



SENATOR THE HON GEORGE BRANDIS, SC

**Deputy Leader of the Opposition in the Senate
Shadow Attorney-General
Shadow Minister for the Arts**

TRANSCRIPT

Press Conference, Parliament House

30 November 2012

Topics: AWU Affair

E&OE.....

BRANDIS: Good morning ladies and gentlemen. There has been some debate this morning in the media about the claim made by the position that Julia Gillard broke the law in relation to the establishment and operation of the Australian Workers Union Workplace Reform Association. In order to get to the bottom of this affair, the Opposition, as you know, yesterday called for the establishment of a judicial inquiry. I think the terms of reference that we proposed for that judicial inquiry were released by the Opposition Leader's office yesterday but for ease of reference for you I will give you a copy of them as well as a small bundle of documents I want to take you to.

Now, Parliament is a political forum and debates between journalists and politicians about the law are seldom very illuminating but let me explain to you the basis upon which or the principal basis upon which the Opposition says Julia Gillard broke the law. We say that she broke the law because the Australian Workers Union Workplace Reform Association was established as a sham to facilitate a fraud and by her participation in its establishment, Julia Gillard was a party to that crime. Now, it is against the law of every Australian State, including the law of Western Australia, to provide a materially false statement when a person is under a statutory obligation to provide information to an authority. That is the effect of section 170 of the Western Australian Criminal Code in the terms in which it was drawn at the time of these events in 1992.

It is also, of course, a crime to participate in a conspiracy to defraud – that is also a statutory offence under Western Australian criminal law. The key issue in this case, therefore, was the nature of Ms Gillard's involvement as a solicitor then working for Slater & Gordon – as a partner indeed of Slater & Gordon – in the establishment of the Australian Workers Union Workplace Reform Association. And we

know what her state of mind was from her exit interview with the partners of Slater & Gordon on 11 September 1995.

Now, I just want to pause there to emphasise to those of you who are not had careers in the legal profession, what an extraordinary thing the exit interview itself was. For a partner of a law firm to be required by her managing partner and her senior partner to undergo a long and tape recorded interview about her conduct of a particular file is something that almost never happens, in a law firm or any other professional firm. And it would only happen if there was a belief on the part of those partners that there was a matter of grave concern in issue. But leaving that aside, in the bundle of documents I've given you, the last of the documents is an extract from what Ms Gillard said in the Slater & Gordon interview. And if I can take you to the bottom paragraph of the first of the two pages – the second last two pages of the bundle, that is the famous slush fund confession. And can I also draw your attention after the omission of some redacted portions, to what she goes on to say in the paragraph commencing three lines from the bottom about what the thinking was.

Now, a number of apologists and defenders of the Prime Minister have gone to great pains to stress or to assert that Ms Gillard, at the time she was involved in the creation of the Australian Workers Union Workplace Reform Association, did not think it was a slush fund, did not know it was a slush fund and that her words in September 1995 should be interpreted and understood to mean that that was an awareness she later developed. I submit to you that on any fair reading of the interview and in particular on any fair reading of the relevant paragraphs of the interview in the context, that is not an available or a reasonable interpretation. It is perfectly clear from the words Ms Gillard herself chose to use, and indeed the tense in which she spoke, that she was speaking of what her understanding of the nature and purpose of the Association was at the time it was established and what her thinking was, her word, in the establishment of the association.

To paraphrase, it was established for the purpose of financing and holding the monies to finance funds to – for the campaign of a ticket of union officials within AWU elections. Now if that's what Ms Gillard's advice to Wilson and Blewitt was at the time – to set up this association for that purpose – then she was obliged not just professionally as a solicitor, though of course she was obliged professionally as a solicitor, but also as a matter of general law in her participation in the establishment of the Association to be honest about its purposes. That is – and there are certain requirements under the Western Australian Associations Incorporation Act which impose certain obligations or requirements or conditions on the establishment and registration of an incorporated association. We know, because it's not in dispute, that Ms Gillard prepared the documents, although they were signed in Mr Blewitt's name.

