

AN INTERVIEW WITH MR GERRY HAND, FORMER MINISTER FOR IMMIGRATION, LOCAL GOVERNMENT AND ETHNIC AFFAIRS

■ This interview took place on 6 October 1993.

P&P: *Mr Hand, is there any doubt in your mind that the Australian Government's refugee assessment procedures provided a fair hearing for the Cambodian boat people's asylum claims?*

GH: I have no doubt that the revised system that I introduced in 1990 was extremely fair, to the point that it may have been too fair; that is, that it was open to exploitation and manipulation. Now, when we introduced it, it was applauded by those sections of the community who, once the first rejection came along, have said how unfair it is. I consulted extensively with the Refugee Council of Australia, the Jesuit Refugee group, Amnesty International and a whole string of community-based organisations on it. I'm not saying that they all endorsed it one hundred per cent because it's just impossible to get that sort of agreement. But the inclusion of a community-nominated person on the review panel put to rest one of their big criticisms. There had been a perception that the three Government representatives conspired. The independent persons appointed were all of incredibly high standard in terms of their capacity and their understanding of the issues.

Nevertheless, it wasn't long after the first rejections came along that some of the very people who were involved in those discussions suddenly discovered the system was unfair. From about that point, my faith in some people began to diminish.

P&P: *Can you confirm that the United Nations High Commission for Refugees (UNHCR) approved the system you established?*

GH: They were heavily involved in it and there was quite a bit of dialogue with the former director of the UNHCR. I discussed the system with senior officers of the UNHCR in Geneva on two or three occasions I was there, and that included Madam O'Garta who is the High Commissioner of the UNHCR. The UNHCR was very much part of the system. They refused to become a voting member but they had the ability to observe the workings of the review committee at any time or any particular case.

P&P: *In relation to the refugee claims put by the Cambodian boat people, many refugee advocates believe that, though most of these people were rejected, they did have a basis for believing that they would be persecuted if they returned to Cambodia. What is your view?*

GH: Well firstly, I never had a view about any individual case because I wasn't privy to the data that they submitted. I quite deliberately stayed aloof from that because the worst thing I think in this area would be for politicians to interfere in a political way. This would jeopardise the integrity of the whole system. What we had to do was to set up a system which could stand the scrutiny of people in terms of its fairness and its consistency. This was extremely difficult because you are dealing with human lives. It is a

horrendous area to administer because everyone becomes emotionally involved. I never made a judgement as to whether they were or they weren't refugees. What I always said was: 'I'm going to make sure they have a fair go to prove their point'.

P&P: *You did, however, journey to Cambodia to examine the situation there and were in a position to determine if there was a serious possibility the boat people would be persecuted if they returned after the review procedures were completed.*

GH: Well, the situation was similar to my previous portfolio. I was called in Aboriginal Affairs 'the frustrated field officer' by my Department because I was determined that if we were going to spend money and try to help people, I'd go and try to find out what was the problem. Now, the same with this area. I went to talk to the UNHCR people in Geneva about the resettlement proposals for refugees in the Thai-Cambodian border region long before I think probably anybody else did, internationally. I decided to go to the camps first to look at the way in which arrangements were being made on the Thai side of the border and then go with the assistance of UNHCR into Cambodia. I visited the holding camps people were going to be housed in on return to Cambodia. I looked at the construction of the camps, the design of the houses, the type of accommodation they would be living in, the water supply, the food arrangements. I then went and visited areas out in the sticks where people were going to be moved back to in the farming areas. We had extensive briefings from Governors, regional Governors and regional political leaders, police forces, local army people, the UNTAC force people. Now, I'm giving you this background

to demonstrate that we did not just sort of jet in and jet out on some sort of bullshit exercise. We were genuinely concerned that if somewhere between 300,000 to 400,000 people were going to be returned, we had to be convinced that Australia was doing the right thing, and that the people would be taken care of.

P&P: *So there was no reason in your mind to assume that if the Cambodian boat people who had been rejected for refugee status had been returned to Cambodia that they would have been treated any differently from those returning from the Thai camps.*

GH: Well, I think they would have been treated much better. Those who returned voluntarily from Australia were given more assistance than the people who went back under the UN scheme. They received \$250 per family on departure plus \$30 per month for 12 months. Single people received half of this amount. I went to Cambodia to make sure that these people were going to be safe because I was not going to send anybody back to an area where I couldn't walk down the street myself. Right back to the very early meetings I had with the Cambodians I said no one will be returned from Australia under a Labour Government where there is a risk of them coming to harm.

