

**CONFIDENTIAL**

**GOVERNOR-GENERAL'S OFFICE**

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*Subject* **THE GOVERNOR - GENERAL'S**  
**PERIODIC CONFIDENTIAL REPORTS**  
**TO THE QUEEN. PART 2.**

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BUCKINGHAM PALACE

3rd December, 1975

*My dear Governor General*

Your two letters of 24th November and 28th November arrived together last night, and I was able to talk to The Queen about them this morning. She will be reading them in detail when she has leisure this evening.

I am really writing now to confirm the telephone conversation I had with David this morning. This was simply to say that, as seen from here, I am sure you would be wise to make no statements during the election that you intend to resign or not to resign, nor that you should speak to the nation about your constitutional position.

I sense from your letters that the tide of opinion is beginning to flow in favour of your action and I hope it will continue to do so. Anything you say now would, I am sure, revive controversy, and would certainly be interpreted by some that you doubt the wisdom of what you did, and by many others as a political intervention.

I cannot refrain from adding that I have read Alan Ashbolt's shameful article in the New Statesman. If anyone is nuts he is! I am sorry you have been subjected to this monstrous attack buttressed as it is by a farrago of misrepresentation and absurdities.

I shall write again soon.

*Yours sincerely*

*Martin Charteris*

His Excellency the Governor-General of Australia.

Government House,  
Canberra. 2600

5 December 1975

*My dear Private Secretary,*

There is not much to report from here at this stage. We are simply waiting now for the campaign to conclude.

I enclose a copy of this week's "Bulletin" <sup>⊗</sup> which has a number of items in it including the article by Alan Reid which, I think, has come to your attention. Another article worth looking at is the one in which Ronald Conway gives the reason why he will not vote for Whitlam - the previous week's issue having had an article by Donald Horne giving his reasons for doing the opposite. I also send you two items from the press about opinion polls. One from "The Age" of Wednesday, 3 December and one from this morning's "Melbourne Sun". I also enclose a copy of an article from today's "Financial Review" in which it does its best, in an absurdly tenuous way, to suggest that the C.I.A. conceivably might have been associated with events here. In this article they repeat an assertion which has been made occasionally during the last couple of years that I have had intelligence connections. This is simply false. At no stage in my military career in the last war, nor before or since that time, have I ever had direct or indirect connections with Intelligence organisations.

Thank you for ringing about the question of my announcing an intention to resign. I agree with you on this matter. I had been wondering if the Palace might have an attitude on this. The same question may be going to be raised in a different way because the "National Times" yesterday asked David Smith two questions. Was it true that I was planning to go to London in the second half of December? Was it true that my intention was to report to The Queen for the purpose of resigning?

⊗ 6 December 1975.

.../2

2.

David Smith said, by way of reply, that I had made no plans for the second half of December. This is, of course, true. No plans have been made and none can be made until after the election. As you know I shall then consider the form of an overseas trip if it appears to be possible.

Many thanks for your continued interest. Please assure Her Majesty of my loyalty and humble duty.

*Yours sincerely,*

JOHN R. KERR

Lieutenant-Colonel The Right  
Honourable Sir Martin Charteris,  
K.C.B., K.C.V.O., O.B.E.,  
Private Secretary to Her Majesty  
The Queen,  
Buckingham Palace,  
LONDON. ENGLAND

# HOW MUCH CAN SIR JOHN

I BELIEVE that the Governor-General, Sir John Kerr, acted to sack Mr Whitlam with a deeper knowledge of behind-the-scenes affairs than has so far been appreciated. I understand he was given some information by a senior Labor minister over the Loans Affair and the Connor sacking which caused him deep concern.

The minister involved is Mr Frank Stewart, Minister for Tourism and Recreation — but more importantly at that time he was vice-president of the Executive Council.

Between the hours of 11.30 am and 12.15 pm on October 20 Stewart made a telephone call to the Governor-General as "a matter of conscience."

Stewart reported that from discussions following the crucial Executive Council meeting of May 20 (the meeting at which Connor's authority to secure a \$2000 million petro-dollar loan was formally revoked) he thought that Connor was entitled to believe that he (Connor) had Prime Minister Gough Whitlam's approval to continue his search for petro-dollars, despite the withdrawal of his formal authority.

Connor resigned as Minister for Minerals and Energy on October 14, six days before Stewart's conversation with Sir John Kerr.

His resignation came following disclosures by the money broker Tirath Khemlani that negotiations for petro-dollars had continued after the May 20 date on which the Executive Council withdrew his authority.

It may be significant that Whitlam did not make the continuation of negotiations for the loans the basis for Connor's enforced resignation.

Whitlam said publicly that Connor's resignation had been because he had been "misled" by Connor when assured by Connor that "all communications of substance between him (Connor) and Khemlani were tabled by him (Connor) on July 9, 1975 (in the Parliament)."

This in turn had led him (Whitlam) into misleading the Parliament when answering questions from the opposition.

Stewart's version, as reported to the Governor-General, claims that when the formal business of the Executive Council had been concluded on May 20 Connor asked Whitlam if this was the end of the search for petro-dollars.

Whitlam said not necessarily.

Whitlam was reported to have added:

- While negotiations were under



Sir John Kerr . . . There was more to his decision than has so far been realised

way, as they then were, for a \$100 million loan in the United States, Australia was obliged to reveal details of any other loans being sought.

- It was because of this that the Connor authority had been revoked.

- But this did not mean that explorations about the possibility of securing such petro-dollar loans was banned.

- Such exploratory activities could continue, without Executive Council authority.

Present at the May 20 Executive Council meeting were Stewart, then vice-president of the Executive Council (who was chairing the meeting due to the absence in New Zealand of the Governor-General Sir John Kerr), Whitlam, then Prime Minister, and Connor in his then role of Minister for Minerals and Energy. Dr Cairns signed the executive minute but was not present at the formal or informal discussions.

The informal discussions took place after the conclusion of the council's formal business, with Whitlam participating throughout. It is known that Stewart, who has functioned as assistant to the Treasurer as well as vice-president of the Executive Council, was worried from the outset about the Loans Affair and that this worry was intensified by

the events which led up to and surrounded the Connor resignation.

He confided in friends that he was deeply disturbed by some of the circumstances associated with the Connor dismissal, and felt that he should do something about it. Six days after the dismissal, he did something about it by talking with the Governor-General. It is understood that the Governor-General did take some action but at this stage it is not known what action he took.

Connor reported to the Federal Parliamentary Labor Party caucus on the circumstances of his dismissal, but publicly has been taciturn. Caucus accepted his resignation "with regret." Labor Parliamentarians who listened to Connor's report to the caucus on the circumstances of his resignation said that Connor said there were some facts which were not then known but did not disclose them at that meeting.

The sequence of events were these:

**November 22, 1974:** Frank Crean, then Treasurer, "There is no need, and no cause, for Australia joining in any mad rush to borrow petro-dollars abroad at any price."

**December 11, 1974:** Crean dismissed as Treasurer and replaced by Dr Cairns.

**December 13, 1974:** Executive minute signed by Whitlam, Dr Cairns, Connor, and Senator Murphy, then Attorney-General, authorising Connor to raise \$4,000 million loan.

**January 7, 1975:** Connor's authority revoked because of pending Deutschmark loan.

**January 28, 1975:** Executive Council authority given to Connor to raise a \$2,000 million loan.

**May 20, 1975:** Executive Council meeting consisting of Stewart, Whitlam, Dr Cairns, and Connor revoked Connor's authority of January 28, 1975, because of pending U.S. loan.

**June 6, 1975:** Dr Cairns replaced as Treasurer by Bill Hayden.

**June 10, 1975:** Whitlam, "Henceforth, no person has authority to do anything in relation to borrowings by the Australian government unless it is done with Mr Hayden's authority . . . the whole of that (Khemlani) transaction is ended. I thought I'd made that plain."

