



**THE HON DR CRAIG EMERSON MP**  
MINISTER FOR TRADE

Transcript  
ABC 612 Mornings with Terri Begley

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*Subjects: asylum seekers, Qantas.*

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TERRI BEGLEY:

Now we're heading to Canberra. And who knew what and when on the grounding of the Qantas planes: that's where the argument has shifted now; and whether it could have been avoided. And the latest asylum boat tragedy off Indonesia - happening just hours after a bipartisan approach to strengthen laws on people smuggling. And the mining tax Bills to go to Parliament, as a key Independent throws coal seam gas up for discussion. How much ground is Labor likely to give him to get his vote?

Let's go *Inside Canberra*. Dr Craig Emerson is the Trade Minister and Senator George Brandis is the Deputy Opposition Leader in the Senate. Good morning to you both.

GEORGE BRANDIS: Good morning, Terri. Good morning, Craig.

CRAIG EMERSON: Hello, George, and to Terri.

BEGLEY: Yes. Good to talk to you again. Now, firstly, the asylum-seeker tragedy overnight on the high seas: the Home Affairs Minister confirming the boat that went down off Java. The figures so far: eight asylum seekers dead; 15 missing. Brendan O'Connor said that this was his fear, after the Malaysian solution was stalled. Craig Emerson, is it the right time to be discussing failed policy options on asylum seekers?

EMERSON: Well, Brendan was asked a question and gave a direct answer to a direct question. I don't like the idea of playing politics with people's lives. And amongst those who have died are a number of little girls, as young as two years of age. We simply seek a capacity to deter people smugglers. We have legislation in the Parliament that would have that effect.

We have a disagreement with the Coalition. The Coalition believes that Nauru is the way to go. We believe, on advice, that Malaysia is. We're not asking the Coalition to support Malaysia. We are not designating in the legislation a particular processing location; simply that offshore processing be allowed.

BEGLEY: In the meantime, what assistance are we offering Indonesia in the search for those missing overnight?

EMERSON: Well, we are ... I'm not sure, to be perfectly honest. I know that we're getting reports from our people in Indonesia as to the circumstances. It's happened in Indonesian waters. There was going to be resumption of searching at the first available opportunity this morning. I don't want to be unduly pessimistic, but you would have grave fears for those who have disappeared and have not yet been located.

BEGLEY: George Brandis ...

EMERSON: It happened in Indonesian waters, you see, so...

BEGLEY: Yes, of course.

EMERSON: ... you know, we would lend any assistance that was required of us.

BEGLEY: But it is believed that the asylum boat was heading our way?

EMERSON: That's right.

BEGLEY: Yeah.

EMERSON: That's right.

BEGLEY: George Brandis, your party has come to some form of agreement with the Labor Party to strengthen people-smuggling laws. What sort of extra powers were being discussed in Parliament last night on this?

BRANDIS: Well, there are not really extra powers. The Opposition is supporting a Government Bill to clarify the definition of the people-smuggling offence. The people-smuggling offences were - or a more extensive range of people-smuggling offences and mandatory jail penalties - were introduced by Mr Ruddock during the Howard Government in 1999.

There is a particular case going on in Victoria at the moment in which the people smugglers are trying to argue that the legislation means something other than what it was always understood to mean. And we are assisting the Government merely in putting the legal definitions beyond doubt.

We don't think they were doubtful, by the way. But we certainly don't want to see a loophole opened up that will get the people smugglers off the hook. So it's for ... so we're not, in our view, changing the law. But we are, if you like, clarifying its meaning ...

EMERSON: And Terri, could I just take the opportunity to thank George Brandis for his approach on this? We, under this legislation, believe, across the parties, that people smuggling is a crime and therefore it should be punishable. And George Brandis has led the argument in the Coalition that the Coalition should support the Government's legislation. And I thank you, George.

BRANDIS: Well, that's good of you to say so, Craig. But, I mean, it wasn't much of an argument. The Liberal Party and the National Party will always support sensible legislation. This is sensible legislation. Every piece of legislation that your Government has introduced which in our view has been sensible, we have supported.