Now, in the bundle of documents I've given you, the first document is actually the application form, dated 22 April 1992, and if you look at item 2 of the particulars, "The Association is formed for the purposes of development of changes to work to achieve safe workplaces," and that is described in the parentheses below as the main purpose. Ms Gillard prepared that document. That, as we know from her exit interview from Slater & Gordon was not the main purpose or indeed a purpose of the Association. And if one also looks at the objects clause of the rules of the association – clause 3 – which were lodged with the application, it is as plain as can be that this association did not purport to be established for the purposes of financing the campaign of a group of union officials in an internal union election campaign.

The second document in the bundle is the certificate of incorporation. It's only relevant because of the date it bears – 24 June 1992. Now pausing there, if a person participates in seeking the registration of an association and misdescribes its purpose in a misleading fashion as Ms Gillard plainly did, the rules – clause 2 of the application cannot, on any fair reading, sit with the paragraphs of her exit interview to which I've drawn your attention. Then that, in the Opposition's view, in my view, in the view of Julie Bishop who is an experienced commercial lawyer herself, a former managing partner of the Perth office of Clayton Utz with more than 20 years experience as a commercial lawyer, that is a breach of the commercial laws of Western Australia – that is section 43 of the Association's Incorporation Act – but it is also a breach of section 170 of the Criminal Code.

If that were the end of the matter, it would be enough but there is more because the Workplace Reform Association didn't just solicit contributions from individual members of the Australian Workers Union, it also solicited contributions from external contributors – one of whom, Thiess, subsequently made a complaint to the police saying it had been misled as to the purposes of the association. It's entirely plausible that some of the people – some of the members of the AWU who signed a payroll deduction authority to allow a small part of their fortnightly wage to be paid to the Workplace Reform Association, may have known the true purpose – that by contributing to the association they were contributing to the Wilson-Blewitt faction's ticket for internal union elections, that's plausible.

It's not plausible, in fact, it's impossible to believe that external contributors like Thiess, in making their contributions to the Workplace Reform Association, so believed or did so for that reason. That's why Thiess subsequently complained to the police. The next document in the bundle I've given you – the third document – is invoice number one. It's the earliest invoice document, as the serial number one tends to suggest, made to Thiess by the Workplace Reform Association for services. The importance of the document is the date – 30 April 1992 – which is eight days after the application was lodged and almost two months before the registration was certified or the certificate of incorporation was issued. Further, the next document in the bundle, purchase order 410373, is the first document that we can find that is

made out to the Workplace Reform Association. This is, so far as I can find, the first document on which the Workplace Reform Association is described by that name and you will note that the date of that document is 9 April 1992. That's on the left-hand side just below the reference to the name and address of the Association.

Now, once again, the significance of that document lies in the date which in fact, in this case, predates the application itself. What that shows, the Opposition contends, is that this is not merely a case in which the Australian Workers Union Workplace Reform Association was established for one purpose – that is the slush fund – the purpose of a slush fund to fund the election of union officials running on the Wilson-Blewitt ticket, and months or even years down the track, it came to be used as a vehicle for other unlawful purposes. At the time of its very inception, it was being used to solicit external contributions, and to provide services to companies external to the union that had nothing to do with the purpose – the true purpose – of the association which Ms Gillard recited. So the fact that contributions were going to be – or moneys were going to be paid into the association from external parties, not merely from trade union members, was known from the start.

Now – – –

REPORTER: (Inaudible question)

BRANDIS: We are saying that, at the time the Association was established, that was always its work. We are saying that, on the basis of the legal documents she lodged – prepared and lodged, she materially misled the Western Australian Corporate Affairs Commission. But we are also saying that from its inception, the AWU Workplace Reform Association was set up not merely to receive contributions from union members, but to receive contributions from external commercial parties.

REPORTER: Can I take to you the objects of Association?

BRANDIS: Yes.