**July 17, 1975:** Whitlam, "All relevant documents concerning the loans have been tabled in the parliament. They don't suit the opposition because they do not support their innuendoes of impropriety."

# KERR TELL US? An exclusive report by Australia's most experienced political journalist, ALAN REID

**October 13, 1975:** Solicitors delivered to Whitlam copies of Khemlani telexes dealing with loan developments subsequent to May 20 and published in the Melbourne Herald on October 13.

**October 14:** Connor resigned and was replaced by Senator Wriedt as Minister for Minerals and Energy. Whitlam, "I advised the Governor-General to accept the minister's resignation because I do not believe in the accuracy of the assurance which the minister gave me that all communications of substance between him and Mr Khemlani were tabled by him on July 9 last . . . They (the communications) did not amount to negotiations."

**October 20, 1975:** Stewart communicated with the Governor-General.

**October 21, 1975:** Mr Ian Sinclair, CP, NSW: "I ask the Prime Minister did Mr Connor have any authority, implied or otherwise, to negotiate for a major overseas loan after May 20." Whitlam, in reply: "This question was answered months ago. I would have thought it was answered on May 21 last." (On May 21 in reply to a question from Malcolm Fraser on how the proposed loan was to be spent, Whitlam said, "The authority has been revoked.") Andrew Peacock, Lib, Vic, "My question to the Prime Minister is supplementary to the question asked by Mr Sinclair, which was not answered by the Prime Minister. Did Mr Connor have any authority implied, or otherwise, to continue with his overseas loan negotiations?" Whitlam, in reply: "I answered that question earlier."

**November 5, 1975:** Fraser, then Opposition Leader, "I ask Mr Stewart has he, the vice-president of the Executive Council, any information that would exonerate the former Minister for Minerals and Energy (Connor) from full blame for what has occurred over the Overseas Loans Affair?" Stewart, "As the vice-president of the Executive Council I have no information that would put the blame on anybody who was associated with the Loans Affair, nor do I have information that would completely exonerate anybody, if there is any blame attached to anyone."

Strange circumstances have surrounded the loans affair from the outset. On December 13 there were two meetings at the Lodge. Present at one were Whitlam, Attorney-General Murphy, Connor and officials. This was already under way when the then Treasurer, Dr Cairns,



Frank Stewart . . . He telephoned Sir John Kerr "as a matter of conscience"

arrived. Dr Cairns attended briefly that meeting which was discussing the raising of petro-dollars.

Dr Cairns had to leave to attend the second meeting which was dealing with a different subject. When he returned to the first meeting he was told that they had discussed the raising of \$4 thousand million in petro-dollars. Cairns made the point that they could not spend such money immediately and arrangements would have to be made for its investment while awaiting occasions on which it could be spent, at least in part.

He also dealt with the timing for informing the States about the "temporary" loan which was to be for 20 years. Whitlam asked him if he had any objections to Connor being placed in charge of the loan raising to which Cairns said that if that was the way in which they wanted it he would go along with it.

Later, in the hall of the Lodge, Cairns told Whitlam and Connor that he did not believe that they could obtain such money but he was prepared to give every assistance he could even though he thought the assistance would be wasted.

There was a discussion about the signing of the executive minute authorising Connor to raise the loan and Whitlam told Cairns, "You had better sign that minute too," which Cairns did.

Subsequently, Cairns was virtually frozen out of all discussions about the raising of petro-dollars.

Later at an unpublicised meeting with central bank and Treasury officials in Canberra questions were raised about the propriety of using Khemlani in negotiating for the loan. From there on Cairns advocated that Khemlani should not be used as an intermediary.

Though Treasurer Cairns was not told about it the second authorisation was given Connor to raise \$2 thousand million from Arab sources.

But when a U.S. loan was under negotiation, a U.S. group came to Australia. The Secretary of the Treasury, Sir Frederick Wheeler, warned Cairns of the damage that continuing negotiations through Khemlani was doing to Australia's image overseas.

While actually in the Parliament, Cairns approached Whitlam then sitting in his Prime Minister's seat and argued that Connor's authorisation should be withdrawn.

Whitlam said: "All right, but you'll have to be the bastard who tells him."

Cairns moved from the central table in the House of Representatives and conferred with Connor, who was then sitting on the ministerial benches.

Cairns then moved back to Whitlam and reported that Connor had told him that if the authority presented any embarrassment to him, Cairns, then he was quite willing to have the authority withdrawn.

It was this that led on to the May 20 meeting which revoked Connor's authority and on to Stewart's phone report to the Governor-General as to what had happened at this meeting.

Frank Stewart was a reluctant candidate for this election. He threw off what he called a "state of depression" to face his tenth election in 22 years. He said that he had been considering whether he should spend more time with his wife Maureen and their six children. However, when the election came so unexpectedly he decided to stand. "I feel that under the very special circumstances which have arisen none of us can afford to consider personal, or even family reasons," he said.

During the period beforehand, when he was making up his mind, he was reported as saying: "If I make up my mind to quit, not to fight the next election, I won't be making any angry statements that Gough, Cairns and Connor were so-and-so's."

# Why I can't vote for Whitlam

LAST WEEK I watched Gough Whitlam and Melbourne friends doing their frenetic thing on TV. It was Labor's blaring policy speech at Festival Hall. I watched with a group including an elderly German-Jewish matron who had narrowly survived Hitler's concentration camps. Half-way through she began to shudder and weep: "My God, turn it off! It's like what I remember in Germany long ago. Are they going to do it here now?" The old lady's question had chilling implications that authoritarian governments can emerge as readily from demented populist hysteria on the left as from the right.

And most of the touch-points of the Nuremburg-style rally were there at Festival Hall. Heavily-ordered Teutonic solemnities were absent since the crowd was ferociously jovial. But the well-orchestrated outbursts of "We Want Gough" felt uncomfortably like "Sieg Heil!" The same full-throated undertone of animal fervor was there too. Nobody cared what Whitlam was promising or neglecting to promise. The thundering God-politician was there clothed in light, swollen with righteous vengefulness, harping magnificently on the fears, discontents, and petty fixations of the crowd as perhaps no politician has done in the national sphere since Federation. It all seemed grimly ironic when one remembered all those rogue posters picturing the reticent, sober squire from Wannon giving the Nazi salute, the Middle 'S' of his name brutally twisted into the most evil symbol of oppression in our century.

The reasons why I can't vote for Whitlam can be itemised severally. But first there is the man himself. Traditionally, parliamentary Labor has always been governed by caucus. Yet the sackings of five ministers leave no doubt that the agile mind of Edward Gough Whitlam bestrides the narrow world of his former ministers like a colossus. There are no threatening heirs-apparent to check his headlong ambition. One by one, the really well-known party figures on whose reputations Whitlam rode to power have been discredited — either by their own incompetence or perhaps even by their leader's connivance. The various bodies in Labor's party room are well-buried and all the authoritarian apparatus of a collectivist party machine can be marshalled to keep them that way. The only horrid slip of Dr Jim Cairns, that Whitlam was lying when he disclaimed any knowledge of the shadier side of the Loans Affair, has been hastily covered up, the moral hero of Labor is



*Last week Donald Horne outlined why he could not vote for Malcolm Fraser. This week RONALD CONWAY explains why he can't vote for Gough Whitlam on December 31. Conway and Horne are both writers and academics. Conway's book *The Great Australian Stupor* is the only sociological runner-up in sight of Donald Horne's *The Lucky Country*, having gone into six printings since it was first published in 1969.*

*Conway is senior lecturer in applied psychology at the Royal Melbourne Institute of Technology and senior consulting psychologist to St Vincent's Hospital, Melbourne. Until Labor took power he saw himself as essentially a non-political animal. Three years of Gough Whitlam have caused him to change his mind.*

now meekly toeing the party line along with a leader he has every reason to despise. Beside such a nauseating reconciliation under the herd slogan of solidarity, the open and clumsy palace revolutions of the Liberals now seem almost endearing. There are, after all, no secrets about the fall of Billy Snedden.