P&P: *Now that being the case and there being no criticism from the UNHCR representatives in Australia as to our judgements on these people's claims, why is it that you received so much criticism from advocates like the Jesuit Refugee Service, Justice Einfeld, Commissioner Burdekin and the leaders of the Refugee Council of Australia?*

GH: I think it is a combination of things. For each individual I'd

probably make a different comment. Quite a number of the lawyers became very emotionally involved with their clients. It was probably their first experience. They saw their case as the great refugee case and therefore how could anybody question it. I think there were others, quite frankly, who set about to dismantle the processing arrangements. I have no doubt about that.

For example, when we moved people over to Port Hedland the lawyers were located in a building right beside them. I thought I was doing bloody great things but I suppose human nature being what it is, if it's your first job after getting your degree you go up and you get attached to individuals because they spent so long with them that they became emotionally involved. However, I think that they should have been able, as professionals, to stand back at some point and judge whether what you are counselling is in fact correct. I carry this (GH produces a photo) at all times because it's a constant reminder of bastards I have met. It's a photo of a sign put up by lawyers who ought to be disbarred. It says, 'Suicide is just two steps away. You might as well jump'. Now that was on the door of the lawyers interviewing room that we provided for them in Port Hedland, so that applicants walking through the door to be interviewed by their lawyer, (not the Government lawyer) would read that. In another case, lawyers installed a toy telephone with a sign telling the applicants to ring me up and have a talk to me. That's the sort of bastardry that I had to put up with by some people. I concede that it was a difficult environment, there's language problems and all sorts of problems living in Port Hedland. But really, if you

take that work on as a lawyer you do have responsibilities.

I had to deal with the likes of Bishop Hickey, who entered the debate in an opportunistic way. He went on the Jana Wendt program and talked about my departmental officers and the issue of abortion, and then when Jana, who has a long history of opposition to abortion, becomes quite excited about it and says, 'Do you mean to say that the department forced this woman to have an abortion?' he responds with, 'Oh no, I wouldn't quite say that'. At the time I happened to be in my office in Canberra and the phones light up with every anti-abortionist in the country calling me a bloody murderer. Yet the abortion the woman had was actually arranged for through the churches. The hypocrisy of that is breathtaking.

I think that a lot of the lawyers weren't able to stand back a bit, so it became a contest for some of them. There was a lawyer, classic type, wears a sports coat and a tie and tight fitting jeans. It's sort of a uniform out there, isn't it? It makes you a radical, that sort of dress. He was looking after one of the Cambodians and probably became quite attached to him. He was quoted as saying that this person was being sent home by me to be killed. The reality was quite different. We sent a member of a refugee organisation, a person who had worked in the Thai camps, back to Cambodia with the Cambodians. The individual who was under threat of persecution was met at the foot of the plane and given an expensive gold chain by his uncle, who just happened to be one of the wealthiest people in Cambodia. We subsequently received a report on how these people were treated on return by the person

accompanying the Cambodians. This report rejected the lawyer's concerns.

P&P: *Why did you move the boat people from Melbourne and Sydney?*

GH: That was a difficult time when we moved people from Sydney to Darwin and from Melbourne to Sydney. Now we got a lot of stick about that. It was a TV event. People performed for the cameras and we were accused of some dreadful things like denying people access to phones and belting them with iron bars. Well, it never happened and subsequent enquiries proved it never happened. Sure, there were some people dragged to a bus and other people lay in front of it. But we had to administer a law and we had people in Sydney who by that time had been rejected for refugee status. We had a low security facility in Sydney which people were wandering in and out of at will. You will recall there were demonstrations in Melbourne when I moved some people from the Melbourne centre out to Maribyrnong about how unjust it was. But what they didn't tell you was that every day two or three people were going AWOL and never being seen again. So twenty odd people had disappeared over the fence, despite all the promises that that would never ever happen again. Now once we rejected people, you could imagine what was going to happen.

After these moves, in May 1991, Nola Randell, the Secretary of the Association of Khmer Australia Incorporated, a Sydney based group very close to the Cambodians, talked about how she was shocked at the events of the Sydney/Darwin move. I met with them on the Wednesday night and they held a demonstration against me on the Friday. But subsequent to that Nola wrote to me indicating that if

people fail the test we've got to have some sort of system for people being returned.

