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**ATTORNEY-GENERAL
MINISTER FOR THE ARTS**

13 August 2015

TRANSCRIPT - Interview with Tony Jones, Lateline, ABC

Topics: The Hon Dyson Heydon; same-sex marriage.

E&OE.....

TONY JONES: George Brandis, thanks for joining us.

ATTORNEY-GENERAL: Pleasure, Tony.

TONY JONES: Now you and the Prime Minister seem to be on different pages today on the Dyson Heydon affair. So when is a Liberal fundraiser not a fundraiser?

ATTORNEY-GENERAL: The event to which you are referring, the Garfield Barwick address was not a fundraiser and it was specifically indicated by the person responsible for convening the event that it was not a fundraiser. In fact, late today the State Director of the NSW Liberal Party, Mr Nutt, put out a statement in which he indicated he had done a costing and the cost of the event charged by the venue provider was almost exactly the ticket price so it's not a fundraiser if you don't raise any funds from it, Tony.

TONY JONES: Well the Prime Minister has got it wrong then, did he, in Question Time?

ATTORNEY-GENERAL: Well, I...

TONY JONES: There was an awful lot of play about that in Question Time...

ATTORNEY-GENERAL: Question Time was before Mr Nutt put out his statement which indicated that, effectively, no profit was made from the event. It was an event that was put on by the NSW Legal Profession Branch of the Liberal Party but it was a public lecture, it was a public lecture about a legal topic to an audience largely of lawyers. It was an event that had an association with the Liberal Party because they put it on but it actually wasn't a fundraiser.

TONY JONES: Fair enough. Well are you suggesting, in that case, there was no problem with the Royal Commissioner appearing at an event which was nominally under the auspices, as it says in the email, of a part of the NSW Liberal Party?

ATTORNEY-GENERAL: I think the point that needs to be emphasised is that Mr Heydon, as one would expect, was punctiliously careful to make sure that the outrageous statements made against him by the Shadow Attorney-General and others on the Labor benches today couldn't honestly be made which is why the Secretary of the Royal Commission sent an email to the organisers. That said, if there is any possibility, with the words 'any possibility' bolded for emphasis by the way, if there is any possibility that the event could be described as a Liberal Party event he will be unable to give the address, at least while he is in the position of Royal Commissioner. So Mr Heydon, of his own initiative, before this was even raised in the public arena by the Labor Party, had done the very thing that they said he ought to have done.

TONY JONES: In the email exchange you were referring to today, Gregory Burton SC, who's the man who invited the Royal Commissioner to speak, said: "As you know, although nominally under the auspices of the Liberal Party lawyer's professional branches, this is not a fundraiser."

Would you agree there's a suggestion that Dyson Heydon already knew of a Liberal Party connection to this event?

ATTORNEY-GENERAL: Look Tony I'm not going to parse email exchanges between individuals...

TONY JONES: Well that's precisely what you were doing a moment ago.

ATTORNEY-GENERAL: The fact is: a) this wasn't a fundraiser; b) it wasn't, in my view, in the character of a political event being a legal lecture to a group of lawyers, albeit one put on by the New South Wales legal professionals branch of the Liberal Party; c) it was a public event and in any event, lastly, Mr Heydon, to avoid any possibility of this being said against him, withdrew of his own initiative.

TONY JONES: Yes. Would you agree, though, the phrase 'as you know' suggested Dyson Heydon was well aware of the Liberal Party's involvement prior to this email exchange has been released?

ATTORNEY-GENERAL: I think that phrase in the email exchange could mean anything.

TONY JONES: Did it, in any way, or would it, in any way, have impugned his neutrality as a Royal Commissioner for him to have given that speech at a function which was under the auspices of part of the Liberal Party.

ATTORNEY-GENERAL: I think it would have been better had he not done so which is why he decided, of his own motion, not to do so.

TONY JONES: Should he have done better due diligence, that's what people are asking, before accepting the invitation in the first place?

ATTORNEY-GENERAL: Well as I understand it he was approached some years ago by a person at the New South Wales Bar who suggested that at some unspecified time in the future he might give the Sir Garfield Barwick address. This is a well-established address within the

New South Wales Bar. The address was not merely advertised by the lawyer's branch of the Liberal Party. It was advertised by the New South Wales Bar Association with no reference to a connection to the Liberal Party. The transcript of previous Garfield Barwick addresses have been published in the monthly journal of the New South Wales Bar Association...

TONY JONES: Can I just bring you up on that point because you delivered the inaugural Garfield Barwick oration back in 2010. Did you make your travel arrangements for that under the assumption that this might be judged as attendance at a party fundraiser?

ATTORNEY-GENERAL: No, not really. I was very flattered to have been asked to give the inaugural Garfield Barwick address and the event that I attended was precisely of the character that I have just described. It was an address to a group of lawyers, almost entirely people from the New South Wales Bar and Bench. I gave a lecture that had absolutely nothing to do with politics whatsoever. I was conscious that the people organising the event were Liberal lawyers from the New South Wales Bar but this was much more in the character of a bar association professional event than it was a political event.