My suspicions of the probity and scruple of Whitlam go back a long way. The late Arthur Calwell, whom Whitlam displaced, made no secret of his resentment and dislike of the Whitlam style. Calwell was an old-time Labor man for whom the party was a second religion. He saw in the eager Sydney lawyer, a well-manicured,

silver-tongued opportunist, more interested in preferment than principle. That vision of Whitlam has never been effectively banished. Consider the glass of water in the face of the calmer, deeper intellect of Paul Hasluck, the snide innuendo about John Gorton's parentage, the smirking hints that William McMahon might have married Sonia McMahon for reasons more desperate than love and companionship — that vicious high camp wit at the expense of less well-defenced or mentally gifted, the callous betrayal of Speaker Cope after the wretched man was sworn at as an idiot, the "Bible-bashing bastard" jibe at Joh Bjelke-Petersen. All these, and more, were the marks of a malicious, petty man whose culture and sensitivity were merely dressy wardrobe accessories to be worn or doffed according to whim or experience. John Dunn, writing for Time magazine refers to Whitlam as a "jugular" politician. Dunn has his metaphorical anatomy misplaced. In the tight political clinches our Labor leader has rarely hesitated to aim straight for the groin!

Thousands of reflexive Labor voters still imagine that the Curtin-Chifley party of my boyhood and theirs is the party of today. The resemblance is superficial. The party of "the working class" is no more. The legendary injustices which arose from the Labor-management struggles of the 90s no longer exist. Organised industrial labor today is in a position to either enrich or cripple the national livelihood of every Australian. British Labor, with far fewer advantages and far more credible class battles to fight, has already succeeded in bringing England economically to its knees. It has produced a nation which is literally run by its shop-stewards.

In Australia the bigger left-wing unions openly threaten and boast of their power. The industrial tail of the ALP effectively wags the political dog. Despite the fact that Messrs Carmichael, Halfpenny and Gallagher make no secret of their formal communist affiliations and their revolutionary alternatives, Labor stalwarts and trendier Liberals have virtually made references to communism a taboo. One may speak of left-wing industrial leaders but Communist Party card holders in unions have become either officially invisible or actually respectable. Yet we are told that such union leaders, who are answerable only to the fanatical cabals who vote for them, will tear Australia asunder if Labor is not returned. But



academics feel obliged to make in the face of America and British left-liberal establishment propaganda. This is done without regard to the relevance of such propaganda in a nation which would be happier and more innocent for not importing overseas political neuroses. It is not only dope and ethnic and sexist bickering which are our newest imports. There is a lot of faintly lunatic intellectual pollution as well. The romantic idealisation of populist uprisings by the left marks a bloody trail from the Spanish Civil War to the Kent State shootings. Intellectuals are good at fanning populist fires but inept at putting them out.

The other half of the problem lies with the neglect by Liberal and Country Party followers of anything resembling carefully thought out principles or competent intellectual critique. The fat cats of the private sector thought for too long that the possession of money and complacency made any respect for the power of ideas unnecessary. They are now belatedly recognising their mistake. Malcolm Fraser's recent speech to the National Press Club is the most succinct and attractive defence of modern individualism and human variety in a mass society produced by the right since the early hey-day of Menzies. Would that more people had bothered to read it before chanting political incantations about fascism!

As for Labor's defence and foreign policy, let me not think on it. I could vomit. The Whitlam ministry capitalised on the blunder of previous LCP commitment of conscripted troops for Vietnam by simply staging a heartless debacle, leaving thousands of pro-Australian South Vietnamese to their fate. The rape of Cambodia by its own "patriots" gives an idea what one can now expect from people's democracies in South-East Asia. For the rest the current capability of our defence forces could scarcely dislodge two stubborn lovers from a balcony. Lance Barnard was the only defence-minded man in the Labor Government and his fate is also a matter of record. Meanwhile, foreign policy for Whitlam means belting Rhodesia and South Africa while sucking up to left-wing tyrants like Tito and slipping a nice little Australian loan to North Korea when nobody is watching the till.

Mismanagement of the national economy since 1972 is so self-evident that the Whitlam policy speech did not even bother to rebutt it. Even Hayden makes aggrieved claims only for the few months he has held the Treasury portfolio. I do not propose to dwell on this area, for even the most one-eyed Labor supporter could not fail to be aware of soaring inflation and increased unemployment. These are simple

stubborn local facts which no amount of slippery reference to "world-wide problems" can explain or justify. Once again the real fault must lie at the door of a Labor leader so frantically determined to leave his personal mark in every corner of Australian life. Whitlam has been unable to comprehend the difference between carefully prepared reforms such as pension increases and medical aid and \$200,000 overseas jaunts to view ancient civilisations while striking abysmally unproductive foreign poses. Between the purchase of Blue Poles and Hayden's illusory tax cuts lies a partly uncharted jungle of legislation varying from the cunningly authoritarian to the plain bloody silly. One Labor back-bencher (who wisely chooses to be anonymous) recently remarked: "I don't really understand what's in half of these 21 blocked bills we passed in the Reps anyway. Apart from Gough, a few ministers, and the legal eagles, I don't think any other bugger does either — and that goes for the Press Gallery too. Maybe the Senate had more time to think about them than we were given."

That dismaying comment points to the decisive reason why I not only CAN'T vote for Whitlam, but why I DARE not. It also may partly explain the draconic severity of the Governor-General's action in dismissing the Labor Government. My uneasy speculation is that Sir John Kerr, as a member of the Executive Council, must know far more about three years of devious Canberra wheeling and dealing than a Queen's representative can decently speak about while he remains in office. Yet Sir John has been connected by several fat-headed scribblers with the NCC, the DLP, and even the persecutors of the late Sydney Sparkes Orr. A Labor man since boyhood, and a jurist with an impeccable record for firm but fair judgments, Sir John has been disgracefully misrepresented, like some corrupt Louisiana party hack. Doubtless while he is gagged by the very proprieties he is accused of violating, the Governor-General may yet be linked with the Ku Klux Klan, the Mafia, the League of Rights, and the Daughters of the American Revolution! It's open season for vice-regal entities right now.

I find it difficult to believe that Sir John Kerr did not realise that legislation such as the Interstate Commission Bill, the Electoral Redistribution Bill, the Broadcast and TV Bill, The Purchasing Commission Bill and the Australia Police Bill (our local Gestapo?) did not contain clauses which strike at the very roots of free enterprise, free contract, and free public speech in Australia. He must have realised that the spirit, if not the letter, of Westminster-style democracy would be more threatened by a half-senate election aimed at pushing

through such potentially dangerous bills than by an outright dismissal of the government.

In the final analysis, Labor's ragings at the former Senate are merely the outcome of its realisation that for as long as the rights of smaller States and rural electorates are guarded by the Upper House, Labor's chief power base in the mushroom suburbs of Syndy and Melbourne can never prevail over the national interest as a whole. I DARE not vote for Whitlam because I believe his unscrupulous ambition will prompt him to exact an implacable revenge on all those with the courage to stand against him. If Labor wins, the scarlet virus of megalomania which seems to run through the lives of so many Labor politicians from Jack Lang through to H. V. Evatt may find its most opulent target in a Labor Prime Minister who will brook no power or judgment beyond his own. As Whitlam jokingly reminded his followers at the Terrigal conference — he and God represent essentially the same constituency.

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because 1974 was the blackest year since World War II for industrial strikes, Clyde Cameron, the vaunted strong man of the Whitlam ministry, was dumped. Cameron's pleas to union bosses were ignored and his demands flouted. With loyal friends like the Carmichaels and the Halfpennys, Labor needs no enemies. Hence Liberals could hardly make things worse than they are. The gentle shrewd approach of Tony Street in the Labor portfolio might work a darn sight better.