P&P: *Your point is it that subsequently they retracted from that position.*

GH: Prior to answering this question, let me say I have no knowledge of any change to Nola Randell's organisation's positive attitude on this issue. However, some moved to the well-tried old system in immigration that the longer you can stay here the less chance there is of the Government rejecting or returning you. That applies right across the board in immigration, not only in refugee area. It's the oldest trick in the book. Once we had the new system up and running we got into the uncharted area of natural justice. If you talk to any lawyer about this, it's like a column of smoke. Nobody can tell you what it is. We were trying desperately to establish a fair system and suddenly, as though someone pulled a switch, every manoeuvre was used to try and slow the process down. It was dreadfully frustrating. I know that lawyers were saying, 'You don't have to worry, the High Court will stop this,' or 'We're in the Federal Court tomorrow and everything will be OK because the judge will let you stay'. Now that was dreadfully cruel.

P&P: *Can we turn now to your original thoughts about the treatment of the boat people? You indicated to the Refugee Council in December 1990 that you had in mind the possibility of treating these people as humanitarian claimants should the refugee review process be completed quickly.*

GH: Well, I wrote on the fifth December to Luke Hardy, Executive Director of the Refugee Council, about this possibility. He wrote a very

lengthy letter to me arising out of a meeting I had with the Refugee Council and Amnesty International and a whole range of groups acknowledging that I had the discretion to grant temporary entry to individuals who are determined not to be refugees but who still have a need for protection on more general humanitarian grounds. Now that translates clearly to this industry as: 'I am not going to do anything to short circuit or chop into the refugee processing. However, if they are rejected, I will, if appropriate, consider their cases, on humanitarian grounds'. Now this was based on the fact that in Cambodia then, there was still a war going on. There was a risk whether you could guarantee safety for people. This justified a serious look at the humanitarian category. Now for some extraordinary unexplainable reason, having said it to Luke, having said it to Bishop Hickey and a whole range of organisations over and over again, we could never finalise any case. It was just bloody amazing.

P&P: *Your point is that they obstructed any possibility of you actually implementing the humanitarian option raised in December 1990.*

GH: To be absolutely fair about this, I would say that if I had my time over again as Minister there would be certain things that I would be sure we didn't do. There were a couple of occasions when doubts were created within the process and I ordered it to be redone so that we could eliminate any doubt that our processing of particular cases had been done properly. So I accept that we may have been the reason for a delay here or there. But quite clearly, when a lawyer, who bitches and belly aches on the national airways about wanting to act on behalf

of these people and how we're frustrating him, takes up to eighteen months to lodge the applications, you've got to ask yourself what were these people doing. Every time I rang this lawyer I'd say to him that for God's sake this is crazy. He would respond that next month I'll have them there, or give me two more months or give me three more months. Then I'd ring the Jesuits and I'd say can you talk to your people in Darwin. They became frustrated as well.

P&P: *In effect, what you're saying is that the delays in the processing caused the extended detention of these people.*

GH: Well, there's no doubt, because I think that some people had it in mind that a weight of opposition or support for these people would be generated, and the old Gerry was a bit of a bleeding heart, and he'd give in. I've got no doubt in my mind that based on things said to me later that that was an assumption some people made. They confused my politeness with weakness. I was determined, having observed the lack of processing arrangements in Europe, that we wouldn't repeat this experience. I must say it used to distress me that my critics thought they were the sole custodians of morality. Some of these characters that strut around with these funny collars on assume that they are the only people capable of compassion and morality or feelings.

P&P: *You subsequently did not intervene to review those who failed in their refugee claims. Why didn't you consider them on humanitarian grounds?*

GH: The situation changed dramatically in Cambodia from 1990 through to when I finished in 1993. I think you've got to be fair about this —

either we are part of an international set of arrangements with UNHCR as the custodian of the refugee program or we are not. I cannot see that it is correct to be part of a Government that sends nearly 300,000 to 400,000 people back from the Thai borders, urges the Indonesians and the Malaysians to clean out their camps in the same way and then says to the whole world, 'Well, hang on a minute, even though we have processed these people in a much more legally correct way than in any other country, we're going to ignore our procedure, we're going to ignore what's going on in the rest of the world and we're going to say, "Well, don't worry, everybody that comes here by boat can automatically stay because they have stayed here for X number of months"'. You can't just come to Australia, land on the beach and wander ashore like the invaders did 200 years ago. There is now a proper process of entry and if you don't come the right way you will be put in custody. That's the rule. That was intended and I said it all through South East Asia. If you come to Australia the right way, you are most welcome. But if you seek to be a refugee, well you will be processed in accordance with our law.

