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Transcript  
SKY NEWS AM AGENDA  
Tuesday, 30 March 2010  
Kieran Gilbert interviews Dr Craig Emerson and Senator George Brandis

E&OE

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*Subjects: Stern Hu case, opinion polls, health reforms, asylum seekers.*

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**GILBERT:** Good morning and welcome to AM Agenda. The Australian Government says the handling of the Stern Hu case is a missed opportunity for China. Critical over the lack of transparency in the case the Foreign Minister Stephen Smith has this morning told SKY News the outcome could have broader ramifications.

**[Excerpt of audio]**

**SMITH:** It was in our view, a lost opportunity. That's had obviously repercussions for Stern Hu and the other three employees, but it may well have repercussions in terms of international communities dealing with China. Now that will be a matter for the international business community.

**[End of audio]**

**GILBERT:** This morning welcome to our panel, the Small Business Minister Craig Emerson, good morning Craig.

**EMERSON:** Good morning Kieran.

**GILBERT:** And in Brisbane we've got the Shadow Attorney-General Senator George Brandis, good morning Senator.

**BRANDIS:** Good morning Kieran.

- GILBERT:** Craig first to you, the Foreign Minister says there are serious unanswered questions for both the Australian and international business communities after the Stern Hu case. Will business now think twice about operating in China?
- EMERSON:** Well that is a call that business needs to make, but the point that Stephen Smith is making is that in respect of the commercial secrets charges, as distinct from the bribery charges, there wasn't the transparency there. Our consular officials were allowed into the hearings relating to the bribery charges and there does appear to be a fair bit of evidence of bribery and Stern Hu has been convicted of that. Our officials weren't allowed into the hearings related to commercial secrets, and so that remains quite opaque and the point again that Stephen's making there...
- GILBERT:** ...Opaque, and that's got to lead to uncertainty in relation to international business...
- EMERSON:** ...Well I think Stephen is making the point that businesses may then say "We don't understand how this operates, and what constitutes a commercial secret or otherwise".
- GILBERT:** So they might think twice about operating there, surely.
- EMERSON:** And that is ultimately a matter for commercial enterprises to make a decision on. Stephen is just indicating that there may be an issue there. And it's really this, the missed opportunities, this issue of the lack of transparency, so if people don't understand...
- GILBERT:** ...It doesn't look like its impacted Rio Tinto at least, I mean they're charging on, they've sacked Stern Hu and moving ahead.
- EMERSON:** And they are, and that 's why Stephen and I are saying in the end that's a matter for commercial decision making, but it is a missed opportunity in terms of transparency because it would have imparted more information to the broader business community, and also to the Australian community in relation to those charges in respect of commercial secrets.
- GILBERT:** Okay, Shadow Attorney-General George Brandis, what did you make of the trial, and specifically that secrecy around the element of the Hu trial.
- BRANDIS:** Well I think there are a couple of points to be made here Kieran, but let me begin by saying I think that Australians learning this news today will have a sick feeling in the pit of their stomachs that the Australian Government didn't do all that it could have

done to protect the interests of this Australian citizen, and there's absolutely no point in Mr Smith, the Foreign Minister complaining now that it's all happened, that things went wrong, that the process lacked transparency. The time for the Australian Government to do something to protect Mr Stern Hu's interest was before the trial and during the course of the trial, not after he has been sentenced. Now, there are two particular respects in which the Opposition says that the Australian Government didn't act. First of all, the Prime Minister at no stage picked up the telephone and took the matter up at the highest levels with the Chinese Government. When Kevin Rudd was elected in 2007 you might remember we had that very theatrical performance when the President of China was in Australia just before the election when Kevin Rudd delivered half of his speech in Mandarin, and I think Australians were led to believe that Kevin Rudd was a bit of a China expert, and bit of an old China hand, and he would bring a unique capacity to manage the Chinese-Australian relationship, which was shared by no previous Australian political leader. That's certainly fallen flat. His management of the Australia-China relationship has been clunky, and incompetent. The second point the Opposition makes, and it's a narrower point is this: There was a Consular Agreement in place which guaranteed Australian consular officers access throughout the trial. That Consular Agreement was breached when Australian consular officials were excluded from that part of the trial, dealing with commercial secrets. What the Opposition wants to know is what steps the Australian Government took immediately they learned the Consular Agreement was going to be breached, to call upon China to honour the Consular Agreement, because it looks as if they did nothing.