The most extraordinary feature of this crucial campaign has been the fervent partisan support mounted by the academics and the literati for Labor. Much of it can be explained by simple cupboard love and Gough Whitlam's honeyed assurances that the men and women of the ivory tower and the typewriter are dear to his heart. Handsome (even ludicrous) grants for literature and the arts, the appointment of large numbers of grateful academics to various boards, commissions and think-tanks have catered to both the egos and the status of countless discontented intellectuals. Many writers such as Buckley, Horne, Davies and McQueen have long laid bare the secret resentment of the Australian academy for being so long excluded from the corridors of power. Sincere or insincere, the wooing of the academy by Labor has paid off handsomely in currency of the most splenetic condemnations of Malcolm Fraser and Sir John Kerr that anyone could have imagined.

It would be all too easy, however, to dismiss all these angry partisans as parlor pinks and running dogs of Labor. For a man of the charity, intellectual grace and stature of Professor Manning Clark to utter the following words was remarkable. After lashing out at the petit bourgeois attitudes and conservatism of the Australian people, the distinguished historian is reported to have remarked with quite uncharacteristic pomposity: "I'm not sure whether the intellectuals, the students or the trade unions would give Fraser a chance to govern." In such statements — with their bizarrely inverted snobbery — Clark and so many lesser lights have us all back at the barricades with Paris Commune of 1871, pillaging Notre Dame and soaking the Saint-Chapelle with petrol. The professor seemingly hints a return of the maniacal excesses of counter-culture protesters who paralysed Berkeley, Columbia and Tokyo universities and made impossible any fair and rational discussion of the issues except under the rifle butts of campus police.

Part of the blame for the massive defection of the intelligentsia from right-wing or centrist stances is due to the essentially unreal cringe so many



Poll shows coalition has 8.3 per cent. lead over Labor



# Big swing to Liberals

## Melbourne is Labor's city outpost

By LEONARD RADIC

The Liberal-National Country parties had an 8.3 per cent. lead over Labor last weekend, the latest AGE POLL shows.

Support for the coalition parties was 52.3 per cent. The Labor vote was 44 per cent.

On these figures, taken two weeks before the election, the Fraser caretaker Government would be confirmed in power with a majority comparable with the Liberal-Country Party victory in 1966.

The poll shows that while there has been only a slight drift on the part of those who voted Liberal-NCP at the 1974 elections, the swing away from Labor is immense.

Only 79.9 per cent. of those who voted Labor in May, 1974, said they would do so again on December 13.

The comparable Liberal-NCP figure was 95.6 per cent.

Of the 20.1 per cent. of disaffected Labor voters, the clear majority (18.9 per cent.) said they would give their vote this time to the Liberals.

Another feature of the poll was the marked drift in support for the minor parties. The DLP's intended national vote was 1.0 per cent and the Australia Party's 1.6 per cent.

A further 1.6 per cent. said they would vote for other parties. Melbourne, where 49.7 per cent. said they would vote A.L.P. (5.7 per cent. above the national average), was the only capital where Labor voters were in the majority.

The poll was taken last weekend—November 29-30. It was based on a nation-wide sample of 2000 voters in all States and in every Federal electorate except the Northern Territory.

It was the first poll of voters to be conducted this election with so large a sample and in a single weekend.

It was also the first to be taken and published since the main party leaders delivered their policy speeches.

The 2000 people, aged 18 and over, were asked: "If a Federal election for the House of Representatives were held tomorrow,

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### We might change tax scale: Fraser

The Prime Minister, Mr. Fraser, yesterday gave notice that a Liberal Government might alter Labor's new tax scheme before the next Budget.

He also indicated that Medibank could be changed—but not until enough time had passed to assess its faults and virtues.

He said the new tax scale—introduced in the Budget—would come in on January 1 because it was a proclaimed law.

But the scheme contained "some elements of injustice."

A L-NCP Government would act to correct these before the end of the financial year "if circumstances permit," Mr. Fraser said.

The Liberal Party has promised to introduce the first stage of a three-year plan for tax indexation in the next Budget. Mr. Whitlam this week also forecast that a Labor Government would grant further tax relief in next year's Budget.

Earlier he told a Melbourne Press Club lunch that the Hayden tax scales penalised "very greatly" people seeking to do things for themselves, for example educating their children and paying off homes. "We would reverse the injustices."



for which political party would you probably vote?

	Per cent.
A.L.P.	43.0
Lib./NCP	51.0
DLP	1.0
AP	1.1
Others	1.6
Don't know	2.3

When the "don't knows" were distributed among the parties, on the basis of the existing support, the results were:

	Per cent.
A.L.P.	44.0
Lib./NCP	52.3
DLP	1.0
AP	1.1
Others	1.6

Victoria, where the Labor vote was 48.0 per cent. (compared with 45.9 per cent. for the Liberal-NCP), was the only State where Labor was ahead.

In each of the other States the Liberal-NCP had a clear majority.

The Liberal-NCP vote was: NSW (51.6 per cent.), Queensland (62.9 per cent.), SA (53.5 per cent.), WA (56.4 per cent.) and Tasmania (53.2 per cent.).

The comparable Labor vote was: NSW (45.5 per cent.), Queensland (35.3 per cent.), SA (41.6 per cent.), WA (41.0 per cent.) and Tasmania (46.8 per cent.).

In Melbourne, Labor had a 5.2 per cent. lead over the Liberal-NCP coalition. But in the other capitals, the position was reversed.

The Liberal-NCP vote was 50.3 per cent. in Sydney, 60.3 per cent. in Brisbane, 50.0 per cent. in Adelaide and 53.1 per cent. in Perth.

The comparable Labor figures were: Sydney (46.4 per cent.), Brisbane (38.2 per cent.), Adelaide (43.1 per cent.) and Perth (44.9 per cent.).

Labor's overall city vote (46.3 per cent.) was much stronger than its non-city vote (40.7 per cent.), but still below the Liberal-NCP city vote (49.6 per cent.), and well below its non-city vote (56.3 per cent.).

While Labor appealed to 57.5 per cent. of blue-collar workers, its white-collar vote was very much lower (29.6 per cent.).

In the middle and upper white-collar brackets, it was lower still—particularly upper white-collar workers, only 15.4 per cent. of whom said they would vote Labor.

By comparison, 65.3 per cent. of all white-collar workers (including 76 per cent. of upper white-collar workers), and 40 per cent. of blue-collar workers said they would vote for the Liberal-NCP.

The poll showed a marked decline in support for Labor on the part of two traditional groups of A.L.P. supporters—young persons and the university-educated.

Among the university-educated, 61.7 per cent. said they would vote Liberal-NCP, but only 32.2 per cent. for Labor.

At the opposite end of the age spectrum, 47.3 per cent. of those aged 60 and over said they would vote Labor, and 51.3 per cent. Liberal.

There was also a falling-away of support for Labor among students, 39.7 per cent. of this group declaring themselves for Labor and 58.4 per cent. for the Liberal-NCP.



