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E&OE

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O'BRIEN: Historic doesn't really begin to tell the story, does it? Madonna speaks every week with Queensland Liberal Senator George Brandis, so I'll do that this week. Good morning Senator.

BRANDIS: Good morning, Chris.

O'BRIEN: And of course the Labor Member for Rankin, Craig Emerson. Good morning, Dr Emerson.

EMERSON: Hello, Chris. G'day George.

BRANDIS: Morning, Craig.

O'BRIEN: Have you two caught up since the momentous decisions of yesterday?

BRANDIS: Ah, no.

EMERSON: No, we're in different cities. I'm down in Canberra, of course, and I haven't seen George in that short time but I'm sure we'll catch up soon.

O'BRIEN: Yes, I know I'm being naïve. I think the 612 listeners think that, you know, you guys ring each other up every five minutes just for a chat even when you're not on air.

EMERSON: They're onto our secret.

O'BRIEN: Gentleman I have a line written down here, this is how I'm going to start our conversation: we live in interesting times ...

BRANDIS: Well the times have certainly, politically have been quite remarkable. No doubt about that. And I think we're in for even more interesting times in the next couple of years because this is, all the commentators said yesterday, it's not exactly a particularly original insight, but this is going to be a very fragile and unstable Government. The ... and I think we need to remember the context of course. We, on our side, are disappointed with the decision of the two Independents to put the Labor Party into office. But this decision came against the background of a shocking result for the Labor Party at the Federal Election. They lost 17 seats. Last time an opposition won ... a government lost 17 seats without actually losing office was I think the 1969 election. Mr Whitlam won 17 seats from the Coalition and three years later he got over the line. So this was an even worse result for Labor than that, because ... than that had been for the Coalition all those years ago because of course they, they lost the election, they lost their majority, they lost the popular vote, they lost the two-party preferred vote, they won fewer seats than the Coalition. And these are all matters that have merged into history now. I don't want to dwell on them too much. But you do pose that question and I think we should ... it's not inappropriate this morning to have a little bit of retrospective reflection on the interestingness of what's happened.

O'BRIEN: Craig Emerson?

EMERSON: Well, Chris I don't mind doing a little of retrospective but we need to do it accurately. And one of the statements that George has made is one that he's been making frequently and that is that Labor got fewer seats than the Coalition. That's untrue. The Labor Party got 72 seats, the Coalition got 72 seats. Mr Crook is ...

BRANDIS: ... the Coalition got 73 seats.

EMERSON: ... the Western Australian National who declined even under pressure from the Independents to pledge his support one way or the other, most particularly to the Coalition. What he said is that he would support the Coalition in supply – that is the Budget –

and motions of no confidence, but that he would sit on the cross-benches. Now, it's a funny old member of the Coalition who sits on the cross benches. It puts Mr Crook in the same position as the Greens' member, Mr Brandt who said similar things that he would obviously not sit with the Labor Party. He is a member of a different political party. We accept that. But it's just a re-writing of history for George and the Coalition to claim that they won 73 seats. We both won 72 seats.

BRANDIS: I'm sorry, I'm sorry Craig, but you are misleading the listeners. Mr Crook is a member of the National Party. He hasn't resigned from the National Party. The National Party is a party of the Coalition, and Mr Crook actually went to the National Party meeting in Canberra last week. So you can

try and distort some unguarded remarks you might have heard, but Mr Crook is a member of the National Party ...

EMERSON: No, no, they were not unguarded at all, they're not unguarded at all. This was revisited just two days ago ...

BRANDIS: Is Mr Crook a member of the National Party, Craig? Is Mr Crook a member of the National Party, Craig?

EMERSON: These issues were revisited two days ago, and Mr Crook reaffirmed that he would attend National Party room meetings, but not, not joint party room meetings. And ... could I finish? He would sit on the cross benches. Now, sitting on the cross benches ...

BRANDIS: Now, is Mr Bandt a member of the Labor Party, Craig? Now, is Mr Bandt a member of the Labor Party, Craig?