**GILBERT:** Foreign Minister Stephen Smith discussed the Consular Agreement on SKY News just a little while ago; let's hear what he had to say about that in the context of the Hu case.

**[Excerpt of audio]**

**SMITH:** The Consular Agreement we have with China that was struck in 1999/2000 by the previous Government and it says that yes, there should be access in such matters, but it also expressly says that the Consular Agreement is subject to the laws of China and the laws of Australia. Now, just as in Australian law, I'm advised in Chinese law it's open to a court in particular circumstances to close the court.

**[End of audio]**

**GILBERT:** And Stephen Smith did point out Senator Brandis, as well that officials sought access at every point. What more could they do?

**BRANDIS:** Well what Mr Smith assumes, wrongly, is that the Chinese legal system is comparable to the Australian legal system, and of course it's not. The notion that we respect in Australia of the independence of the judiciary from the political arms of government, is not a feature of the Chinese legal system. There is a political dimension to Chinese courts just as there is to Chinese commercial state agencies...

**GILBERT:** ...But how does that change, how does that make them any more accessible? The question is, what more could the Government have done?

**BRANDIS:** Well what we would've expected the Government to do is when the judge who was conducting these proceedings indicated that Australian consular officials were going to be excluded and thereby acted at variance from the Consular Agreement that a complaint would have been made at that stage to the highest levels of the Chinese Government. Please don't tell me that the independence and separateness of the judiciary is respected in China, the way we respect it in Australia.

**GILBERT:** Craig Emerson, your response.

**EMERSON:** My response is that megaphone diplomacy doesn't work, and Barnaby Joyce and people like that standing on the rooftops, shouting from the rooftops, condemning China for arresting Mr Hu in the first place doesn't actually achieve a result. It might for Barnaby Joyce, it might achieve some sort of political dividends for the Coalition, but it doesn't help Stern Hu, and I didn't hear anything that George said that they would have done differently. He is assuming that nothing happened behind the scenes. If you want to get a result, or maximise your prospects of a good result it's best to work behind the scenes rather than standing on the rooftops at the outset, condemning China for even arresting the four men who have now been found guilty of bribery. Indeed, Rio Tinto has, as you said, dismissed these four men and said that there is substantial evidence of bribery. Now, the other charge, the commercial secrets charge - obviously there was behind-the-scenes manoeuvring. Now George just wants your viewers to think that we did nothing so that he can score some political points out of it.

**BRANDIS:** Well what did you do Craig? It's all over now Craig so tell us, what did you do?

**EMERSON:** You know, George, in truth that there were very strong representations behind the scenes, including at the highest levels. You know that, you've pretended otherwise because it suits your base political purposes.

**BRANDIS:** The fact is at no time did the Prime Minister raise this matter by telephone, not by megaphone, by telephone at a heads of government level as he ought to have done.

**EMERSON:** Well George you just don't know what went on behind the scenes, and the fact is that the Australian Government worked vigorously for these four men. We believe the sentence is harsh, we don't think that it's great...

**BRANDIS:** ...Too late to be saying that now Craig. The damage is done.

**EMERSON:** All right George, you would've done it so differently they would have been freed...

**BRANDIS:** ...Yes we would have...

**EMERSON:** Yeah yeah, under the Coalition.

**BRANDIS:** Listen Craig, a Liberal Prime Minister would have picked up the telephone and spoken at a heads of government level as, for example the Prime Minister of the United Kingdom did in relation to a United Kingdom citizen last year...

