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**E&OE TRANSCRIPT
SKY NEWS LIVE
PYNE & MARLES
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SUBJECTS: Margaret River incident; foreign affairs; budget; citizenship; budget day

CHRISTOPHER PYNE: Well, good afternoon and welcome to *Pyne & Marles* here on Sky News Live on Friday, 11 May at 1 o'clock Eastern Standard Time. Sadly, at the moment events in Margaret River are unfolding in terms of a mass death in that particular community. Sky will bring you news throughout the next half hour. For us, we, at the moment, only have limited information so we can't bring you any more news than that. Our sympathies go out to the community of Margaret River of course and everybody who is involved in this terrible tragedy, but we'll have to get on with our show and Sky will bring you news throughout the next half hour while Richard and I are managing *Pyne & Marles*. So, good afternoon, Richard. Welcome to you in Geelong.

RICHARD MARLES: Thank you, Christopher, and it obviously is a tragedy in Margaret River and our sympathies go out to all the families of those involved.

It is a big week: budget week, of course a huge decision in the High Court, but you know, you and I often like talking about matters abroad and foreign policy, security policy, and what a week there.

I mean we've had the announcement overnight that what's being billed as the summit of the century is going to occur on 12 June between Donald Trump and Kim Jong-un in Singapore; Mahathir Mohamad, the long-term prime minister of Malaysia has been reelected at 92, the oldest democratically elected leader in the world; and of course the US has pulled out of the Iran deal, so there's a lot to make of that. What do you reckon about the Korean summit, Christopher? This is going to be a huge thing.

PYNE: Well there's been a massive week in domestic politics, but as you say internationally, not least of which the election of Mahathir Mohamad at 92 which could give John Howard ideas about the comeback of course.

But yes, the summit in Singapore in mid June, if it brings about a denuclearized North Korea and peace on the Korean Peninsula, then I think Donald Trump will

have a claim to win the Nobel Peace Prize, so we'll all have to wait with bated breath and wish them the very best of luck. He's talking tough today, though. He's pointing out that he's prepared to walk away from the table if it's not genuine, same with the Iran renegotiations of the JCPO in Iran, so lots happening and we need to be keeping abreast of that while also dealing with what's been a big week in Australian politics.

MARLES: Indeed, and look, I feel like there's a lot of risk in the summit but I was in the US last week and actually came away feeling like there's a risk but there's hope also about a meaningful outcome with the summit between Donald Trump and Kim Jong-un. We will watch that with interest, and you're right, John Howard is a sprightly late 70s, so, you know, stranger things have happened, so who knows?

But we should talk about the events at home during what really is the big week of the political year, budget week. We'll be focusing on the budget in the first half of the show. We're going to talk about competing tax cuts of both major parties. Debt and deficit has been a theme in the national discussion for a long time now. We're going to talk about how the budget reveals that issue. And in terms of a specific substantive issue, there was a lot made in relation to aged care in the lead and we'll talk about how the budget particularly affects that. Our guest today, which of course deals with the High Court decision, is Kim Rubenstein who is a constitutional expert at the Australian National University.

But let's start with the question of tax cuts. This is the major theme of both the Budget statement on Tuesday night and the reply statement last night: two propositions in relation to tax cuts. Have a look at this.

SCOTT MORRISON [CLIP]: Under our personal tax plan, 94 percent of Australian taxpayers will pay no more than 32.5 cents in the dollar as a marginal rate.

CHRIS BOWEN [CLIP]: Well, if he wants to stand in the way of Australians getting a tax cut on 1 July 2018 by not agreeing to compromise to split the legislation, let him explain it to the Australian people.

MALCOLM TURNBULL [CLIP]: We want, asking the Opposition to support it all, the Parliament to support it all.

BILL SHORTEN [CLIP]: We will deliver a bigger, better, and fairer tax cut for 10 million working Australians - almost double, in fact, what the Government offered on Tuesday.