P&P: *In the case of the Cambodians who by late '91 early '92, had been rejected and their fate was continued detention if they didn't return, what role did refugee advocates play in dissuading them from accepting that they had to return?*

GH: We processed all the people on the first two boats a second time. They had begun to be processed through '90 under the old regime. When we introduced the new regime in 1990, advocates said it was infinitely fairer because we've helped you to devise it,

therefore those first two boats should be done again. Now at the same time there were statements made by some people — particularly the Prime Minister — about the Cambodians' status.

P&P: *You are referring now to Mr Hawke's statement in July 1990?*

GH: Yes, when he said that these people were economic refugees. Well, the first point to make about that is, and I made it to Bob in a lot more colourful way than I'll make it now, that the term economic refugee is a contradiction in terms. He had no more knowledge on the plight of these people than anybody else. He had no understanding of where they came from, except that they generally came from up there. The fact that they said they were Cambodians had to be subsequently proved and in some cases was disproved. So the Prime Minister's intervention was used by people to argue that this intervention had possibly influenced the outcome. So rather than finishing the process I said, 'Well, all right, we'll do them all again', and so that was one delay of a substantive nature.

P&P: *But even after the second processing many of the Cambodians refused to accept their situation. To what extent was this attributable to the persuasion of advocates and lawyers. Did they falsely raise their expectations?*

GH: Well, I think it was largely due to their intervention. We had international agencies go in and counsel people about the possibility of return, and what the current situation in Cambodia was. We used UNHCR appointed people who were brought back to Australia from overseas and some who were working here and we used the Red Cross. Now can anybody suggest that I had the ability to

influence officers of the Red Cross and the UNHCR and give them a script and say this is what you say to people? This is nonsense. However, it was said. After counselling, people were saying at four o'clock in the afternoon that they thought they'd go home. At eight o'clock the next morning they suddenly would change their mind. We had many approaches concerning returning to Cambodia. Every approach that was made to us was portrayed by the lawyers as though we were somehow forcing the people into this situation. It was as though, 'How dare they want to go home'. People would be told, 'Look, change your mind, this is before the Courts you know and the Judge might let you stay'.

I want to stress that under the law of the land it was legal for them to do this but it is important to know that after all this extraordinary fairness this persuasion was occurring. There was one situation with three women in hospital on a hunger strike. That was a tragic example of how people can be manipulated. One wanted to go home. She got a letter from her mother. She decided she'd go off the hunger strike. She was harassed in the most extraordinary way about how she was undermining the case of the other two. In fact, they questioned her sanity. The implication was that anyone who wants to go home to see their mother had to be mad.

P&P: *Can you tell us more about the financial interests of the lawyers involved?*

GH: The majority of lawyers that went to Port Hedland were under contract to the Department. They were all paid under quite a good contract. Yet they are always portrayed as voluntary lawyers acting on behalf of

the Cambodians. This gives the impression that it is all a very noble cause. Well, it is noble in the sense that it's a very difficult area to work in. But then I got letters saying what a dreadful bastard I was because I was exploiting these voluntary lawyers.

P&P: *Can we now return to the detention issue? You have been criticised for holding these people in detention.*

GH: Yes, it is true that I was criticised for holding these people in detention. However, due to the many legal actions in the courts, I was unable to comment. What used to annoy me most was the many unfair attacks on officers of the Department who were caring for the applicants. Many of the people working on behalf of the applicants seemed unable to understand that the officers had a very difficult job to perform. The stress on the officers and their families at the time was enormous. I was always grateful for their loyalty.

The weakness in a lot of the European countries was that they had no system. I'm not making that up. I can show people the minutes of all the meetings I had with all the relevant ministers in up to ten European countries. We have a potential disaster here. When Gorbachov met Thatcher and she was giving him one of those black-board lectures, he said 'Well, you say let my people go — how many do you want this year, twenty-five million'? We can't ignore that sort of a problem. I talked to people in London about Hong Kong. I was told by a senior British Minister, 'Hong Kong, of course, is primarily a problem for the colonies'. I asked, 'What do you mean by the colonies?' and he said, 'Canada and Australia, they'll be responsible for what happens out of

Hong Kong'. We face the potential of large mass movements of people here.