**EMERSON:** ...Listen, do not pretend George that the outcome would have been different under you.

**GILBERT:** ...Senator Brandis just finish your point and I'll come back to Craig Emerson about what a Liberal Prime Minister would have done.

**BRANDIS:** A Liberal Prime Minister would have picked up the telephone and spoke to the President of China and dealt with the matter at a heads of government level just as the Prime Minister of the United Kingdom, Mr Brown, did last year in relation to a United Kingdom citizen who was on trial for his life in that case.

**EMERSON:** ...And what happened in relation to that United Kingdom citizen?

**BRANDIS:** It would be nice...

**EMERSON:** ...The poor bloke was executed actually.

**BRANDIS:** Mr Brown's intervention failed but at least he tried. Which is more than your Government did for Mr Hu Craig.

**EMERSON:** You're telling me that a Coalition Government would have got these guys freed. That is complete and utter rot and you know it.

**BRANDIS:** Craig, I'm not saying that, but at least we would have tried.

**EMERSON:** And we did try.

**GILBERT:** Lots more to talk about on the program, stay with us after this very quick break.

**[Commercial break]**

**GILBERT:** Welcome back to AM Agenda. Today's Newspann has a bounce for Kevin Rudd, with me now the Newspann chief executive Martin O'Shannessy to discuss the results. Martin, a boost for Labor in its primary vote, the two-party vote, now very strong at 56-44 and Kevin Rudd's approval rating also up. What do you put this down to?

**O'SHANNESY:** Well it looks to me, the other questions we did in the poll of course dealt with the two long suits that the two parties have that is the economy and health. What we've seen is a falling away, a pretty sharp falling away of the Liberal Party, or the Coalition's dominance on the issue of the economy basically since the last poll that we did on this in February, and what we see is a falling away there and of course from this poll, a suggestion that Tony Abbott hasn't been able to put a glove on the Prime Minister on the area of health, so if you like, in a two round boxing match at the moment on points to the Prime Minister in both rounds.

**GILBERT:** Well in terms of the economic management Martin, the Prime Minister, the Labor Party has got the strongest result under his tutorship, the Treasurer Wayne Swan, in Newspann history, is that right?

**O'SHANNESY:** Well that's right, there have been times in the 90's when there were higher results for Labor, we dropped that series until 2005 but since then, complete domination by the Coalition in that area. I noticed Craig was pretty quick to bring Barnaby Joyce into every answer earlier on today and I think it's pretty clear the criticism and the free kicks that were coming across haven't helped the Coalition maintain their position as the more credible economic manager and I think that's where Tony Abbott's really going to have to work hard.

**GILBERT:** Okay Martin, moving forward, we've just seen Tony Abbott compete and complete remarkably that ironman at the weekend, lots of talk about that around the water cooler, how do you see that playing out?

**O'SHANNESY:** I don't think that it necessarily aids or harms Tony Abbott, although he's got to have a strong policy on health, he's got to have a clear dominance on the long suits that the Coalition should enjoy a dominance on, in the area of the economy and

so perhaps it's a distraction and not necessarily a positive either way.

**GILBERT:** Martin, as always appreciate your time this morning.

**O'SHANNESY:** Always a pleasure.

**GILBERT:** Welcome back to our panel now, the Small Business Minister Craig Emerson and the Shadow Attorney-General Senator George Brandis. Craig Emerson, is the result we've just been discussing with Martin O'Shaughnessy a relief for Labor, and the Government.

**EMERSON:** We're not focused on the polls, we're concerned and are working to do our very best on the basics. Health and education, and economic management, and that's what we'll continue to do...

**GILBERT:** ...But half an eye, you mightn't be focused on it but you'd have half an eye on it, must be a bit of a relief.

**EMERSON:** Every fortnight between now and the election and every fortnight after the election there'll be a Newspoll out. If we just spent our time waiting for the next Newspoll then commentating on it, lets have experts like you and Martin do the commentary on Newspoll. That's perfectly appropriate.