EMERSON: George, would you let me finish? Sitting on the cross benches is not being a member of the Coalition, just as the other Independents do not say they are members of the Labor Party or of the Coalition. Mr Crook is in the same situation sitting on the cross benches; that is, not sitting with the National Party and the Liberal Party. That's sitting on the cross benches reaffirmed – not in an unguarded statement on election night – just two days ago when the Independents made this very enquiry. Therefore, we finished on 72 seats each, and it was Labor that was able to get to 76 seats. The Coalition got to 74 seats. That's why the Government of Australia has been formed by the Labor Party working with the Independents.

BRANDIS: I think we know the way in which the Labor party got to 76 seats. The point I made merely – and I repeat – is that it was my side that got the majority of the vote and the largest number of seats, and that's a ... and that's a ...

EMERSON: It's incorrect. It's just incorrect. It's just incorrect.

O'BRIEN: Doesn't it bring up a wider issues and that is the way we decide governance in Australia. Has this, has our system worked? Has this election brought up any, oh I don't know what, are there ways which we could change the system so that when times are tight, when the result is close, that we wouldn't be having this argument over the way to interpret results.

BRANDIS: I think that ... I think it's that our system has worked in the sense that it has produced a Government. Let's not lose sight of the facts and in that limited sense, the system has worked. What disappoints me though is this: given that there was a hung parliament in which people who were genuinely Independents – the four of them, Mr Wilkie and the three rural Independents – did have to make a choice between two major parties, both of which found themselves in minority positions on the floor of the Parliament. They didn't take account – well Mr Katter did – but the other three didn't take account of the fact which way the country voted. Because, I won't revisit the argument about Mr Crook again, but I notice Craig doesn't dispute the proposition that

the Coalition actually won the majority of the votes, about 700,000 well, primary votes, and importantly it won several thousand more two-party preferred votes, and ...

EMERSON: That count is continuing ...

BRANDIS: That count is continuing ... and that's ...

EMERSON: Well, don't say that it was won, don't say it's over, it's not.

BRANDIS: ... and that's been the case, and that's been the trend for more than a week; in fact for a week and a half. Now, I think it was a disappointment to me when I heard Mr Windsor and Mr Oakeshott speak yesterday; that as they recited the various considerations that they had taken into account in landing where they did, neither of them actually referred to the majority vote of the country. Now I'm not saying it's the only thing they should have had regard to, but it's a shame they didn't even mention it.

EMERSON: Well, applying George's logic ...

O'BRIEN: Do you think the system worked, Craig?

EMERSON: Well, applying George's logic, John Howard should have, in 1998 said, 'fair cop, I went to the 1998 election, I only got 48.5 per cent of the two-party preferred vote, therefore I'm asking Kim Beazley to form a Labor Government.' No one actually expected that of John Howard ...

BRANDIS: No ...

EMERSON: And so you can't redesign the criteria – the way it works. And George has actually said this and I think he'll even say it now; the way it works is that the government of the day is formed on the basis of the number of seats that that political party, or coalition of parties, can command in the House of Representatives ...

BRANDIS: I think that's certainly true ...

EMERSON: That's written in the Constitution.

BRANDIS: Well, it's actually not written word for word, in the Constitution but that's ...

EMERSON: All right, but that is, that's the way it works ...

BRANDIS: That's uncontroversial. But of course the plain difference between 1998 and 2010 is that in 1998 one party actually had a majority of seats on the floor of the House of Representatives.

O'BRIEN: Okay ...

BRANDIS: On this occasion, neither party did. And you're right Craig, to the greatest extent possible you would want the seat count to reflect the vote

count across the country and to avoid anomalous results, like 1998. This was an opportunity where the Independents could have actually said, 'well, all things considered, by a narrow margin, the Coalition won this election, therefore we will give the country what it voted for.'