## Age Poll

### 1—Voting intentions—The Nation (Base—2000)

	Actual vote May '74 %	Intended vote Sept. '74 %	Intended vote Dec. '74 %	Intended vote June, '75 %	Intended vote Aug. '75 %	Intended vote Nov. '75 %
A.L.P.	49.3	41.4	41.3	40.5	36.3	44.0
Lib./NCP	45.8	52.3	50.8	54.1	56.8	52.3
DLP	1.4	1.0	1.4	1.5	1.6	1.0
AP	2.3	1.9	2.8	2.5	3.1	1.1
Other	1.2	3.4	3.7	1.4	2.2	1.6

### 2—Voting intentions—The States

	VICTORIA				NSW			QUEENSLAND				
	Intended vote Dec. '74 (503) %	Intended vote June, '75 (520) %	Intended vote Aug. '75 (525) %	Intended vote Nov. '75 (542) %	Intended vote Dec. '74 (678) %	Intended vote June, '75 (716) %	Intended vote Aug. '75 (712) %	Intended vote Nov. '75 (723) %	Intended vote Dec. '74 (252) %	Intended vote June, '75 (277) %	Intended vote Aug. '75 (274) %	Intended vote Nov. '75 (284) %
A.L.P.	42.7	40.7	35.1	48.0	42.3	42.1	35.9	45.5	39.7	38.5	36.4	35.3
Lib./NCP	50.7	53.1	56.2	45.9	49.9	52.0	57.4	51.6	52.5	59.7	58.4	62.9
DLP	1.9	1.8	3.1	2.7	1.3	1.5	0.9	0.6	2.2	0.4	1.4	0.4
AP	2.9	3.1	3.1	1.6	3.6	2.9	4.4	1.1	2.4	1.4	2.1	0.7
Other	1.8	1.3	2.5	1.8	2.9	1.5	1.4	1.2	3.2	*	1.7	0.7

### 3—Voting intentions—The Capitals

	Actual vote May, '74 %	Intended vote April, '75 (2000) %	Intended vote June, '75 (1120) %	Intended vote Aug. '75 (1132) %	Intended vote Oct. '75 (2000) %	Intended vote Nov. '75 (2000) %
A.L.P.	52.4	48.7	43.8	35.7	47.3	46.3
Lib./NCP	43.0	45.7	50.1	57.2	47.3	49.6
DLP	1.5	1.2	1.7	1.5	1.3	1.0
AP	2.6	3.1	2.7	3.4	2.0	1.4
Other	0.5	1.3	1.7	2.2	2.1	1.7

NOTE: The April and October polls were based on a sample of 2000 voters in metropolitan electorates. The other three polls (including last weekend's) were based on an Australia-wide sample, also of 2000 voters. The figures in this table are the capital city voters in those samples.

### 4—Voting intentions—The Swingers

How they voted in May, 1974	WOULD VOTE NOW				
	A.L.P. %	Lib./NCP %	DLP %	AP %	Other %
A.L.P.	79.9	16.9	0.4	1.0	1.8
Lib./NCP	2.5	95.6	0.9	0.4	0.6
DLP	13.9	47.9	38.2	—	—
AP	20.0	50.5	—	24.3	5.2
Other	30.0	52.1	—	—	17.9
Did not vote	36.3	56.4	1.0	2.7	3.6

NOTE: Tables should be read across, not down

## We could unseat 4 Libs: Whitlam

By JOHN JOST

The Federal Opposition Leader, Mr. Whitlam, said last night Labor had a great chance of winning four marginal Liberal seats in Melbourne.

Mr. Whitlam named Flinders (held by the Treasurer, Mr. Lynch), Deakin (held by Mr. Alan Jarman), Hotham (held by the Minister for Social Security, Mr. Chipp), and Bruce (held by Mr. Bill Snedden).

"We won four marginal Liberal seats in 1972 and another two in 1974," Mr. Whitlam said.

"Labor Party surveys show that these seats are now safe for Labor."

"Our surveys also show that we have a great chance of winning four more seats in Melbourne."

Mr. Whitlam was addressing a dinner given at the Royale Ballroom by

the Victorian Labor Party to commemorate the anniversary of Labor's victory in December, 1972.

Mr. Peter Redlich, attacked recent public opinion polls.

"Don't be pessimistic about these polls. Don't believe them. Our own polls show that we are running at a level about the same as that in 1974," Mr. Redlich said.

He said there were two common factors in all opinion polls.

The first was the 17-20 per cent. level of undecided voters, and the second was that all polls showed that in Victoria, Labor led in the marginal seats.

"Labor is ahead in Victoria and this is where we will win the Federal elections," he said.

"The next 10 days are decisive. We must ensure that the rightful Government is returned to power."

### Anatomy of a poll

Today's AGE POLL report, which identifies the latest national voting trend, was based on a sample of 2000 voters.

The sample of 2000 is the largest sample for any national poll conducted since the beginning of the election campaign.

The sample covers every Australian electorate except the Northern Territory.

The interviews were conducted last weekend after the leaders of the main parties had delivered their policy speeches.

The sample of 2000 is the largest sample for any national poll conducted since the beginning of the election campaign.

The poll was conducted by Irving Saulwick and Associates in association with the Beacon Research Company.

A second nation-wide AGE POLL will be held next weekend.

Tomorrow AGE POLL will report on the issues in the election as the voters see them.

### Comment Allan Barnes

## The end is near

The signs are beginning to point towards a landslide against Labor at the Federal election on December 13.

This is the only assessment one can make from the spate of public opinion polls which have been published over the past fortnight.

Three independent polls—including today's AGE POLL—have put the Labor vote at between 42 and 44 per cent., with the Liberal-Country Party coalition rating between 48 and 51 per cent.

The uniform pattern of these polls reinforces their conclusion—a stunning win for the forces of Mrs. Malcolm Fraser.

In addition, limited private research surveys commissioned by both the Liberal and Labor parties are known to have pointed in the same direction.

### 20 seats

If Labor's vote in 10 days, time does, in fact, show a slump from the 1974 election of five to six per cent. right across the nation—as the newspaper polls indicate—the A.L.P. will lose between 20 and 24 of its present 65 seats in the House of Representatives.

That would give the L-NCP between 82 and 86 seats in the new House—a massive majority of around 45 out of a total House of 127.

Of course, the swing will NOT be evenly distributed. All of the polls have shown that Labor is holding up disproportionately well in Melbourne, where at least five of its vulnerable seats are located and where there are a number of marginal Liberal seats.

A strong Labor vote in Melbourne could save Labor from decimation.

But, in the rest of Australia, there seems little to save it from resounding defeat.

5 DEC 75

## The making of a myth?



SIR JOHN KERR

## The CIA and Whitlam's dismissal

By BRIAN TOOHEY

THE combination of the mythology and hard fact surrounding the sacking of Prime Minister Whitlam is starting to spread like wild fire among the Labor faithful.

One of the most pervasive stories concerns the role of the international intelligence communities.

It is not a role that is readily accepted by the former Prime Minister, Mr Whitlam.

He sees Sir John Kerr's decision to sack him on November 11, 19 days before Supply ran out, as primarily that of a judge who handed down a statement without recognising the immense political consequences that followed.

The Whitlam view is that although no one went to jail, a whole elected political movement was stopped short in its tracks.

Nevertheless, it is known that he has some nagging suspicions about events in the days immediately preceding his dismissal.

The events are outlined below without comment.

Their importance is in what they might do, however unsubstantiated in terms of the Labor Party's mood should it ever gain a blocking majority in the Senate, assuming it is once again in Opposition.

There is also the factor, as reported yesterday, that the Church Committee in the US is looking into the activities of the CIA in Australia.

The events are these:

On Friday morning, November 7, a question appeared on the House of Representatives' notice paper from the Leader of the

Continued page 10

# CIA and Whitlam's dismissal

From page 1

National Country Party, Mr Doug Anthony.

Mr Anthony asked Mr Whitlam, "has his attention been drawn to a report on page one of The Australian on Thursday, November 6, 1975, in which a US State Dept official is reported to have said that Mr Richard Stallings had never worked for any US intelligence agencies?"

"If so, will he provide substantiation of his claim that Mr Stallings was in fact an officer of the US Central Intelligence Agency in 1966-67?"

Mr Whitlam had earlier told the House in answer to a question without notice from Mr Anthony that Stallings was a CIA official.

The Australian Financial Review had earlier reported that Mr Stallings was a former head of the Pine Gap Base in Central Australia and according to Mr Anthony's account, a friend of Mr Anthony's.

Before Mr Anthony put his question on the notice paper, the then Defence Minister, Mr Morrison, approached him after representations from the head of the Defence Dept, Sir Arthur Tange, and asked him to play down any statements that Mr Stallings was a member of the CIA.