**GILBERT:** Okay, so what about the economic management?

**EMERSON:** For a government we need to be working on those basics and we're doing that, health, education and the economy.

**GILBERT:** Are you surprised the economy number is up?

**EMERSON:** Well, we are the only developed country that has stayed out of recession, I think people probably do give a certain amount of credit to the Government for its role in that along with a number of other factors but the economic stimulus plan, including the biggest school modernisation program in Australia's history have been important there.

**GILBERT:** But there have been bungles there, and there have been bungles with the insulation program.

**EMERSON:** It's interesting isn't it? Barnaby Joyce yesterday sending out emails almost desperately looking for any cases where there might be some sort of issue or problem in the school modernisation program. Tony Abbott is doing the same thing.

**GILBERT:** It's not hard to have a look, it's not hard to find is it?

**EMERSON:** Well less than one per cent. Less than one per cent, so 99 per cent or more of those projects are very welcome and they've worked out very well, and what's the coalition focused on? Less than one per cent because the problem, more generally I think, for the coalition is that they're very good at opposing but have not been interested in proposing any alternatives.

**GILBERT:** Senator Brandis, Tony Abbott has done well in suring up the conservative base, the coalition's base vote. Is it now time to look to the middle ground, to make him competitive in this election year.

**BRANDIS:** Well I think Tony Abbott has done remarkably well since he became the leader of the Liberal Party at the beginning of December last year. The one point that you will find Craig in agreement about Kieran, is the importance not to be obsessed by individual polls, because as all political practitioners know, the polls bounce around. There's been a fairly lineal trend in the polls since Tony became leader towards the Liberal Party. This poll shows is the first poll that doesn't reflect that trend so I think it's far too soon to be drawing any particular conclusions about one poll, but I think Craig and I would also be in agreement that the next Federal Election, whenever Mr Rudd chooses to call it will be very competitive indeed.

**GILBERT:** There's suggestions in The Australian newspaper that the parental leave scheme that Tony Abbott put forward has damaged your economic credibility, the Coalition's strong bedrock issue, really. The economic management rating for the coalition down from 45 to 39 per cent. That doesn't look like an aberration. Would you put it down to that parental leave scheme, what's that due to?

**BRANDIS:** I'm not going try and read the entrails of the particular opinion poll, but can I simply say on economic management, Craig made the point about Australia being the only developed country to come out of the global financial crisis without a recession, the main reason that happened is because we are the only developed country that went into the global financial crisis with no public debt, and that was entirely due to the policies, the economic management of the former Coalition Government.

**GILBERT:** Okay, in terms of the overall political landscape at the moment, Senator Brandis, there's a lot of talk as I mentioned to Martin O'Shannessy about, Tony Abbott's approach. He did that ironman at the weekend, it's hard to see how that's anything but a positive for him, but now that he's got that under the belt, he's done the swims, should he not do this Pollie Pedal, this 9 day cycle, and get back in the suit and focus on the main game?

**BRANDIS:** Tony Abbott is a fabulously hard working bloke, and none of the time he spends keeping himself in good shape is at the expense of the hard work he does all the time on policy development, but can I make this point about Tony Abbott in this context, what we know about Tony Abbott is that he's a real bloke, he's a real person. He actually lives in a real world, he is not a spin-doctored media-managed, confected creation of the public relations consultancy like the Prime Minister.

**GILBERT:** Okay, Craig Emerson, the 100<sup>th</sup> boat since the Rudd Government took office and no sign that this flow of boats is going to stop. Just a week ago we had the Prime Minister mocking the coalition saying they had the record for the number of boats in a month. Well you've broken that record now with 15.

**EMERSON:** Could I just very quickly finish on that last point of George's though? He said Tony Abbott is working on policy, well we'd like to see some. He should take the advice Dr Mal Washer, who is a doctor of medicine who said that Tony Abbott should take the positives out of the Government's health plan and value add to them. But yet, Tony Abbott said when he was Health Minister that no one should fret about an unreformed health system. So here's a guy who has no commitment to reform the health system, the hospital system...

