. ²⁰²
Irregular migration	Essentially, movement that takes place outside the regulatory norms of the source, transit and destination countries involved. This includes arriving or remaining in a country without authorisation or a valid visa. ²⁰³
Overt entry	Overt people smuggling operations involve people who are seeking to make themselves known to authorities on arrival in the destination country in order to seek asylum. ²⁰⁴
Refugee	The United Nations Convention relating to the Status of Refugees defines a refugee as a person who: ...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. ²⁰⁵
Source country	The country of origin or home country of a migrant, asylum seeker or refugee.
Transit country	A country through which a migrant, asylum seeker or refugee travels on his or her way to a destination country.
Unauthorised arrival	A person who has arrived, or attempted to arrive in a country, without authorisation or a valid visa. ²⁰⁶

198. International Organization for Migration (IOM), 'Key migration terms', IOM website, viewed 12 July 2012, <http://www.iom.int/cms/en/sites/iom/home/about-migration/key-migration-terms-1.html>

199. Schloenhardt, 2003, op. cit., pp. 91–92.

200. IOM, 'Key migration terms', op. cit.

201. Ibid.

202. Ibid.

203. Ibid.

204. Schloenhardt, 2003, op. cit., pp. 91–92.

205. *United Nations Convention relating to the Status of Refugees* done at Geneva on 28 July 1951 [1954] ATS 5 (entered into force on 22 April 1954), art. 1, viewed 11 July 2012, <http://www.austlii.edu.au/au/other/dfat/treaties/1954/5.html>

206. Phillips and Spinks, op. cit., p. 23.

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