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AM PROGRAMME

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THE EROSION OF JUDICIAL INDEPENDENCE IN AUSTRALIA

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Justice Michael Kirby

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ANNOUNCER: The Kennett Government's changes to industrial laws in Victoria continue. Yesterday the Government sacked eleven Judges of the Accident Compensation Tribunal of Victoria. Other moves include an attack on compensation benefits for people injured at work. The eleven Judges sacked from the Compensation Tribunal have written a letter of protest and their cause has been backed by Judges and legal figures in other States. Among those condemning the Kennett Government's actions is a senior New South Wales Judge, Justice Michael Kirby, who is also Chairman of the Executive Committee of the International Commission of Jurists. This morning Marius Benson asked Justice Kirby about his objections to the sacking of the Victorian Judges.

JUSTICE KIRBY: This is the third time in five years that an Australian Government and Parliament have taken away the promise to Judges, who were appointed with the promise that they would not be removed except for misbehaviour and on the basis of a resolution of Parliament. This is therefore a very worrying development in our country. No Judge, who is not protected by the Federal Constitution, can now accept appointment in the assurance that that sort of promise

will be fulfilled. They can simply be removed by the removal of their tribunal or court.

MARIUS BENSON: Sir, do you believe that, the decision should be that once a Judge is appointed by whichever Government, that's the end of the story, the Government can no longer can interfere in that appointment?

JUSTICE KIRBY: No, I don't believe [that]. But the conventions which have hitherto been followed in Australia and throughout the British Commonwealth of Nations - and also international principles which have been laid down by bodies at the United Nations level concerning the independence of the judiciary and the tenure of judges which is necessary for their independence - assert that, in the event that a court or tribunal comprising Judges is reconstituted and abolished, the Judges involved, out of deference for the importance of their tenure, will be offered equivalent appointment as a Judge in a body of an equivalent kind. That is what has not happened in the three occasions in the last five years in Australia. So it is an important erosion of judicial tenure and independence.

MARIUS BENSON: Can it be argued that that principle is an admirable one but times are very hard, a lot of people are losing their jobs, Judges simply can't be a separate case?

JUSTICE KIRBY: Well, it can be argued. And that is doubtless what will be argued by the State of Victoria. But the position of Judges is integral to the good government of our society. The judiciary is the third branch of government. This is a very precious feature of our form of government. It has been with us for hundreds of years. In the last few years in Australia we are in the process of dismantling it. I think this is a very bad development. And it is a development which will attract not only national condemnation but, I believe, international condemnation.

MARIUS BENSON: Does this development that you've described have a real impact on the judiciary now or is this just an in principle objection from the judiciary?

JUSTICE KIRBY: No, it is not an "in principle objection" only. The point is that Judges, and people who are offered judicial appointment will look at what is happening in our country. The fact is that this has now happened in the Federal Arbitration Commission, in the magistracy in New South Wales and now in the Court in Victoria. They will have to entertain at least very grave doubts about the promise that Parliament makes that Judges will not be removed except for proved misbehaviour. Because when it doesn't suit Parliament, they will simply abolish the tribunal and say: "Well, that's just too bad, the Judges have lost their position". It is an attack on judicial independence and judicial tenure. It is one which is apparently advancing. And each new attack is justified on the basis of the last. We are seeing an erosion of a very important feature of freedom in our society which is upheld by the rule of law, which is protected by the Judges. I think it will be brought to the attention of international bodies such as the International Commission of Jurists and the Centre for the Independence of the Judiciary in Geneva. And I would expect that there will be a great deal of concern voiced about this development in Australia. It is really a very serious constitutional development which should not be under-estimated.

MARIUS BENSON: You are a member of those international bodies. Will you be drawing this issue to their attention?

JUSTICE KIRBY: I have already done so. I communicated to the Centre for the Independence of the Judiciary in Geneva last week. I know a great deal of concern is expressed there about this development. We are thought, in a sense, to be a country of the rule

of law. Yet now, within five years, we have seen three developments. In each case I have indicated that these developments are out of line with international principles and also with the conventions that have been followed in our society over the last couple of hundred years. Certainly, in British societies we have just not done this. It is therefore a matter that should concern all citizens. And all citizens, not just lawyers and judges, should be protesting about it.

MARIUS BENSON: Justice Michael Kirby.