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ATTORNEY-GENERAL
MINISTER FOR THE ARTS

14 April 2015

TRANSCRIPT – Press Conference announcing the appointment of the Hon Michelle Gordon to the High Court of Australia.

Topics: Appointment to the High Court of Australia, constitutional recognition of Indigenous people, national security

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ATTORNEY-GENERAL: Good afternoon. Earlier today His Excellency the Governor-General accepted the advice of the Cabinet to appoint the Honourable Michelle Gordon, a Judge of the Federal Court of Australia, as the next member of the High Court of Australia. There will be a vacancy on that court created by the retirement of Justice Ken Hayne who reaches the statutory retirement age on the 5th of June. Justice Gordon will be sworn in at a ceremony at the Court on Tuesday the 9th of June.

Justice Gordon has enjoyed a very illustrious career as a lawyer, as a barrister and as a judge. Her Honour was born and educated in Perth. She began her career as a lawyer in the Perth firm Robinson Cox, now Clayton Utz. In 1988 she was recruited by the firm Arthur Robinson & Hedderwicks, now Allens, and moved to Melbourne. She rose to be a Senior Associate of that firm, was called to the Bar in Melbourne in 1992, she took silk 11 years later. Since 2007 she has been a member of the Federal Court of Australia, based at the Victorian Registry of that court.

Justice Gordon has had a very extensive practice, primarily concentrating on major commercial litigation and she will bring great strength to the High Court of Australia on the basis of her enormous experience acting for both regulators and corporates in some of the most important commercial litigation in the past two decades. Justice Gordon turns 51 later this year so she will serve on the Court for some 19 and a half years. The Government welcomes this appointment, of course, and we also wish to thank Justice Ken Hayne for a lifetime of service to the law and a very distinguished contribution as a Judge.

It is an interesting feature of this appointment that Justice Gordon is the wife of Justice Hayne. It would, of course, in this day and age be outrageous for a person who was

otherwise well-qualified for an appointment, as Justice Gordon certainly is, to be disqualified on account of whom they were married to.

JOURNALIST: What's your thought on the constitutional requirement that requires very talented people at the top of their game to leave at 70?

ATTORNEY-GENERAL: Well that was a legacy of the Fraser Government's 1977 referendum. I don't want to reopen that issue today.

JOURNALIST: Given though that we've got the retirement age going up, we're talking about Australians staying in work, we're living longer and healthier, does it not make sense to look at it?

ATTORNEY-GENERAL: Look Tom, as you know getting a constitutional referendum up is an enormous undertaking. The Government is not considering reopening that question at the moment.

JOURNALIST: It was really just intended to get rid of one person, maybe it should be reopened?

ATTORNEY-GENERAL: Well I don't know what you mean by that.

JOURNALIST: Wasn't there one judge that just wouldn't leave?

ATTORNEY-GENERAL: No, I think that's quite wrong. I remember the debate, I was a young man at the time, I voted No in the referendum I must say. It just goes to show how far our views about age and ageing have come since the 1977 referendum but the answer to both of your questions is that the Government isn't reopening that issue at the moment.

JOURNALIST: Taking account of what you said about talented people not being precluded from positions because of who they are married to was there discussion or consideration about the concerns about appearances of favouritism?

ATTORNEY-GENERAL: There is no issue of favouritism, I consulted very widely among the State and Territory Attorneys-General, which I have a statutory obligation to do; among members of the High Court, and of course I excluded Justice Hayne from the process so far as concerned Justice Gordon; among other senior federal judges and members of the legal profession and the overwhelming, the overwhelming view was that she was an outstandingly well qualified candidate.

JOURNALIST: Can I ask Attorney about constitutional recognition of Indigenous people. What is your assessment of whether this will be achievable and whether it would be in a meaningful form?

ATTORNEY-GENERAL: The Government is committed to the constitutional recognition of Indigenous people. I note what Mr Pearson had to say yesterday, I respect Mr Pearson's views. Mr Pearson was of course a member of the expert panel that recommended constitutional recognition of Indigenous people. At the moment the matter is in the hands of Mr Ken Wyatt who is chairing the Parliamentary Committee looking at framing the question. I spoke to Mr Wyatt yesterday. I understand that the report of his committee is likely to be received during the Budget sittings of the Parliament. It is the intention of the

Government to proceed with an appropriately phrased referendum question on the constitutional recognition of Indigenous people.

JOURNALIST: Is it achievable?

ATTORNEY-GENERAL: I believe so, yes.

JOURNALIST: How helpful are Peter Costello's comments about the tax policies of this government?

ATTORNEY-GENERAL: Well look, Mr Costello was a great Treasurer. These days he participates in a number of capacities and he spoke as a commentator. I'm not going to add to the commentary.

JOURNALIST: Do you agree with Mr Pearson's assessment that the current recommendations of the expert panel would fail to win the support of constitutional conservatives?

ATTORNEY-GENERAL: Well let's not get ahead of ourselves here. It is very important that people who approach the issue of referendums with a sceptical mind be satisfied. And I've said all along that if you look at the speeches I've given on this issue, both in Parliament and outside the Parliament, I've made that very point myself so I agree with Mr Pearson's assessment that those who are conservative or sceptical about constitutional change need to be reassured and whatever referendum question the Government adopts will be adopted with a view to giving an appropriate measure of reassurance to people of a more sceptical or conservative cast of mind. Now that having been said, as you know, not many referendums have been successful. There have been seven, I think, that have been successful in the history of Federation but the reason the founding fathers put Section 128 into the constitution was to enable it to be amended appropriately and after due consideration.

JOURNALIST: Can I ask you about Justice Gordon's appointment. It's been about 114 years of Federation, South Australia has never had a Justice of the High Court. Is there just simply no one in that state worth considering or is it geographic considerations?

ATTORNEY-GENERAL: There are fine lawyers in every Australian State. I undertook a very exhaustive process of consultation and on the basis of that process of consultation, which involved speaking to people from all over the country in a position to have a well-informed view as to where the very best quality nominee, who the very best quality nominee was. I settled on Justice Gordon.

JOURNALIST: Attorney when the PM gave his national security speech a few weeks ago he flagged some further changes, including I think for the prohibitions on hate speech, involving the Crimes Act. Has any progress been made on that issue?

ATTORNEY-GENERAL: That's under active consideration at the moment...

JOURNALIST: Can we expect an announcement soon?

ATTORNEY-GENERAL: In the future. Thank you.

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