O'BRIEN: So that's taken us to where we are. And you can hear the dispute there and I understand that, but okay, and I know you both agree with this: this is where we are now. Were there lovely positive signs over the last day or two, with group hugs and with the Prime Minister saying warm things about Tony Abbott's congratulatory phone call, and optimistic signs about the way everybody's going to work together in Parliament? George Brandis and Craig Emerson, do you share this optimism about a new way of doing politics in the next three years?

BRANDIS: Umm, I think politics never essentially changes, but sometimes the tone changes. Now, the difference that will be interesting to observe is that with nobody having a majority in the House of Representatives – because the assurance that two Independents and Mr Wilkie, rural Independents – have given the Labor Party is only about confidence and supply, so the Labor Party actually doesn't have a majority in relation to any piece of legislation other than the Budget bills. It will be interesting to see if the way that the House of Representatives now operates, particularly with a augmented committee system, comes to reflect more, or resemble more closely the way in which the Senate has customarily operated, where neither side usually has a majority.

O'BRIEN: New tone, Craig Emerson?

EMERSON: I think that's right. What George has said is right. The new committee structure in the House of Representatives will make committees far more important, far more relevant. And that's a good thing. It does, in sense, as George says, reflect the situation in the Senate where I think only on a couple of occasions in living memory has one political party commanded a majority in the Senate, so they're used to this sort of process. But these were the reforms that were settled by both major political parties with Rob Oakeshott and the other Independents. We thank Mr Oakeshott for this. I think it means that in the House of Representatives the Executive will be less powerful in terms of the conduct of the House. That's probably a good thing. I think the tone will be more civil. Tony Abbott has talked about a kinder and gentler Parliament. I hope that comes to pass. But a point that Julia has made is that on those issues where we do have profound philosophical differences – and that's not all issues by any means – of course there will remain room for, and the need for, robust debate. It is a clearing house for ideas.

O'BRIEN: Or ferocious even, Tony Abbot said yesterday. And I don't think he meant that in a vicious way.

EMERSON: We're all grown up and we can all handle that. But I think that these are good reforms in the House of Representatives to shift the balance of power, if you like, away from the Executive of the day towards the House

itself. That will mean more transparency, more accountability. That's a pretty good development.

BRANDIS: Well, we'll see how it goes. I mean, as I said at the start, I don't think politics essentially changes and I think the political competition – particularly given that for all the reasons that I've indicated and won't go over – this Government does lack democratic legitimacy. Or, as Mr Oakeshott said several times yesterday, does lack a mandate for anything. I think the political contest, if anything, might be even more willing.

EMERSON: Well, I think that's a bit disappointing to hear George – and this obviously is something out of central casting – saying that a government formed under the Constitution, using the processes that are long established, lacks democratic legitimacy. He talked about a fragile and unstable government. These are worrying phrases coming from George's mouth. I hope they are not implemented in the way that the Coalition conducts itself. Let's see how we go. I take Tony Abbott at face value when he talks about a kinder and gentler Parliament. I hope that's what happens. That's what the Australian people want, stability and good government, and that's what we'll seek to deliver.

BRANDIS: I think the Australian people do want stable and good government. But I don't think they are likely to get it from your mob. You couldn't deliver stable and competent government with a 16 seat majority.

O'BRIEN: That doesn't sound very optimistic.

BRANDIS: It is fanciful to imagine that you are going to be able to deliver it based on a cross-bench of irreconcilable differences with regional conservatives on the one hand and inner-city green radicals on the other.

O'BRIEN: Well let me ask you, Senator Brandis, the public has said, also clearly I think since the election, that whatever happens they would like it to be stable. Do you want it to last? And will it last?

BRANDIS: I think everybody ... well I think everybody would like the Government to be stable; of course they would. My point is that I ... I am not very hopeful that this Government will be stable. It is an extremely fragile political position on the floor of the Parliament. The cross-benchers upon whose support it depends have irreconcilable differences and come from utterly different points of view. They ... it is a Government which, when it had a majority, did not have a track record for stability and competence. So unstable was it that they executed their own Prime Minister. So, I'm not very optimistic that this Government will be a stable Government and I hope Craig doesn't hide behind the argument that ... as an argument why the Opposition shouldn't do its job, which is to hold the Government to account. If, in the last Parliament, the Opposition hadn't been doing its job we wouldn't have exposed the Building the Education Revolution school hall fiasco, we wouldn't have exposed the home insulation fiasco. We'll be doing our job in this Parliament, as we did in the last.