MARLES: So, Christopher, Bill Shorten announced Labor supporting a tax cut almost twice the size of the tax cuts announced by the Government on Tuesday night. Now, I heard the Treasurer talk about 'this is the money of ordinary Australians', that you're a Party that wants to reward effort and enterprise, so are you going to back in our tax cut?

PYNE: Well, Richard, the problem with your fella is that nobody believes anything that he says, so in Bill Shorten's response last night we heard that they're going to have more tax cuts, they're going to have more spending, and they're going to have a lower deficit. Now, that's the 'you can have your cake and eat it, too' budget reply. It's not actually up to standard. He has no costings behind this tax cut-

MARLES: -That's not true

PYNE: -and nobody believes him. Nobody believes him.

The reality is we have measured tax relief in this budget. We're living within our means and we're delivering essential services, and your guy is under a lot of pressure in the Caucus after his catastrophic call on citizenship. Last night was basically a whole speech about the ALP National Conference in July. It's all internal dynamics in Labor whereas we are actually getting on with the job of government.

MARLES: OK, well, it's good we've got all the politics out of the way, but let's get to the substance here, Christopher

These numbers have been costed. They've been costed by the Parliamentary Budget Office, and they've been costed based on the numbers that are in your budget. You know that the reason why we're able to pay for a tax cut twice the size of the one you're proposing is because we're not putting up an \$80 billion tax cut for big business. We have been engaged in policies around tax reform over the last four years, from negative gearing to dividend tax imputation, a range of policies, and that's what's paying for it. At the end of the day we've done the hard work which allows us to make this policy.

PYNE: Well, if only that were true. The tax cuts for small- and medium-sized businesses have already been legislated. They're already through the parliament and they're flowing to businesses. That's worth about \$30 billion. Are you saying you're going to take that away, because you just said that you had \$80 billion more to spend, so you're announcing today that you're going to reverse the tax cuts for companies, for small- and medium-sized enterprises.

The problem with Labor is-

MARLES: -We're not doing that

PYNE: Well, how are you going to do it?

MARLES: We're not doing that at all, Christopher.

PYNE: How are you going to do it?

MARLES: Firstly, you're obviously you're not following us on negative gearing. You're not following us on dividend imputation. You're not following us on family trust.

PYNE: We don't believe in \$220 billion worth of new taxes. That's your policy.

MARLES: OK, but the point that you've just made there is that there is a contribution to the bottom line associated with each of those policies which is paying for the tax cut that we announced last night, and you are providing tax cuts to big business going forward that isn't legislated yet which will see \$80 billion put on the budget bottom line 10 years from now.

PYNE: Well, you haven't answered my question. You're not going to answer my question.

MARLES: We've got policies which actually pay for it.

PYNE: Well, you haven't answered my question, and we'll move onto the next topic, which is the debt and deficit angle of the budget. Let's have a look at how that unfolded this week.

PETER COSTELLO [CLIP]: We'll never get back to where we were. You and I will die before that happens.

PANEL HOST [CLIP]: Peter Costello came out and said, look, we'll all be dead by the time this debt is paid down.

JOHN HOWARD [CLIP]: Well, speak for himself.

SCOTT MORRISON [CLIP]: With the budget returning to balance, we will start paying down debt. We have reached the turning point on debt.

BILL SHORTEN [CLIP]: But on Tuesday night I do not remember hearing the Treasurer admit that national debt has more than doubled under the Liberals.

PYNE: Richard, John Howard's still got. He still knows how to make people laugh, which is fantastic.

But the truth is that we have done such a great job managing this budget for the last five years, taking up the mess you created-

MARLES: -Oh, please.

PYNE: -that we're actually coming back to surplus a year earlier than was expected at \$2.2 billion. Now, isn't this the pattern? Labor gets into office. We get into office and we fix all the financial problems in the economy. Labor gets back into office, does the same thing as they did under the previous governments. We fixed them. Five years later we are coming out of deficit a year early because we've managed the revenues and the spending of the budget better than than Labour ever has. The last surplus you delivered, my friend, was 1989.