**BRANDIS:** ...We're only talking about control by local boards because Tony Abbott put it on the...

**EMERSON:** ...Yeah in two states, in two states. That's a comprehensive health policy.

**BRANDIS:** They're the two Labor states where state Labor governments have given the public hospital system a heart attack.

**GILBERT:** Please, I want to hear you response to this because 100 boats since you took office and 15 this month already.

**EMERSON:** Yeah I had a look at the numbers of people who have arrived to our shores as asylum seekers by boat, and the answer is 22,000, and that is not 22,000 thousand last year, that's not 22,000 the year before, it's not 22,000 in the last decade, it's 22,000 in the last 35 years. Now 14,000 of those were under John Howard - 8,000 under Fraser, Hawke, Keating and Rudd. Now let's keep this debate in perspective; 22,000 people over 35 years.

**GILBERT:** ...Why didn't we hear that from the Prime Minister as opposed to the strong rhetoric "we're kicking people out", "we make no apologies" and all that sort of stuff?

**EMERSON:** ...If people are found to be not genuine refugees as 87 people were, and who are taken to Villawood Detention Centre and the shadow immigration person said "We, (the Coalition) would never have taken them to the Villawood Detention Centre to be deported"...

**GILBERT:** ...Craig you're talking about the small number, comparatively, over time. Why do we get this hairy-chested approach from the Prime Minister then? Because that's what we're getting.

**EMERSON:** ...Because if people are found to be not genuine asylum seekers they should be sent back and that's what we are doing. That's what we were criticised for by the shadow immigration minister who said they would never do that. What? Are they going to put an air strip on Christmas Island? They said that the whole problem was fixed under the Howard Government, well why did they build Christmas Island?

**GILBERT:** Okay, Senator Brandis, there's your question; I want to ask you particularly though, as the Shadow Attorney-General, what's your legal advice? Do these asylum seekers that have been moved to Villawood, the Government says they are off-shore status remains, do you think legally they do have a course of action through our courts?

**BRANDIS:** Well Kieran, I'm sorry to disappoint you but I'm not going to be tossing off legal advice on breakfast television off the top of my head, but let me just say...

**GILBERT:** ...What's your instincts say, because the Government say's they've got no legal avenues.

**EMERSON:** That's correct.

**BRANDIS:** That is not something as I say I'm going to be offering an opinion off the top of my head on breakfast television.

**GILBERT:** Haven't you sought advice because your colleague Scott Morrison is saying that they do have legal avenues, he's obviously throwing things off the top of his head?

**BRANDIS:** I'm sure what Mr Morrison says is correct by the way, but you asked me for a legal opinion and as I say it's not my practice to throw opinions around without due reflection but what Mr Morrison said is correct. Now can I go back to the broader issue though, of asylum seekers, because we now have this morning from Craig, a new line; and that is "It's only 22,000 thousand over a period of many years"...

**EMERSON:** ...Thirty-five.

**BRANDIS:** ...That doesn't matter. Thirty-five thousand over a period of many years...

**EMERSON:** ...Thirty-five years.

**BRANDIS:** ...Oh, okay. Twenty-two thousand over 35 years, the fact is that every single one of those 22,000, which is a very large number of people, is a breach of Australia's borders, a breach of Australian law, and a breach of Australian national security...

**EMERSON:** ...Fourteen thousand under John Howard.

**BRANDIS:** The Liberal Party doesn't regard that lightly. The fact is that when the Coalition was last in power there was a developing problem and we fixed it. We fixed it by bringing in tough policies in 2001, and the number of illegal arrivals fell to virtually nil, an average of three a year.

**EMERSON:** ...Why did you build the Christmas Island detention centre? Why did you build Christmas Island?

**GILBERT:** Well you've both had a fair say, Senator Brandis, thank you for your contribution today, Craig Emerson, as always thank you.

**BRANDIS:** Thank you Kieran.

**EMERSON:** Thanks a lot.

**END**