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Dr Craig Emerson with Kieran Gilbert and Senator George Brandis

E&OE

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GILBERT: Welcome back to AM Agenda. With me now the Shadow Attorney-General Liberal Senator George Brandis and the Minister for Small Business Craig Emerson.

Gentlemen, good morning to you both.

BRANDIS: Morning Kieran.

EMERSON: And hello Kieran.

GILBERT: Hi Craig. First of all the risk register from Minter Ellison warns - this is the second risk assessment that was released late yesterday about the insulation program. It warns consequences of not delaying the scheme could include poor control, early termination of the scheme and political fall-out, all of which happened. Why weren't they listened to?

EMERSON: Well, based on what I've seen, this report came to light yesterday during Senate Inquiry hearings. I'm also advised that it was not shown, at the time, to the minister, Peter Garrett. He acted upon all the advice that came his way. It's pretty difficult to act on advice if it didn't come his way. Now it may well have been that information in that report was incorporated into the design of the scheme as of 1 July last year. But in terms of that document being provided to the minister, my advice is that he did not see that as similarly he did not see the Minter Ellison Report until just a couple of weeks ago - I think it was on 11

February. So it was pretty hard to respond to a document that you haven't seen. To the extent that it was incorporated into broader advice, the minister did act on that advice in the design of the program and acted on subsequent advice in dealing with these sorts of risks.

GILBERT: Senator Brandis, is that a fair enough rebuttal, the fact that the minister didn't receive this actual risk register?

BRANDIS: It's not a satisfactory explanation, because a minister is, in the end, responsible not only for what happens on his watch, but most particularly a minister's responsible for the administration of his own department and his own ministerial office.

Now this had been a very controversial issue in politics for some weeks, as we all know. It's inconceivable that this wasn't drawn to his attention until it was exposed by the Opposition in a Senate Committee Hearing yesterday. I mean what on earth has this minister been doing? It's no excuse to say, you know, to use the Sergeant Schultz excuse and say I wasn't told. Ministers have to take responsibility for what happens on their watch.

Whatever happened to Mr Rudd's boast during the last election campaign; the buck stops with me? On this occasion the buck stops with Peter Garrett. There have been now documented more than 20 warnings, of one kind or another, to the minister or his officers, about how dangerous this scheme was and the minister's failure to take action, his failure to have a system in place, within his own department which would have alerted him to these issues, is culpable negligence.

It is way beyond the time when this minister should have gone and you've got to ask yourself the question what do you have to do in the Rudd Government to be sacked? Is there no level of incompetence beneath which you're able to fall if you're a Rudd Government minister?

GILBERT: Okay. Well Craig then, I want to ask you about the substance of what you said before, because you said that it would have been incorporated within the advice of the department...

EMERSON: It might well have been incorporated...

GILBERT: Well if it was...

EMERSON: ...in the design of...

GILBERT: ...well if it was, the warning that it would cost hundreds of millions of dollars to the taxpayers, one. Two, that it should have been delayed three months. That it would result in early termination, political fall-out. If that was all incorporated into the advice, why wasn't it acted upon? It's fairly stark advice.

EMERSON: Well the design of the scheme did take account of various risk assessments that were made. And what I'm saying, Kieran is that if a minister hasn't seen the document - we've now got a

new standard from the Shadow Attorney-General which says if a document is not given to you, is not presented to you, you nevertheless need to act upon it. Now what was the core defence of the Howard Government...

BRANDIS: It's the Sergeant Schultz defence.

EMERSON: ...in the wheat for weapons scandal? It was that ministers did not know - that ministers did not receive this advice. So it was all right at the time, when you had John Howard and other senior ministers...

BRANDIS: I thought you said at the time Mr Downer should have resigned.

EMERSON: We were seeking to...

BRANDIS: ...you said at the time...

EMERSON: ...we were seeking...

BRANDIS: ...Mr Downer should have resigned.

EMERSON: I'm just looking for a bit of consistency here. We were seeking information and that inquiry sought information as to whether ministers were actually told of these reports of this information. At the time the Howard Government - minister after minister, including the Prime Minister was saying; I didn't know and under the Westminster system I, therefore, am not in any way responsible for what actually happened.

Now that the tables are turned, suddenly...

GILBERT: It's not the best - but it's not the best defence is it?

EMERSON: But it suddenly...

GILBERT: It's not the best defence to be going...

EMERSON: If you - I don't know...

GILBERT: ... back five years.

EMERSON: I don't know how I, as a minister, would be expected to respond, act - and respond on a report whose existence I was not aware of. Now how do you do that? How do you do that?

BRANDIS: Aren't you responsible for the administration of your department? Aren't you responsible for...

EMERSON: For everything that happens in the department?

BRANDIS: Aren't you responsible, as a minister, to ensure that reports on critical issues come to your attention, because you can't say...

EMERSON: Of course you would want such a report...

BRANDIS: ...you can't say...

EMERSON: ...to come your way...

BRANDIS: Craig, you can't say...

EMERSON: ...but if they don't...

BRANDIS: ...that this wasn't a critical issue, that it shouldn't have been top of mind for the minister, top of mind for his departmental officials and advisers, yet he didn't have a system in place to make sure that these matters came to his attention. That itself is a failure of ministerial responsibility.

EMERSON: To go - head off over the department - go through the filing cabinets, see if there's any reports.

BRANDIS: He's meant to administer the department Craig, that's his job.