MARLES: OK, but Christopher, behind the trumpet which is the conservatives saying they're wonderful at economic policy there is there is a veil over the fact that you're lazy economic managers. You've always been that. The hard economic yards in this country in terms of economic policy have always been done by Labor. That goes back to Hawke and Keating and that's what's being done right now.

You know, you said, before the 2013 election, you said there was a budget emergency. You had a debt truck driving around. As Jim Chalmers said during the week, you've been run over by your own debt truck. The reality is you have doubled the debt since you've come to power-

PYNE: -Richard, if only you were like Hawke and Keating.

MARLES: -like drunken sailors.

PYNE: I wish you were like Hawke and Kearing.

MARLES: We've done the hard work around this.

PYNE: You're the party that gave 16,000 dead people \$900 cheques during the Rudd Government, the Rudd experiment, quite frankly. The Rudd-Gillard government were profligate spenders and we're fixing it. That's the bottom line. I wish you were like Hawke and Keating-

MARLES: -There was a global economic crisis.

PYNE: -you're too much like like Jeremy Corbyn.

MARLES: There was a global economic crisis. We were one of two countries in the developed world to avoid recession. That is an achievement of the Rudd-Gillard years.

But if you look right now, take negative gearing. Negative gearing contributes \$14 billion to the budget bottom line over the next 10 years. You take what we're doing with the dividend imputations. That contributes \$50 billion to the budget bottom line over the next 10 years.

What you would do with the big business tax cut is driving a wrecking ball through the budget of \$80 billion over the next over the next 10 years.

PYNE: We're out of time.

MARLES: That is the big difference when it comes to who's managing the budget, but we need to go on to aged care. It was a big issue in the lead up to the election, in the lead up to the budget, and it did feature heavily on budget night. Have a listen to this.

SCOTT MORRISON [CLIP]: We want to preserve and increase the choices of older Australians. To support the choice of older Australians who wish to stay at home and avoid going into residential aged care, the Government will be increasing the number of at-home care places by 14,000 over four years.

TANYA PLIBERSEK [CLIP]: He's made this big show and dance about home care. In fact, those places have come from funding from residential aged care places and don't make a dent on the waiting list for home care.

MARLES: So this is a big theme in the lead up to the budget, Christopher. There was lots of hoopla about what we could expect, and when we get to budget night not a single extra cent in this budget for aged care. That's the reality. What you're funding in terms of at-home packages you're paying for by cuts to residential care. Literally, this is robbing Peter to pay Paul.

PYNE: Well, if only the Labor Party knew what they were talking about with aged care. First of all you shouldn't be frightening older people about aged care. A lot of people are going into aged care these days and the the quality of aged care is much,

much better than it was 20 years ago or 10 years ago, and yet Labor's playing politics with the fears of older people and their families.

But in this budget we're spending \$5 billion on aged care. There's a \$60 million package for capital in residential aged care, \$40 million for repairs and maintenance in rural and regional Australia, and of course 14,000 more community care packages on top of the 6,000 we'd already announced since the last budget, so 20,000 new places for community care packages, which is what people want if they can because they like to stay home in their own homes for as long as they possibly can. So, you need to get bipartisan on aged care because I think you'll lose the politics of it trying to frighten people.

MARLES: Just let's put this in some context. There's 100,000 people waiting for at-home aged care packages. That number grew by 20,000 in the last six months of last year, so that puts into context the extra 14,000 place that you put in the budget on Tuesday night.

You paid for it with cuts to residential care. It is literally robbing Peter to pay Paul, and in terms of playing to the fears of older Australians this is just a great big hoax that you've put on elderly Australians. There is nothing - nothing - in the budget for them at all.