But, sadly, a lot of the legislation that you have introduced, including the carbon tax and the mining tax, in our view is not sensible and we've opposed it. That's what Oppositions do.

BEGLEY: We're getting off topic there.

EMERSON: And I think, George, you would actually privately support our legislation for offshore processing. But I'm not going to put you on the spot.

BRANDIS: Well, that's not true because I was the draughtsman of our amendment, which you

won't pass. And if you would pass it, the impasse would be resolved.

BEGLEY: Well, as...

EMERSON: And you are striking out Malaysia by putting Somalia in. That's absurd.

BEGLEY: As we said, though, I think today probably isn't the day, as you both probably agree, that talking about failed policies...

EMERSON: That's right.

BEGLEY: ...on this is not going to help what has happened overnight.

On to Qantas. Definitely areas of argument here: we've heard played out in the media in the last day or so, out of Parliament, with both sides becoming quite nasty about whether or not the grounding action by Qantas could have been prevented. Craig Emerson, could it have been prevented by Julia Gillard if she'd acted earlier?

EMERSON: The problem with the proposition of acting earlier is that Qantas never asked the Government to do that. It consistently maintained the position that it wanted to continue dealing directly with the unions without third-party intervention. We respected

that view of Qantas. There was a debate that has emerged since Saturday, saying that the Prime Minister should have invoked a particular section of the Act - the Fair Work Act - but that particular section would have been justiciable and therefore in all likelihood ended up in the courts. So what the Prime Minister did is invoke the section which meant that the industrial action and the lockout were both terminated.

BRANDIS: Well, look, with respect...

BEGLEY: Which - on that basis - I was just ... sorry, Senator Brandis. On that basis, has that exposed a flaw in the Act: the fact that Julia Gillard wasn't prepared to use Section 431 because she thought it would end up as a protracted court challenge? Doesn't that mean the legislation is flawed on that?

EMERSON: Well, that legislation is very similar to legislation that was in the previous Government's Industrial Relations Act. And this particular provision that the Prime Minister used worked. Within a matter of a day or so, the industrial action and the lockout were both terminated. And they are now required - the parties are required - to seek a constructive resolution. And if they can't do that, then the umpire - Fair Work Australia - will make a ruling.

So, in effect, the industrial action has been settled.

BRANDIS: Well, look, can I respond to that, Terri, please...

BEGLEY: Yes.

BRANDIS: ...because ... I mean, I've ... what Craig has said and what the Government is doing to try and justify its poor handling of this issue on Saturday afternoon is preposterous.

Let me quickly explain to your listeners. There are two relevant sections of the Fair Work Act: there's a section under which the Government acted, which enables the Minister to apply to Fair Work Australia to ask Fair Work Australia to make an order requiring parties to suspend industrial action; to terminate or suspend industrial action. That's the section, as I say, under which the Government acted late on Saturday night.

But there was another section available to them - Section 431 - which enables the Minister to make a declaration; no need to apply to Fair Work Australia or any other court or tribunal, to take effect immediately.

Now, we know, and this is not in controversy, that Qantas advised the Government at, or

shortly after, 2pm eastern daylight time, on Saturday afternoon of what it was proposing to announce at 5pm.

EMERSON: No, what it was *going* to announce.

BRANDIS: No, no, no, no. What it was ... that is uncontradicted on the public record.

BEGLEY: And this is ...

BRANDIS: So the Government had three hours within which to make a declaration prohibiting the industrial action, both the strike and the proposed lockout. And if it had made that declaration between 2pm and 5pm, taking effect immediately, then the lockout wouldn't have happened, the grounding of the aircraft wouldn't have happened, and the Australian public wouldn't have had 48 hours of inconvenience. But the Government was too slow off the mark.

And I asked a question of the Minister for Industrial Relations, Senator Evans, in the Senate yesterday, on this very topic. And I said, 'why didn't you act under Section 431 the moment you were told that this was imminent - you had three hours to do it?'. He said, 'we then took advice'.