It is understood from sources very close to Mr Anthony that this information was supposed to reveal something previously unknown about Pine Gap.

According to a former senior CIA official, Mr Victor Marchetti, it is almost inconceivable that the Russian and the Chinese echelon do not know what Pine Gap does.

Pine Gap is a highly advanced and very expensive US communication station outside Alice Springs.

The Australian Financial Review has been told that Mr Marchetti's view has been disputed, or alternatively, that Labor Government ministers were not told in full detail the data being collected by the satellites connected with Pine Gap.

One example is information relating to Russian missile-firing nuclear submarines, a point that has immense bearing on the nuclear balance of terror.

The agreement to renew Pine Gap comes up on December 10.

Mr Whitlam had on the one hand, said that it would be renewed while on the other — in answer to a question in Parliament in April — indicated that it wouldn't.

After Mr Anthony's question appeared on the notice paper on November 8, the head of the Defence Dept, Sir Arthur Tange, took the unusual step for him of ringing a ministerial staff member.

He spoke to a senior Whitlam staff member about "grave" breaches of national security involving the Anthony question.

Intelligence sources available to the The Australian Financial Review say they cannot see the significance of a revelation that Mr Stallings was a CIA official working at Pine Gap.

They say that who actually ran it, and paid for it, would be well known in the top levels in Washington to the rival organisation such as the Defence Intelligence Agency and the National Security Agency and the CIA.

Prior to the question about Mr Stallings being asked on the notice paper, Mr Whitlam had asked the Public Service for a list of CIA officials in Australia over the last 10 years.

Mr Stallings' name was not produced on the first list given to him. However, it became available on further questioning.

It is understood that the questioning produced a reaction to the head of the PM's department, Mr John Menadue, that was hyper-tensive.

Additionally, the question from Mr Anthony seeking to have Mr Whitlam confirm that Mr Stallings was a member of the CIA produced a very active response from Sir Arthur Tange.

Over the weekend following November 8 he tried to ring Mr Whitlam's principle private secretary, Mr John Mant, on several occasions.

And on Monday, November 10, one of Mr Whitlam's staffers recalls three urgent telephone attempts from Sir Arthur's secretary to get in touch with Mr Whitlam, who was in Melbourne.

Two versions of the proposed answer to the Anthony question were drawn up.

One came from Sir Arthur Tange, and another from Mr on Tuesday, November 11, had

The answer that Mr Whitlam intended to give in Parliament he not been sacked on that day, was along the following lines, and his staff is adamant that it is correct.

He would have said that the Foreign Affairs Department was unable to tell him that Mr Stallings was an official of the CIA but that this subsequently emerged from the head of another department.

Before Mr Whitlam could give that answer he was both sacked by the Governor-General and a cable arrived in Australia on the Monday, November 10, from the Asian representative in Washington saying what he had been told by the CIA.

The cable was sent to the interim head of ASIO, Mr Mahoney, following the surprise resignation of its former head, Mr Peter Barbour.

Its main claim was that the intelligence swapping arrangements between Australia and the US were in jeopardy.

There was no claim that the Americans were thinking of withdrawing Pine Gap from Australia.

According to people who are supposed to know about it even if it were geophysically possible, this would cost the Americans \$1000 million.

However, it is important to note that there was a hint that intelligence swapping arrangements between Australia and the US could be at risk because of what Mr Whitlam had been saying about the CIA.

The Australian Security Intelligence Organisation was set up under a previous Labor Government in the late 1940s due to a threat from the Americans that they would not provide intelligence information unless ASIO were established.

An important point about the cable from the US regarding the CIA and Australia was that a very senior Whitlam staff member regarded it as pre-emptory in tone.

He is prepared to say that he was "staggered by it."

He says: "It displayed a degree of flappability I cannot get over."

What is also at issue is an accusation from the CIA regarding cover for their employees in Australia that cannot be substantiated by anything that is known to have happened.

The above sentence is based upon the Australian Financial Review's investigation into the activities of the CIA in Australia.

Mr Anthony's question on the notice paper, of course, was never answered because of Sir John Kerr's action in sacking Mr Whitlam.

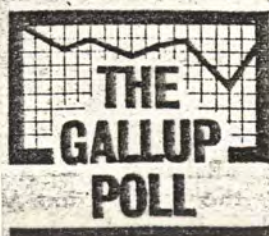
There are plenty of stories around about Sir John Kerr's intelligence connections in the 1940s that could easily feed the paranoia within some sections of the Labor Party.

Mr Whitlam is sticking to his view that Sir John Kerr acted as someone who saw a pre-eminent role for a judge, whatever the definition of constitutional monarchy in the modern world might have demanded.

But the willing ability of people surrounding Mr Whitlam to reveal events leading up to his dismissal — without in any way drawing inferences — is sure to feed the sort of conspiracy theory that could set Labor on a course that could read meaning to the phrase "polarisation" of the Australian community.

# LIB VOTE UP

## Labor down to 40 p.c.



LABOR would have suffered a disastrous defeat had the federal elections been held last weekend, according to the Gallup Poll.

The poll said support for the ALP in the last two weeks of November fell to 40 per cent.

Support for the Liberal-NCP coalition rose to 53 per cent — 5 per cent up on its rating earlier in November.

Gallup said the Labor vote was equal to the low vote Labor got in 1966 when the late Prime

Minister, Mr Holt, had a landslide win for the Liberal-Country Party.

The number of people intending to vote Labor was dropping between the two weekends of the poll.

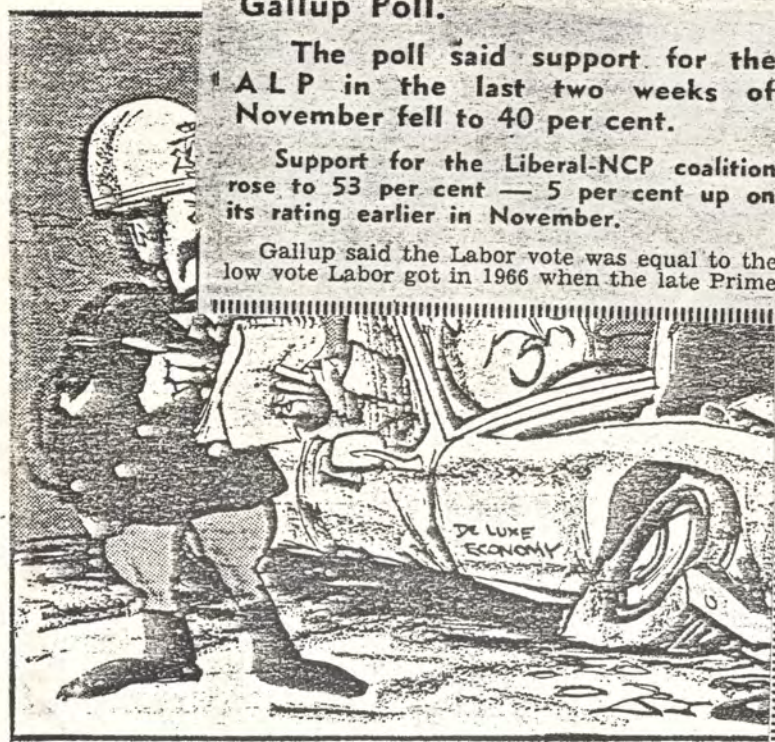
Labor would have got 38 per cent of the total vote in a House of Representatives election last weekend.

This compares with 42 per cent the previous weekend.

The policy speeches of the main parties were delivered between the two weekends.

In the two weekends of the poll, 2089 people 18 and over, were interviewed personally in urban and rural areas throughout Australia, covering all 127 federal electorates, except the Northern Territory.

Matching samples of more than 1000 different voters were interviewed on each of the two weekends.