EMERSON: Could I have a go, George? Last week, the week before, week before, you said, please don't interrupt me, right? We'll have one set of rules. I'm happy to interrupt, let's get into it, but we'll have one set of rules for both of us.

Now, it is impossible for a minister to act on a report that he has not seen. Now, presumably the department would have a responsibility of drawing the attention to - of the minister to particular reports.

If they did not, that suddenly is the minister's responsibility? I think Peter Garrett has established a very strong case that whenever he received advice, he acted on that advice. And I don't believe the Coalition has established a case that the minister received these warnings and brushed them aside and said, look, we're going ahead anyway, I don't care.

That has never actually been an allegation against this minister.

GILBERT: One of the warnings here was that it should have been delayed three months. Now, as one of the ministers, Small Business Minister, within the broader economic domain, this was a - that was the reason, the reason was because of the economic stimulus.

Isn't it very clear from this risk register, more than beyond doubt now, that the stimulus created the risks inherent within the system, that the need to get the money out the door - or as Lindsay Tanner says, not to - didn't have time to cross the Ts and dot the Is - isn't that at the centre of the flaw here?

EMERSON: ... and my response to that very legitimate question, Kieran, is that I am not aware that the minister received advice to delay the program for three months. There may have been a report - appears there was a report with that recommendation or suggestion. That did not appear in front of the minister, to the best of my knowledge...

GILBERT: The haste of the spending created this sort of problem.

EMERSON: Well, of course there was an economic stimulus program that consisted of this, the biggest school modernisation program in Australian history, a lot of local council works, infrastructure works. And I will point out, I will point out that the Treasury estimates that that prevented 200,000 people losing their jobs.

Now, in the relation to this scheme, it has been a tragic loss of life. I said that on this program last week. And it is terribly sad that those four young men have lost their lives. No one feels other than great sadness for them and for their families.

But the motivation behind the entire stimulus package was to save jobs, save 200,000 jobs, and of course we know the Coalition has done nothing but criticise it.

BRANDIS: But Craig...

GILBERT: Just one final one on this issue.

BRANDIS: Good motives can't excuse incompetence. And you know, everybody feels that this is a tragic set of circumstances, but you can't escape responsibility for creating the circumstances that led to the tragedy.

Now, Mr Rudd is very, very good at saying sorry for other people's mistakes. He seems to find it impossible to say sorry for his own. Where is the Prime Minister or the minister on the watch taking responsibility for the tragedy that occurred as a result of this incompetently designed scheme?

GILBERT: We're just going to move on because I want to get your thoughts on the counter-terrorism white paper as the Shadow Attorney-General.

We don't have all of the detail yet, but the Prime Minister, the Foreign Minister and the Attorney-General will be making that announcement a little later. But from what you've seen so far, the reporting in The Sydney Morning Herald and elsewhere, what do you make of it?

BRANDIS: Well, a couple of things. First of all, of course the Opposition will look very carefully at the counter-terrorism white paper, and I'm sure it will contain measures that the Opposition would wish to support.

But I just want to make this point. This counter-terrorism white paper was promised by the Prime Minister in his national security statement in December 2008. It has been 14 months in coming, and the Opposition has been pursuing this issue throughout 2009. The Attorney-General in August last year promised that it would be published well before the end of last year. It's at last seeing the light of day, and it has been far too long in the making. That's the first point I want to make.

Secondly, we do have a concern about resourcing issues because, as the - last year's budget stripped away significant resources from the AFP's counter-terrorism programs, all told more than \$12 million of funding cuts to the AFP's counter-terrorism programs, and more than \$58 million in funding cuts to Customs inspection - cargo inspection activities.

So it's all very well to declare in a much-delayed white paper a set of measures in relation to counter-terrorism, but if you don't back it up with the resourcing - and this government hasn't done that so far - then it doesn't fill us with a lot of confidence.

GILBERT: Are you surprised by this apparent warning within the paper that there is an increased home-grown threat?

BRANDIS: Well, as I say, we'll - I haven't read the paper yet. We'll consider it carefully. The Opposition is from time to time, and I am as Shadow Attorney-General from time to time, briefed by ASIO, so I don't want to comment on those particular observations.

We, as I say, will no doubt find that there is much in this white paper that we will be able to support. But it has been delayed for an unconscionably long period of time. Only the week before last, I asked in Senate Estimates of the Attorney-General's Department's officers why it had been delayed so long, how could we see it, and I was given no assurance that it would be produced any time soon. And lo and behold, on the day that Mr Garrett's in deep trouble, it is ushered out at last.

GILBERT: But...

EMERSON: ...much better if it were delayed so that - I mean, what an absurd proposition.

GILBERT: Just one last thing because we're going to run out of time. But I mean, you are the Shadow Attorney-General. On the prospect of having other countries listed - only 30 seconds or so - but won't that create diplomatic tensions?

BRANDIS: Well look, Kieran, I know you would wish me to agree with you, but we will read the white paper carefully. And I'm not going to comment on a document of this sensitivity on the basis of a press report alone.

GILBERT: All right, Senator George Brandis, I'll let you read it. We'll of course, as always, have full coverage of the Prime Minister's announcement of the counter-terrorism white paper when it's released. He's holding a news conference later today here in Canberra, as I understand it, with the Foreign Minister and Attorney-General. So yeah, we'll be bringing that to you live. But Craig Emerson, George Brandis, as always, appreciate it.

BRANDIS: Thanks, Kieran.

EMERSON: Thanks a lot, Kieran.

GILBERT: That's all for this edition of AM Agenda.