TONY JONES: So you didn't treat this at all as travel to a party fundraiser?

ATTORNEY-GENERAL: No.

TONY JONES: When you looked at your own expenses?

ATTORNEY-GENERAL: No, but in any event Tony, I was in Sydney, I have checked my diary, I was, as it happened, in Sydney that day on other shadow portfolio related affairs in any event.

TONY JONES: Now on the marriage equality issue have you advised the Prime Minister that a referendum on this, as suggested by Scott Morrison, would be inappropriate?

ATTORNEY-GENERAL: I don't think I need to advise the Prime Minister because the Prime Minister, addressing himself to this issue after the Irish referendum, said the same thing as I have said today – that is that the purpose of a referendum is to change the Constitution. So if we were to take up the suggestion that the Prime Minister raised as a possibility, and merely as a possibility, of having a popular vote on this issue, then the way to do it would be through a plebiscite not a referendum because no constitutional change would be necessary were the Parliament, or a future Parliament I should say, to decide to legislate for same sex marriage.

TONY JONES: So the Prime Minister is clearly not, or very precisely not, indicated whether it's going to be a plebiscite or a referendum. Scott Morrison suggested a referendum. If the Prime Minister took his advice would you be in an argument with him about this?

ATTORNEY-GENERAL: I think we are getting ahead of ourselves. The point I make, and this is not controversial, is that under our system of government you only have a referendum for one purpose and that is the purpose prescribed by section 128 of the Constitution - to amend the Constitution. The Constitution, as it stands, contains in section 51 a head of legislative power called the marriage power. That head of power was construed as recently as less than two years ago in the ACT same sex marriage case when I initiated proceedings in

the name of the Commonwealth to strike down the ACT same sex marriage laws. Now the question before the court in that case was the paramountcy of the marriage power in the federal Constitution over state, or in this case territory, marriage laws. But the court did resolve, unambiguously and unanimously, in that case, if I may read the relevant sentence of the judgement: "The federal Parliament has legislative power to provide for marriage between persons of the same sex."

That was the unanimous joint judgement of the court so there is absolutely no legal ambiguity here that were a future Parliament to legislate for same sex marriage it has the power to do that under the existing terms of the marriage power.

TONY JONES: There would be another reason to have a referendum of course and that would be to make it more difficult for the same sex marriage decision to be made by the public because as we know throughout history very few referenda have gotten up. If it became a tactical decision to have a referendum would you oppose that?

ATTORNEY-GENERAL: Well as I say Tony, I just don't think the issue arises because...

TONY JONES: It might arise because the Prime Minister hasn't said one way or the other yet.

ATTORNEY-GENERAL: The Prime Minister indicated various ways in which public opinion can be sampled in this country in his press conference late on Tuesday night. But prior to that he had made, addressing himself to the question of whether the referendum was the preferred method, he had made it quite clear so my view, and the Prime Minister's view as then expressed, are identical.

TONY JONES: Do you believe the Liberal Party, with this long tradition of independence, should have its own party room vote on the conscience vote issue.

ATTORNEY-GENERAL: Look Tony, we have had this discussion in the Joint Party Room. We listened to each other with courtesy, it was a splendid meeting. Can I tell you I have never been prouder of the Liberal Party than I was on Tuesday night because, on this very difficult issue on which there were very, very strong feelings on either side, we had about 90 or so speakers and everyone listened to each other with courtesy and respect and goodwill. Now as to whether that was a matter for the joint Coalition parties or the Liberal Party, it could appropriately have been discussed by either.

TONY JONES: Christopher Pyne clearly wanted it to be a Liberal Party party room decision. He actually, according to reports out today, rang Warren Truss to ask him not to bring the Nationals into the party room to join this debate, I mean...

ATTORNEY-GENERAL: I don't know about that Tony, and if I may say so with all due respect to you, I think we are getting a little bit arcane at this point. The fact is that all the members of the Liberal Party were in the room, there was no constraint on anybody expressing their view. The meeting ran without limitation of time. In fact it ran for almost six hours. There is absolutely nobody who was at that meeting who felt frustrated that they hadn't had their say.

TONY JONES: You didn't consider it to be as Christopher Pyne suggested, branch stacking effectively, by the Prime Minister?

ATTORNEY-GENERAL: I'm not going to comment on reports that have been attributed to colleagues at a private meeting, but...

TONY JONES: I think he has openly said it hasn't he?

ATTORNEY-GENERAL: I'm not aware of that but be that as it may, in my view, the process was a wonderful process. It showed the Liberal Party and the National Party at their best. The fact that we could with goodwill and courtesy, and in the spirit of cooperation, deal for hours on end with such a vexed social issue and come to an outcome I think showed the Coalition parties at their very best.

TONY JONES: A final question. Did the way in which this was handled in any way damage Tony Abbott's leadership?

ATTORNEY-GENERAL: No. In fact I think his chairing of the meeting and the way in which he ensured that all points of view were ventilated and had an opportunity to be heard and considered by everyone in the room was masterful.

TONY JONES: George Brandis thanks for joining us this evening.

ATTORNEY-GENERAL: Thank you Tony.

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