PYNE: Richard, this budget is a great budget for seniors and that's the way it's being seen because we're giving them more chance to earn money before their pension starts being reduced. We've got more policies for seniors in terms of health and sporting activities and keeping healthy as well as the aged care reforms, and the aged care community is very happy with this budget, in fact, extatic. That's what all of their representatives have been saying, so if what you're saying was true they wouldn't be happy, and they're a pretty loud community so I don't think that the public will believe you, but we've got to go to the break now and when we come back we'll be talking to Kim Rubenstein about citizenship.

[AD BREAK]

PYNE: Well, welcome back to *Pyne & Marles* here on Sky News Live. We're moving on from the budget in the second half of this show to talk to a constitutional expert from the ANU law school, Kim Rubenstein. Kim, thank you very much for joining us this afternoon.

KIM RUBENSTEIN: My pleasure.

PYNE: So Kim, I guess the first question off the bat after what's been a very tumultuous week for the Labor Party over the citizenship issue is that the decision that the High Court made on Wednesday was unambiguous, but wasn't it just as unambiguous in the Canavan decision that they made last year, and so therefore we spent six months referring something to the High Court which was pretty clear six months ago?

RUBENSTEIN: Well, I think what has happened with this decision is that it's actually extended what was a single sentence into a full judgment. So, what they have done is they've explained what the constitutional imperative means in the context of someone being protected against the dual citizenship provisions, because if you

remember, Christopher, this case built on the Sykes and Cleary case, and one of the clearer aspects of the Sykes and Cleary case was that an individual had to do all that was reasonable on their part to divest themselves of their citizenship, and so that was not clarified in terms of the meaning of it, which is why it actually had to go to the Court. It wasn't clear from that one sentence in *Re Canavan* in terms of that constitutional imperative about what that actually meant, and so the High Court now has effectively said that you have to have an irremediable provision, so a country that effectively prevents you from giving up your citizenship, and that had never been actually clarified before and really what it has enabled, or has it led to rather than enable, the decision means that for some people certain elections will be irremediable in terms of the fact that another country's processing laws will prevent them from actually running for an election, or nominating themselves, in particular.

So, it wasn't a waste because it's given us the clarity now of the absolutism that is involved with getting rid of your citizenship if it is a possibility that you can actually get rid of it.

MARLES: So, Kim, then, the implications it seems to me that comes from this decision, given that if you are renouncing the citizenship of a country which will allow you to renounce it, to a degree you're now in the hands of that country's processes. If you're looking, for example, at the byelections which are now going to occur, one imagines, in June, there will be a whole lot of people who are eligible to vote in those byelections but would have no chance of being able to renounce their citizenship in time. Is that the effect of this decision?

RUBENSTEIN: Yes it is, and I think this is one of the really interesting aspects from a democratic point of view, because the High Court has of course been developing over the years an affirmation that our system protects representative democracy, which is why this constitutional imperative was flagged in the *Re Canavan* in case, but in this decision they've really narrowed that notion of representative democracy from a constitutional point of view, which is actually a form of a disjunction with the way everything else works. So, you've given the example that there are many citizens who can vote but won't be able to actually put themselves up for being nominated to run themselves, and that's just now one of many ways in which people can be active citizens in society, something that we want to encourage, but they are actually prevented from the highest level of active citizenship in any particular election if the country that, maybe just as a matter of lottery, as we know, claims as one of their citizens is going to take longer than the period of time before which you need to nominate.

PYNE: So, Kim, what the High Court's effectively decided is that you have to get your act together, to put it in a colloquial term, well in advance of when nominations close in seats, and there's been quite a call since then, and in fact over the last few months, for the Government to run a referendum to change the constitution that the High Court has interpreted it this way, but you know, you're a constitutional expert. I mean, what are the prospects of a referendum of that kind actually being successful? I mean, we have had a very poor record of changing the constitution

RUBENSTEIN: That is true, Christopher, but I think people tend to get hung up on that process rather than thinking more laterally and positively. We have had constitutional change. It's not that it's never happened, so we have to think I think a

little more productively about what were the elements that led past constitutional change.