Well, the Government should have been ready for this because Qantas had been advertising - had been telling Ministers, and for weeks on end - how serious the position was. It ought to have had a contingency plan ready to go and it didn't have one.

BEGLEY: Senator Brandis ...

EMERSON: I have to respond to that. And that is the provision that George referred to would have ended up in the courts. And the action that we took - the Government took, not Qantas - the action the Government took terminated this dispute and got the planes back up in the air.

And it is false, and George knows that it is false, to claim that Qantas was saying to us 'we want you to intervene'.

BRANDIS: No, no, I didn't say that Qantas was saying that.

EMERSON: It was only on Friday...

GEORGE BRANDIS: I didn't say that Qantas was saying that.

CRAIG EMERSON: Let me finish, George. Let me finish. It was only on Friday that Mr Abbott changed his lifelong position and actually asked for intervention because the tradition of the Liberal Party, exercised by Mr Abbott as Industrial

Relations Minister, is that there should be no third-party intervention; it should be sorted out between the parties. It was only on Friday, curiously, that Mr Abbott back-flipped and said, 'oh, now, after a lifetime of believing there should be no third-party intervention, I'm calling on the Government to intervene'.

BRANDIS: Craig, look, can I...

BEGLEY: And this argument keeps going backwards and forwards. I think we've basically heard both sides there.

BRANDIS: Well can I just ... well can I just clarify...

EMERSON: Well I responded to you, George.

BRANDIS: Can I just clarify one point? The ... that Mr Abbott and the Liberal Party have always said that in cases of national emergency or essential services there is a role for government intervention. And your point that the declaration under Section 431 might have ended up in the courts, Craig ... of course it might have ended up in the courts.

EMERSON: Exactly.

BRANDIS: But at the time it would have ended up in the courts, the stand-down and the grounding of

the fleet would have been avoided; it wouldn't have happened if you had acted more swiftly.

EMERSON:

Not true.

BEGLEY:

But it's almost academic now. I guess the question on people's minds is: does the Fair Workplace laws need to be changed to prevent something like this happening again?

Do they need to be strengthened? I know that backbenchers on both sides are calling changes for the Fair Work Act to be made to prevent an airline taking such extreme action.

Do you both agree that this needs to be looked at?

EMERSON:

Well, I personally don't think it needs changing, because an option that was available to Qantas that it never exercised was to suspend the bargaining period. Now, what that means is Qantas could have applied for a period whereupon no industrial action could have been taken by the unions.

It could have done that. And it never did that.

That was a provision available to it.

BEGLEY:

Okay. We're just...

EMERSON: And I don't believe that there is any merit in going back, heading back in any direction towards WorkChoices.

We think we've got the balance right.

This particular provision worked and worked well.

BRANDIS: Well...

BEGLEY: Just finally, I think...

BRANDIS: Can I just agree with...

BEGLEY: We're running out of time on this one.

BRANDIS: Let me just agree with part of what Craig said. The Government under the Fair Work Act has all the powers that it needs, and it had all the powers that it needed to stop this dispute happening. And our criticism is not of the ... that provision of the Act, but the fact that the Government didn't use those powers. And for 48 hours, 80,000 people...

EMERSON: And we just explained why.

BRANDIS: ... as a result.

EMERSON: And it was not a proposal by Qantas. Qantas said that they were doing it and they weren't entering into negotiations.

BRANDIS: You could have made a declaration prohibiting it before it happened.

EMERSON: They were not entering... and you never hear from George one word of criticism of Qantas for grounding all its fleet; not one word of criticism for inconveniencing the travelling public.

BRANDIS: Craig, the reality is you could have made a declaration and you ...

EMERSON: Against working [voice fades]...

BEGLEY: Okay, I think I'm going to do what Madonna usually does: I'm bringing the fader down. Here we go.

EMERSON: Ring the bell. The buzzer.

BEGLEY: I'll look for it for next week.

We have run out of time, gentlemen. We did have some more topics, but no doubt we can bring them back up with you in a week's time. I thank you both for your time.

BRANDIS:

Thank you so much Terri.

EMERSON:

Thanks Terri.