REPORTER: Now, you haven't actually talked about those and there is another document that's dated March, plus the 9-page document with the objects. Now, they are A to H, they go to contributing to the development of change to work in order to achieve democratic safe workplaces.

BRANDIS: And Andrew, you are going to take me to object F, aren't you?

REPORTER: Okay, I'll take you to E. It is "To promote, within unions, the adoption of the aims of the association"; F, "To support and assist union officials and union members." Now, firstly, when she was asked about this – the Prime Minister was asked about this in August, it was her contention that that was consistent with it being a slush fund, albeit she didn't like the use of that terminology. We asked the Consumer

Protection Commissioner, which is the replacement of the Commissioner and Anne Driscoll said:

“The objects are broad in nature and range and appear to cover a broad range of activities. Accordingly, the objects do not appear to be dedicated to any one particular activity and also that the name of the association does not appear to be inconsistent with its stated objects.”

Where’s your case? Given that very broad – her argument is and her contention is that it was consistent with a slush fund. You cannot move state of mind with your evidence today.

BRANDIS: Well, Andrew, a couple of things. First of all, what you’ve told me the West Australian Consumer Protection Authority has said is that the objects are consistent with the name, and that’s all they’ve said.

REPORTER: “The objects are broad in nature and appear to cover a range of activities.” It’s more than the name.

BRANDIS: Well, the objects are broad in their nature. A plain reading of the objects – – –

REPORTER: Objects that you would write as a lawyer, too, to give you maximum – – –

BRANDIS: May I finish, please?

REPORTER: Yes.

BRANDIS: The objects are broad in their nature, as objects clauses of associations of this kind always are but on a fair reading of rule three – that is the objects clause of the draft rules – it would be, in the Opposition’s contention, impossible to conclude that the primary purpose for which this association was established was the purpose described by Julia Gillard in her exit interview on 11 September 1995 – that is a slush fund to fund a particular ticket.

REPORTER: But a good lawyer – – –

BRANDIS: If I may finish, please – that is to fund the election of a ticket of trade union officials within the AWU. You combine that with item two of the application which asks for the – and that’s a document that it’s not controversial was prepared by Julia Gillard – which asks for the principal purpose of the Association and the principal purpose of the Association could not fairly be described in those terms. In other words, what Gillard said on 11 September 1995 is, in the Opposition’s view, plainly inconsistent with what she wrote as the main purpose of the Association in her document – the document prepared and lodged on 22 April 1992.

There is another point I should make, by the way. This isn’t the only respect in which the lodgement application was also false and misleading. It was also false and misleading because it certified that –

represented that the association was otherwise compliant with the requirements of the Associations Incorporations Act, which require a minimum of five members and in fact there were only two: Wilson and Blewitt.

REPORTER: The writing on this page, all of it is Ralph Blewitt's, isn't it? Apart from the third line which is in upper and lower case, which is Ms Gillard's writing, isn't that the case?

BRANDIS: Well, I'm not a handwriting expert, but I rely on the fact that – – –

REPORTER: But you're saying that this development of changes to work, et cetera, et cetera – that was written by Ms Gillard.

BRANDIS: I'm relying on the fact that Ms Gillard has herself admitted, not only in her exit interview on 11 September 1995, but in her press conference on, I think it was 23 August this year, before you, ladies and gentlemen, that she was responsible for the preparation, or the lawyering of the application of the registration of the Association

REPORTER: So you can tell us right now that she definitely wrote that line two?

BRANDIS: She was responsible for – – –

REPORTER: But you can't tell us that she wrote those words?

BRANDIS: When a solicitor lodges a document – any form of commercial document of this kind, they, by the act of lodging it, represent to the relevant authority that it is, to the best of their knowledge, accurate.

REPORTER: But your case largely rests on the interpretation of nine words "development of changes to work to achieve workplaces" which in itself is vague and the objects are vague. Again, it goes to state of mind. You can't prove, one way or the other, what her state of mind was or contest her assertion that it was consistent with a slush fund.