"Let's see ... failing to give way ... fail"

### Ballot paper

Results of the poll for the two weekends combined are shown in the first column of the table, with separate results for each weekend:

	TOTAL	NOV. 22, 23	NOV. 29, 30
	%	%	%
ALP	40	42	38
LIB.-NCP	53	51	55
AUST. PARTY	2	3	2
DLP	2	2	1
OTHERS	3	2	4
	100	100	100

A spokesman said the results in the first column were the most reliable guide to people's voting intentions, because they were based on the full sample of 2089 people.

Each person was handed a ballot paper and asked to record which party would get his or her first preference vote in the House of Representatives election on December 13.

Ninety-six per cent voted formally and only four per cent informally.

It was assumed that the informals would vote on December 13 in the same way as the 96 per cent who recorded a vote.

Results for the main parties, by states were:

ALL PEOPLE	NSW	VIC.	QLD.	SA	WA	TAS.
%	%	%	%	%	%	%
ALP	40	44	41	32	41	33
LIB.-NCP	53	49	52	63	54	57

The poll spokesman said the results from the smaller states should be treated cautiously because of the smaller sample of people in those states.

The poll showed that 56 per cent of women voted for the Liberal-NCP coalition compared with 51 per cent of men. But there was little variation by age groups.

• Continued, Page 2

### LIB VOTE UP

• From Page 1

When asked: "Which of the two main political groups do you think will win the House of Representatives election on December 13," people replied:

	TOTAL	NOV. 22, 23	NOV. 29, 30
	%	%	%
ALP	40	47	33
LIB.-NCP	47	43	52
UNSURE	13	10	15
	100	100	100

The table shows that 52 per cent of people last weekend thought the Liberal-NCP coalition would win, compared with 43 per cent the previous weekend.

Apart from the policy speeches, the main event affecting last weekend's result was the New Zealand election in which Labor was swept from office.

The Gallup Poll said its poll was not influenced in any way by newspapers, political parties, or any other groups. It said its aim was to

reflect accurately public opinion at the time of measurement. It used the Gallup method, which included the use of ballot boxes and secret ballot papers. These helped to ensure that the answers of those interviewed were kept confidential and not influenced in any way by the interviewers.

Copyright: Australian Public Opinion Polls. (The Gallup Method).

• Jeff's views — P. 8, Campaign reports, Pages 28, 29.



"Let's see . . . failing to give way . . . failure to turn on the lights . . . !"



BUCKINGHAM PALACE

25th November, 1975.

PERSONAL AND  
CONFIDENTIAL

*My dear Governor General*

Since last I wrote I have received two letters from you, those dated 17th November and 20th November, both of these are individually of great historic interest and when taken together I think they provide a clear, full, and, if I may use the phrase with respect, most convincing account of the psychological and actual pressures to which you were subject when you took action on 11th November, and of the reason why no other course was open to you.

The Queen is most grateful to you for this account which she has, of course, read with the closest interest and, incidentally, with a great deal more knowledge and understanding than most observers in this country have at their disposal when they comment on what happened. I have still not found anyone here with knowledge prepared to say what else you could have done.

I am of course delighted that you should have received such a forthright and unequivocal letter of approbation from Bob Menzies. It must have been reassuring to find that he thinks history will credit you with having acted rightly.

In your letter of 17th November you speak of your own future as Governor-General. May I say first that there is relief here that you have decided not to do anything precipitate, such as announcing your intention to resign whatever the outcome of the election may be. It seems to me that to do so could only be interpreted as a belief on your part that you had acted incorrectly. At this moment I have no doubt that you would be right to forget everything that was said by everybody in the heat of the moment, and of course above all not to take anything personally.

You must of course make your own decision whether or not to resign after the election and when either Mr. Fraser remains in office or you have recommissioned Mr. Whitlam to be Prime Minister. This, as you say, must depend on how you judge the feeling in the country. I am bound to say, however, that at 12,000 miles distance it appears that the same arguments which Mr. Fraser deployed against your announcing your decision to resign now would apply with almost equal force after the election.

If Mr. Whitlam is returned I concede that it may well be very difficult for you to work with him but if he is returned he ought to be extremely grateful and I suppose it is not impossible that his animus would be tempered in the flush of victory.



May he not also see political advantage in appearing magnanimous in victory? It may be worth giving him the chance so to act.

If you remain Governor-General or, indeed, if you do not, you will be welcome here at any time that is convenient and practical for you to come. I hope you will be able to stick to the France/Sandringham plan as this would be the most agreeable for you and Lady Kerr and also have the advantage of being less dramatic than a special visit to England for an audience.

The Queen sends you with her  
very best wishes - and I

Yours sincerely

Martin Chuzzle

His Excellency the Governor-General  
of Australia.

Government House,  
Canberra. 2600.

28 November 1975.

*My dear Private Secretary,*

This will be a relatively short note attaching a few clippings. I am conscious that we are probably overburdening you with our bits and pieces from the Australian Press but they do not have to be read with great care. Atmosphere is what they mainly provide.

In recent times the Press, on the constitutional crisis, has been increasingly good as more and more people come to understand what was involved and to expound it. Of course there are many scientists, artists, academics, writers and others completely unversed in constitutional law who have responded emotionally and from their special political point of view, as chemical engineers or painters or psychologists and so on have condemned what I did. Naturally, I do not complain about this. Politics is politics and people are entitled to line up for whatever emotional reason appeals to them.

I also enclose some material showing the position as reflected in the latest opinion polls. One comes from the Bulletin of Wednesday, 26 November, the other from the Melbourne Herald of last night. For what they are worth these show a sizeable swing to Mr Fraser. He and his Ministers seem confident that they are going to win this election but one simply has to wait for the further developments in the campaign.

Mr Whitlam is, so far, making his major thrust in the area of the constitutional crisis with allegations of coup d' état, putsches etc. Mr Fraser however is concentrating heavily on economic issues and the state of the nation.

My mail is showing a growing tendency to ask me not to resign, come what may. Of course, the writers have no idea what the basic constitutional position is. Mr Scholes, the Speaker, recently said that it would not be the intention of Mr Whitlam "to dismiss me". I enclose a short cutting dealing with this. Mr Whitlam, as I have said, would, according to his published statements, expect me to resign.

There is, I think, no point in enlarging on what I have already said on this subject. I suppose there is a possibility that if Mr Whitlam wins I should just allow him to advise The Queen to dismiss me, if he dares, and accept the dismissal rather than resign. Some people think that I should announce now that I shall not resign

.../2

thus forcing Mr Whitlam, under pressure from the Press, to say how he proposes to cope with that situation, before the election is over. There could be some ground for taking such a step having regard to the discussion which has already taken place and having regard to an editorial in the Australian of 27 November. This editorial, though anti-Whitlam, takes it for granted that his victory would inevitably mean that I would have to resign.

The real point about all of this is, I suppose, whether a statement now to the effect that I have no intention of resigning whatever happens in the election could be regarded as too political. On the one hand, it may be said that it puts Mr Whitlam under too much pressure, on the other, it could be said that I am entitled to say, in effect by indicating that I have no intention of resigning in the event of a Whitlam victory, that I stand firmly on the correctness of my decision. This would be implied in a stated intention not to resign. Some would believe that failure to make this clear is a sign of weakness.

As to all of these matters, as I have indicated before, the dominant consideration has to be in the long term interests of the Monarchy and of my office. If I am to indicate publicly an intention of not resigning it would have to be done next week. It would leave open the question of a possible resignation after a recommendation of dismissal.

May I thank you again for the degree of interest which you have shown in my somewhat verbose correspondence and ask you to assure Her Majesty of my continued loyalty and humble duty.

Yours sincerely,

JOHN R. KERR

Lieutenant Colonel the Right Honourable Sir Martin  
Charteris, K.C.B., K.C.V.O., O.B.E.,  
Private Secretary to The Queen,  
Buckingham Palace,  
LONDON ENGLAND

# Labor drops to 42% POLL PUTS LIBS AT 51%



The Liberal - National Country Party coalition would have received 51 per cent of the vote if a House of Representatives election had been held last weekend, according to the Gallup Poll.