O'BRIEN: Are you optimistic, Craig Emerson?

EMERSON: Well I am. But I am concerned about George not accepting the result of the votes that were cast by the people of Australia and the decisions that have been made by the Independents.

BRANDIS: But most of the people voted for my side, Craig. You seem to be forgetting that the majority for the two-party preferred vote was for the Coalition. Most Australians wanted a change of government. Your Government has as much legitimacy as the Pakistani cricket team.

EMERSON: Well, see this is very important. What you've just heard is a very important statement from George Brandis, and he is the Deputy Leader of the Opposition in the Senate. And this is a very concerning development because Senator Brandis is saying that this is an illegitimate Government; it doesn't deserve to govern. I think the first step, George, is to accept the result of yesterday and what has happened and work constructively on those areas of policy where we can work together, perhaps make compromises. And of course hold the Government to account. Of course have philosophical differences. But it's a very bad starting point when the Deputy Leader of the Opposition in the Senate says this Government is not a legitimate Government and that it has the same legitimacy as the Pakistan cricket team. That is a very worrying development.

BRANDIS: Well, please Craig, let me ... let me ...

EMERSON: Withdraw, I hope.

BRANDIS: Don't put words in my mouth. No, don't put words in my mouth. Let me say, again, as Tony Abbott has said, this Government lacks democratic legitimacy because a majority of the people who voted and cast their preferences voted for a change of government. Now – having said that – the system as I said earlier has produced an outcome. We respect the fact that that's the outcome that has been produced by the system. But the Government goes into the new Parliament in a very unstable and fragile position. It doesn't have the authority of an electoral mandate, a point that Mr Oakeshott was at pains to make yesterday. And I'm not optimistic that your side of politics, unable to give stable government in a majority situation, is any more likely to provide stable government in a minority situation.

EMERSON: The point that Mr Oakeshott was making is that we do not have authority to put through each and every piece of legislation that is Labor Party policy because obviously we need the support either of the Coalition or a certain number of Independents, or both. But George, you'll accuse me of verballing you with this, just as you did when you didn't know when Tony Abbott was going to return the Budget to surplus, but you said that this Government as much legitimacy as the Pakistan cricket team.

BRANDIS: Yes, it does. That's absolutely true.

EMERSON: This is a very worrying development. Thank you for affirming that.

BRANDIS: You, a few moments ago, Craig refused to accept what the AEC vote count has been showing for a week and a half that the majority of the people in the country whose votes have been counted voted for a change of government. And more than 700,000 people by the way voted for the Coalition than the Labor Party.

EMERSON: And that vote is continuing. And John Howard got 48.5 per cent of the vote in 1998 and, perfectly legitimately, formed a government and we didn't quibble about it and didn't squeal saying, 'oh, but he only got 48.5 per cent of the vote so he should hand it over to Labor.'

O'BRIEN: Okay, let's end it there.

BRANDIS: Nobody's squealing, but we've been asked a question by Chris O'Brien here, and we've been asked to predict how stable this Government will be, and we've each made a prediction. Let's see who turns out to be right.

EMERSON: Let's bring some goodwill to it, and this is not a good start.

O'BRIEN: I know. I'm about to say I'm a bit depressed now because I've filled in for Madonna for one day and I thought there would be goodwill and bonhomie and now I think we're going to finish on a sour note. So can we finish on a more optimistic note and we'll wish each other well for three years of stable government?

EMERSON: Very happy to do so.

BRANDIS: Well, I hope the Government is stable. I do hope the Government is stable. And I hope that it conducts the affairs of the country competently. I'm not optimistic.

O'BRIEN: George Brandis and Craig Emerson, thank you.

BRANDIS: Thank you Chris.

EMERSON: Thanks a lot Chris.