BRANDIS: We know what her state of mind was because she told the partners in September 1995. She said it was a slush fund for the purpose of – – –

REPORTER: You're contesting – – –

BRANDIS: If I may finish. That it was a slush fund for the purpose of holding moneys to finance the election of a ticket of union officials within union elections and on any fair reading, either of rule three of the draft rules, including rule 3F or of item two – that is the main purpose – certified and represented by Julia Gillard in the application document, that conceals rather than discloses what she said in September 1995 was the true purpose of the slush fund.

REPORTER: That was three years later as well, though, that exit interview, so how can you line up her frame of mind then with what she wrote three years earlier?

BRANDIS: Well, David, that's a very important point you make, because as I said earlier on in my remarks, the Labor Party and its spokesmen are very eager to say that that reflected her belief in September 1995, not her state of mind in April 1992. And all I say to you is if you read her exit interview, it seems very clear, particularly the second paragraph, the less widely publicised paragraph to which I have drawn to your attention, which begins with the words, "The thinking behind", admits, we say, no other fair interpretation than that she was telling the partners of Slater & Gordon what her thinking was in approaching the establishment of the slush fund by way of this legal structure.

REPORTER: Senator, is it your contention that had Julia Gillard back in 1992, filled out line two with the words to the effect "to assist in the re-election of union officials on a platform of workplace safety" that this wouldn't have been incorporated?

BRANDIS: Yes, it would not have been incorporated, but that's not our point. That's not our point

REPORTER: No, no, you're saying she is less than honest.

BRANDIS: Our point, Phil, is that the document that she represented to be true was false.

REPORTER: That's true, that's true, but — — —

REPORTER: Senator, do you seriously expect, though that any DPP would actually bring these charges?

BRANDIS: That's a matter for them.

REPORTER: Senator, let's be clear, the only evidence you've got here for the Prime Minister acting illegally 20 years ago is your interpretation of what she said in 1995 about what she did in 1992? Is that it?

BRANDIS: We know what she said in 1995.

REPORTER: We know your interpretation of it.

BRANDIS: See, the best evidence of a person's state — — —

REPORTER: But is there anything more than that?

BRANDIS: The best evidence a person's state of mind is what they declare to be their state of mind in circumstances in which there is no reason to believe they are not telling the truth. She declared her state of mind, in this case her purpose or intention in 1992, in the exit interview. That is inconsistent with the purposes recorded on the documents which she lodged and represented to be true.

REPORTER: Except she contests that the objects of the association, which she doesn't deny writing and authoring, are consistent with it being a slush fund.

BRANDIS: She contends that.

REPORTER: Do you think that's rubbish?

BRANDIS: Yes, I do. That interpretation of the objects and of item two of the application document is so implausible, it's such a stretch, that it can't be believed. We know why she set this up because she said so. And therefore if she was going to be compliant with the law, she was obliged to tell the corporate regulator that – that it was to run a ticket to secure the election of union officials and she didn't. And we know why she didn't, too, because if she had written the truth, it wouldn't have been incorporated.

REPORTER: Senator, how do you know that, that's back to my question?

BRANDIS: Because that is not a valid purpose for the incorporation of an industrial organisation.

REPORTER: Yesterday you told the Senate that the Labor Party is being led by a criminal. Outside of parliamentary privilege, do you say the Prime Minister is a criminal?

BRANDIS: I'm saying that, on the documentary evidence and her own admissions, there appears to me, and appears to the Opposition, to have been a breach of the criminal and commercial laws of Western Australia – of the Criminal Code, section 170 in particular, and of the Association's Incorporation Act. Now, on the question of what I said in the Senate, parliamentary privilege exists for a reason. Parliamentary privilege is actually part of the law. It's been part of the law since 1689 and the bill of rights and the reason that it exists is that members of the Parliament are unconstrained in the chamber from saying what people are not at liberty to say outside the chamber at least without taking the risk of being sued. It's a privilege that should be exercised judiciously, I, as a former chairman of the Privileges Committee, know that more than most

But it does exist so that when there are allegations of serious wrongdoing to be made against senior people or officials in government, they can be made free of constraint.