Now, one of those is bipartisanship, isn't it. If you have a bipartisan approach to support for constitutional change, and an encouragement for people to seriously consider the merits of what is being put before them, you have a much greater chance than an adversarial system where one side just says no for the sake of politics rather than the sake of substance. So, I think that's one issue. If we could get bipartisanship in terms of our leadership that would be a significant step towards this being a possibility.

I think the second thing is in relation to public education and recognising that this is actually something that could be argued to benefit all of society. It's not actually just about benefiting current politicians, it's actually about benefiting the almost 50 per cent of individuals within Australia who have access to and are often encouraged to become dual citizens in every other respect in our legislative and political life, except for empowerment. So, if we were able to show the majority of people that this is something that actually benefits not only them individually but the whole democratic system, to encourage a better representation, that the people in parliament would better represent the people who are voting for them, I think that's another persuasive issue.

And I think the third thing, constitutionally, is in relation to the fact that this is not only about being a multicultural Australia, which of course Australia has become in terms of migration, but this also relates back to the changing notion of Australian citizenship. So, one of the things, as you both know, is that at the time of the framing of the constitution there was no term 'Australian citizen' and we were all British subjects, and in fact up until 1988, and part of why the problem that developed over this past period occurred, is that many people who had Commonwealth country citizenships just didn't realise that that meant that they were foreign citizens.

Now, even though we had the *Sue v Hill* case in 1988 which categorically said that if you were a citizen of any other country apart from Australia, even if it was a Commonwealth country, that now meant you fell foul of Section 44i, there were a lot of people who still don't necessarily emotionally connect to that idea, and once we make that clear that it's really every aspect of Australian society who is affected by Section 44i and that it diminishes our own system of representation, I think that there would be a greater chance of getting a majority of people in a majority of states. Doesn't deny that there will be some people who don't agree with it, but my personal view is that you could actually get get there.

PYNE: We're going to have to wrap it up, I'm afraid. Kim. We're running out of time, but obviously it's a very interesting issue and that was a very comprehensive answer, and thank you very much for it. It's a very vexed issue for many people in the last few months but it's going to be around for a while to come, I think.

RUBENSTEIN: Yes, indeed.

PYNE: Thanks so much for joining us. It's been great talking to you.

RUBENSTEIN: Thanks for the opportunity. Lovely to speak to you. Great.

MARLES: And that brings us to the question of the week, which is inspired by the fact that it's a really big week in Parliament, budget week, so the question of the week is: what is Parliament like during budget week? First, there was a lot of people in the building, many dinners. What did you get up to on budget night after the budget was delivered?

PYNE: Richard, I always regard the budget day as being like Derby Day in racing parlance because it's the biggest day of the year in the parliament, handing down the budget. It's the national accounts in terms of how much money we're collecting, how much money we're spending, what our priorities are. In Westminster many years ago the Tories used to wear top hats on that day, and the Labour Party would wear miners' hats, in fact, because it was something of a theatrical day. So, it is a good day. It's a lot of time afterwards. After the budget is handed down there's a lot of speeches, a lot of events. I think I visited and spoke at about seven different events over the course of the evening because a lot of people come to Canberra from the business community, the union movement, associations and representative groups, and you do the same thing on Thursday night, I assume?

MARLES: We do. What I've got to say I'm desperate now to see you turn up in the House wearing a top hat.

We do do the same and we had a big dinner last night, very successful, and I also, this year particularly, I'm not sure why, there was a lot of young people, I think Rotary had a group in there, there were Young Labour people in the building, so it was a fantastic week in that sense and a celebration of our democracy.

But Christopher, we've run out time. We look forward, I look forward, to having a chat with you again next Friday on this show, and viewers join us for *Pyne & Marles* on Sky News at 1 o'clock next Friday. We'll see you then.

[ENDS]

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