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***FUTURE SEEKERS
REFUGEES AND THE LAW IN AUSTRALIA***

**By Mary Crock and Ben Saul
The Federation Press, Sydney, 2002**

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The term 'Border Protection' has featured prominently in the political discourse and media in the last few years. This was particularly so at the time of the *Tampa* crisis in August 2001 and the November election. The Federal Government emphasises its policy of 'Border Control', or 'Border Protection' as it is now entitled. What has featured little in the government discourse is a discussion of Australia's human rights obligations.

Last year, the Department of Immigration published a booklet entitled *Refugee and Humanitarian Issues: Australia's Response*. There was significant space devoted to 'border protection' but none to human rights issues — the latter hardly featured at all. This is a curious omission in a discussion about refugees because refugee protection is about observing human rights. Such an omission in the official line is challenged in a series of recent books about refugees and asylum seekers in Australia. These include Mares' *Borderline* (2001), Burke's *In Fear of Security* (2001) and McMaster's *Asylum Seekers*. The most recent addition is by Mary Crock and Ben Saul and is pointedly entitled *Future Seekers*.

Crock is a lecturer at Sydney University in immigration law and Saul is a PhD candidate at Oxford University. They delayed publication in August 2001, a timely decision given the increased politicization of asylum seekers following the exclusion of the *Tampa*, the events of September 11 and the 'Border Protection' election of November 2001. Their book is a valuable overview of the policy and the law affecting asylum seekers in Australia.

The authors take us through some of Australia's political and immigration history from the time of the Vietnamese and Cambodian 'boat people' of the later 1970s, to the Cambodians from 1989, and the more recent groups of Afghans and Iraqis and Iranians from the later 1990s.

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Each chapter commences with a summary of what are described as ‘the key points’ for the chapter. Such a tool makes their book very accessible for those seeking an understanding of the divisive politics surrounding refugee applicants. These summaries will provide useful material to rebut the often ill-informed comments of politicians and the media. In the chapter entitled ‘Boat People’ and ‘People Smuggling’, one key point is thus:

- Although people smuggling is exploitative and criminal behavior, it exists because there is a desperate demand for it among people fleeing from persecution who do not have access to legal channels for claiming asylum.

This statement is then expanded upon in the chapter in a very readable way. The book also publishes cartoons, pictures, statistics and extracts from the media in a style verging on a ‘cases and materials’ type of publication. These extracts are not too many and allow the authors to develop their arguments and rely on the extracts as examples of their views or to reinforce a point.

The case list and index help the more serious reader to make their own study of the matter. The glossaries listing the acronyms is a valuable addition as this area abounds in acronyms and jargon to an extent that makes it inaccessible to those ‘not in the know’.

The book is political. It is not possible to write or comment in this area without being political. Successive Labor and Coalition governments have maintained a similar position in favour of mandatory detention and further restrictions on access to judicial review and other rights. This book presents challenges to ‘populist’ views, such as:

The notion of obligation towards people who come uninvited and without authorization is challenging and confronting for many people, especially in a country like Australia where strict immigration control has been the norm for many years. Some people also resent the fact that the regime for the protection of refugees is established by international laws which constrain the operation of Australia’s domestic laws.¹

An important matter taken up from the title is the use of language as part of the political discourse. Describing refugee applicants as ‘future seekers’ is an astute way of changing the focus from the usual terminology with its pejorative connotations, such as ‘illegal immigrants’. The latter term, whilst in wide usage, is a misnomer in a legal sense as it does not appear in the *Migration Act 1958* (Cth), which refers to ‘unlawful non-citizens.’ This use of language is taken up

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M Crock & B Saul, *Future Seekers: Refugees and the Law In Australia* (Federation Press, Sydney, 2002) p 10.

throughout the book. In the ‘Boat People’ chapter, there is a discussion about the events surrounding the *Tampa*. The authors state:

For its part, government statements concerning the boat people have been crafted to avoid the language of refugee protection: the boat people are almost always referred to as illegal immigrants rather than as asylum seekers.²

It is refreshing to hear views that challenge the populism coming from governments and also reinforce the importance of human rights in this area. The authors manage to reinforce the importance and centrality of human rights in the debate. The increasingly complex application process and laws that apply to asylum seekers are also discussed, demystifying a process generally not understood in the community.

Applicants express their frustration at being rejected on the grounds of credibility and may respond in desperate ways such as self-harm. Those working with refugees and asylum seekers understand where such desperation comes from but this is not understood in the wider community and is downplayed by the government. The chapter on determination procedures will help develop some understanding of the hurdles people have to face in order to have their case even considered, let alone be granted refugee status.

In what can be a depressing area, the authors finish on a positive note – looking to the future. They propose a number of legislative and policy reforms, which they believe will improve the system and restore the importance of human rights in the process. The scope of the book covers applicants in immigration detention as well as those living in the community, although the former are often more in the public mind.

While the book is generally accurate, there are a few minor errors which do not detract from the overall value of the book in promoting discussion of this troubled political and legal area.

The conclusion reinforces the political views of the authors:

We do not hide our sympathy for the growing ranks of Australians who question whether Australia could be doing more to ensure that refugees and asylum seekers are treated fairly, with compassion and dignity. As every refugee knows, the abuse of fundamental human rights diminishes the humanity of us all.³

² Ibid 49.

³ Ibid 126.

In the beginning, the authors state their three objectives:

- Provide a clear and simple explanation of the legal, administrative and political procedures ...
- Encourage readers to make their own assessment of the fairness and efficiency of Australia's asylum procedures and the extent to which law and practice meet international human rights standards ...
- Combat some of the myths and misunderstandings about refugees...

It is fair to state that they achieve these objectives. They also manage to reinforce the centrality of human rights in the discussion about refugees and asylum seekers, a view omitted in the publications from government. Hopefully politicians as well as political commentators will read this book. For too long, a principled political position has only been heard from the minor parties such as the Democrats and Greens. The book is a welcome addition to the literature in the area, which will continue to grow with the regular changes in the area and the increasing polarization of views in the community.