REPORTER: You don't allege anything, you actually said it.

REPORTER: Do you now pledge to hold a judicial inquiry into this?

BRANDIS: Well, we've said there should be a judicial inquiry.

REPORTER: That's quite different. I'm saying if you win government, will you hold a judicial inquiry into this?

BRANDIS: I'm not here to announce a judicial inquiry as an election promise by the Coalition.

REPORTER: (inaudible)

BRANDIS: I'm not here to announce one. What I'm here to do is to, as Mr Abbott did in the House of Representatives yesterday, is to call upon the Government to establish a judicial inquiry, and if Ms Gillard has nothing to hide, then that's what she would do, but of course she won't.

REPORTER: Will you, in the absence – – –

BRANDIS: I'm not here to announce that that is what we would do. I'm not at liberty to do so but we believe that the Government should establish a judicial inquiry into this matter

REPORTER: George, back to line two – No. 2. Greg Combet has got a lot of union experience. He says it's very commonplace within the union movement to establish these incorporations for all manner of purposes.

BRANDIS: It may well be.

REPORTER: Have you studied other applications to incorporate similar funds to contrast the specificity of the stated reasons for its establishment with this? Are they always this vague?

BRANDIS: The answer to your question is no, nor is that a relevant consideration. The fact that there may be – – –

REPORTER: Well, you've made an allegation that this is non-specific enough – this is deliberately misleading. Would there be precedent against which you could – or something to contrast this? This may be the norm.

BRANDIS: If it's the norm, the fact that there is a pattern of wrongdoing in the union movement, and we know that there is a pattern wrongdoing within the union movement, is absolutely no legal justification for any particular act of wrongdoing, and it's on the particular act of wrongdoing in this particular case that with which we are concerned.

REPORTER: Some of the allegations have actually been around for years, including when the Coalition was in Government. Why did the Coalition not, when it was in Government, or indeed when the Opposition Leader was Industrial Relations Minister, look into this more closely?

BRANDIS: Well, I think it's fair to say that this is an issue that has developed particularly in the last few months, developed a momentum of its own. You're right to say – all the documents I've shown you are documents from the 1990s. Just because public attention hasn't been focused on a particular issue in the past, it doesn't mean once, on reflection, the significance of it has come to be appreciated, it shouldn't be now.

REPORTER: George, can I ask another question on a different topic, just on the LNP up in Queensland and what's going on up there – are you worried as we go into an election year about any possible impact on the Coalition's chances given this fragmenting we've seen in the State Parliament?

BRANDIS: Well, I'm delighted to answer that question, Phil. Campbell Newman, on the 24th of March, won not just the greatest electoral victory in Australian history, he actually won the greatest electoral victory on this continent in pre-Australian history – not even in the colonial parliaments did one side of politics have such a massive electoral victory over another – and he ended up with 78 seats out of 89. It was always to be expected and I doubt that there is a political commentator in this room who didn't make the observation at the time, that a backbench that large would be very difficult to handle and it has proved in the case of, I think, three individuals who were all people who, one way or another, were disappointed for not being preferred for promotion. That was entirely predicted. So now Campbell Newman and the LNP in Queensland have got 75 seats, not 78 seats, out of 89.

But Campbell Newman has made a number of very tough decisions. The Newman Government rather reminds me of the Kennett Government which, when it was elected in 1992, also made some very tough decisions in similar circumstances in which the State of Victoria in that case had been reduced to the stage of a recession and almost a mini-depression, largely because of the mismanagement of the Kirner Government – some of whose principal staffers, by the way, now sit around the cabinet table. Within three or four months of the election of the Kennett Government, 100,000 people marched through the streets of Melbourne protesting public service cuts but the government of Jeff Kennett was re-elected with an increased majority at the next election because the people of Victoria realised that the decisions were necessary. Short-term unpopularity in the face of tough decisions by the Newman Government were entirely predictable.

And the short answer to your question after that very long preamble, is no.

[ends]