P&P: *It has been argued that our rules on detention violated the United Nations covenant on civil and political rights. What advice did you receive from legal authorities in the Australian Government on this?*

GH: Well, I don't think it did, and that is the legal opinion that I constantly got. Everything I did was checked by the Attorney General's department in co-operation with the lawyers in Immigration, lawyers in the Attorney General's department and lawyers in Foreign Affairs. Custody is a dreadful dilemma. No one was more concerned about the whole issue than I was. But do I just let people land at Port Hedland or down here at St Kilda and just march ashore. What would have happened if, two months later, there had been an outbreak in some disease in the cattle industry in the Kimberleys? Who do you think would have been blamed?

P&P: *Can you tell us about your dealings with the Indonesian Government concerning the Cambodian boat people?*

GH: I had very good relationships with the Indonesians despite the fact they were well aware of my position on Timor. But that didn't affect our relationships as regards the refugee issue. There seemed to be an expectation in Australia when I went there the last time that I was going up to demand that the Indonesians put a sort of a rope across the bottom of Indonesia and any boat that comes along will be caught up in the rope and dragged back and the people then held on Galang Island. Well, I didn't go there to ask them to do that. It would be presumptuous in the extreme to tell another country what they ought to do.

Particularly when boat people in recent times have said to the Indonesians they are on their way to Australia. I think that international laws come into play if the Indonesians suddenly start rounding them up. Now if someone says they are going on to Australia they may have been assisted with fuel and food. What we wanted to establish with the Indonesian Navy and our own military people was an early warning system. We wanted to know when people were due to arrive. But, equally as important, who knows how many boats haven't made it. The behaviour of pirates and bandits, particularly towards women was appalling. We went up there to co-operate with the Indonesians, with the primary interest being the people coming through on the boats.

P&P: *Mr Hand, what was your view about the ways in which the Cambodian boat people managed their trip to Australia?*

GH: Well, preface it by saying I haven't read any individual's story but I am going on material supplied through the international agencies and my own observations and discussions in Cambodia. What seems to be the pattern out of Cambodia and out of Southern China is that you purchase a ticket off an entrepreneur and that entrepreneur will then arrange a passage for you. He will then pay the captain or master or owner who will transport you to where you want to go, here or Indonesia or America or whatever. It's quite a lucrative business. When I was in Cambodia I visited the port where most of the boats would have begun their journey from and had an interesting discussion with the man running the boat building and repair operation there. He made the observation that I'd probably seen some of

these boats in Australia, and that he and his team had perhaps done some work on them before. He wasn't too specific but he implied that these boats were destined for deep water.

P&P: *Did you have any indication of what the price of a ticket would have been?*

GH: It was a lot of money, many thousands of dollars to go to the US. Obviously one of the factors about a reluctance by some people to return

home is that they have obviously paid a fee. A lot of these people have borrowed substantially to pay that fee on the promise that they'll get a job. Some of them have publicly stated they were promised a job in Australia or they were promised a job in Indonesia or wherever. Most would have entered into a repayment arrangement.

Acknowledgment

We thank Margaret Walker for her expert work in transcribing the interview tapes.

THE POLITICS OF THE REFUGEE ISSUE

■ **Bob Birrell**

Can liberal democracies manage their borders? Some might say that this is not problematic for Australia since it lacks a land bridge to the rest of the world. Yet the trauma suffered by all those involved in decisions about the fate of a few hundred Cambodian boat people indicates that many people perceive border control as a major problem. The Cambodian issue has generated more heat than that of the People's Republic of China (PRC) asylum seekers despite the larger numbers involved. One reason is that the Australian government was originally responsible for their entry and can prevent any further difficulties by simply cutting off the supply. This it has done since 1990 by restricting the issuance of student visas from the PRC.

The boat people represent a different challenge. One influential view within the Australian government is that if they are allowed to stay, even

though some have their claims as refugees denied, this will send a signal to others to come by the same route. This is a route which the Australian government cannot interdict, nor even manage with any certainty, since it requires the cooperation of our Asian neighbours.

The preceding interview with Mr Gerry Hand indicates the limits of Australian government powers in dealing with unauthorised arrivals. His deep frustration with the government's inability to complete the review process, and return those who failed it to their country of origin speaks volumes on the issue. By late 1993 some 286 boat people remained in custody, with another nineteen having absconded. All of these had been declared not to be refugees according to the UN Convention on Refugees by the Government's Refugee Status Review Committee. Yet all have been able to delay their departure through judicial appeals.