But 47 per cent of the people said they thought the ALP would win the House of Representatives election scheduled for December 13.

To the question, "Which party will receive your first preference?" 51 per cent said Lib.-NCP, and 42 per cent said ALP.

To the question, "Which of the two major political parties do you think will win the House of Representatives election?" 47 per cent said ALP and 43 per cent said Liberal-NCP.

The poll was taken nationwide last weekend just before this week's policy speeches.

The poll covered 1027 people aged 18 years and over, in both urban and rural areas of all six states and the A.C.T.

This sample of people is half the usual Gallup Poll sample and therefore results may be slightly less accurate than usual.

Results for the full Gallup Poll sample of 2000 people will be published next week. Another 1000 voters will be interviewed this coming weekend.

Each person in the poll was asked which party would receive his or her first preference vote in the House of Representatives election on December 13. Ninety-six per cent recorded a formal vote.

**Results were:**

ALP	42%
Lib.-NCP	51%
Aust. Party	3%
DLP	2%
Others	2%
Total	100%

Labor's 42 per cent is down two per cent on its Gallup Poll vote (44 per cent) recorded earlier in November just before Mr

Whitlam's sacking as Prime Minister.

The Lib.-NCP has jumped three per cent over the same period — from 48 per cent to 51 per cent.

The poll shows the Lib.-NCP coalition is ahead of Labor in all States, and particularly in country areas, where it scored 54 per cent, compared with Labor's 40 per cent.

When asked "Which of the two major political groups do you think will win the House of Representatives election on December 13?" people replied:

ALP	47%
Lib.-NCP	43%
Unsure	10%
Total	100%

More people thought the ALP would win than thought the Lib.-NCP would win in all States, except Queensland.

Twenty-four per cent of Lib.-NCP voters thought the ALP would win, while 17 per cent of ALP voters thought the Lib.-NCP coalition would win.

In the same poll, people were asked if there was any chance they'd change their mind and vote for another party instead on December 13.

**Replies were:**

May change mind	14%
Will not change mind	83%
Don't know	3%
Total	100%

Equal proportions of ALP and Lib.-NCP voters said they might change their minds and vote for another party. Fairly high proportions of voters for the minor parties said they might change their minds.

The following table shows Gallup Poll results since July 1974, and also actual results for the last four Federal elections:

**FIRST PREFERENCES (PERCENTAGES)**

GALLUP POLLS	ALP	Lib.-NCP	A.P.	DLP	Others
	%	%	%	%	%
1974 July	49	45	4	2	—
August	42	51	4	3	—
September	42	51	3	2	2
October	41	52	4	3	—
November	39	55	3	2	1
December	39	54	3	3	1
1975 February	43	50	4	2	2
March	42	50	4	3	1
April	44	49	3	3	1
May	41	53	3	2	1
June	41	51	4	3	1
July	39	54	3	3	1
August	35	57	4	3	1
September	35	57	4	3	1
October	38	55	3	3	1
Nov. 1, 8	44	48	3	3	2
Nov. 22 23	42	51	3	2	2

**ELECTIONS**

1966	40.0	49.9	—	7.3	2.7
1969	47.0	43.4	0.9	6.0	2.8
1972	49.6	41.5	2.4	5.2	1.3
1974	49.3	45.8	2.3	1.4	1.2

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# Fraser could carry both Houses

THE LATEST Morgan Gallup Poll shows that Malcolm Fraser and his Liberal Country Party caretaker government would win by a clear margin in the House of Representatives and have a better than even money chance of getting control of the Senate.

The poll, the first reliable guide to electoral reaction since the Governor-General's dismissal of Gough Whitlam as Prime Minister, shows a surprisingly strong swing back to the Liberals at the time of the sacking. Contrary to the expectations of many observers, a big swing of sympathy to Labor as a result of Sir John Kerr's action does not appear to have materialised.

Unlike the National Times' ANOP poll, published at the weekend and the result of only 120 interviews, a total of 1261 people was interviewed in this latest Morgan survey of whom 1110 said they were electors. The interviewees were asked to give their first preference "if an election for the House of Representatives were held today." The poll was taken in the week to November 15.

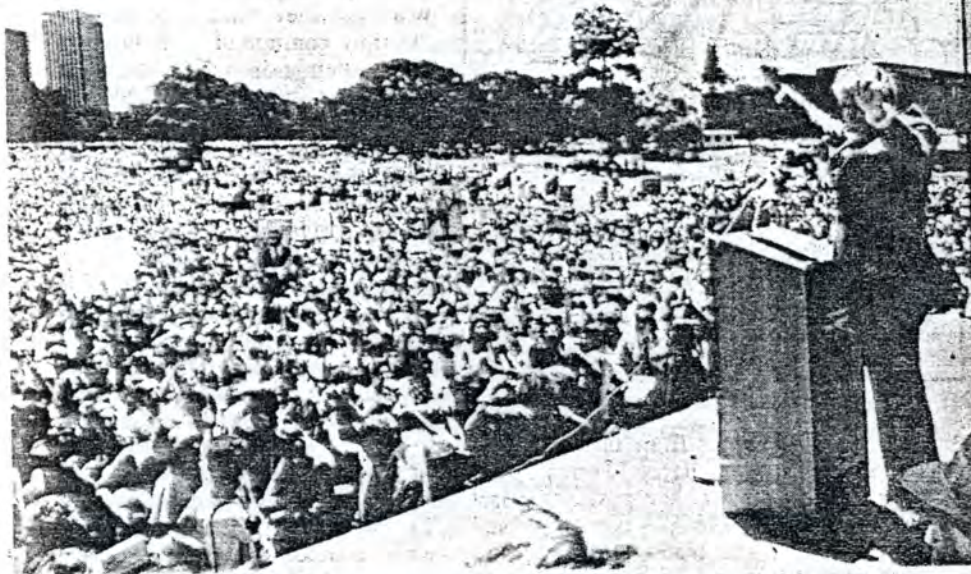
Other questions were also asked on voting intentions in the Senate and electors' attitudes to the two leaders.

In the House of Representatives the poll shows 46 percent of people would give their first preference to the caretaker Fraser government — a rise of three percent over the previous week and a percentage of the vote sufficient for a majority of about 8-12 seats in the Lower House.

Comparison of the last line of the following table, which shows this latest Morgan result (and this poll has a particularly enviable record on predicting the results of elections in Australia) with the last four elections, shows that the Fraser government had more support than Mr Gorton's winning margin in 1969.

Elections, House of Representatives:	ALP	AP	L-NCP	DLP	Ind
	%	%	%	%	%
1966 Holt	40	—	50	7	3
1969 Gorton	47	1	43	6	3
1972 Whitlam	50	2	41	5	2
1974 Whitlam	49	2	46	2	1
Morgan Gallup Polls:					
March 22	49	2	44	3	2
July 5, 6	33	3	60	1	3
Oct 18	43	2	50	2	3
Oct 25	44	2	49	1	4
Nov 1	43	3	47	3	4
Nov 8	47	4	43	3	3
Nov 15	44	2	46	3	5

Probably even more interesting is what the poll finds in relation to



Whitlam on the hustings in Sydney on Monday: the polls have reversed favoritism and things are looking bad for Labor.

intended votes in the Senate. The same electors were also asked how they would vote "if an election for the Senate were being held today." Answers by 94 percent of them show (see Table 1) support for Fraser government at 46 percent, also an increase of three percent. It seems that the result in the Senate depends on whether the Australia Party and DLP have candidates in all States and on their preferences.

A more fascinating study of Senate possibilities is the State breakdowns of Senate voting intentions which indicate the Fraser government may also get a majority in the Senate, thus ending Australia's period of instability (see Table 2).

If the same situation were to emerge at an election (and this must be taken as no more than a guide as samples in some States become very small when taken on a State by State basis) the result would be something like 32 Liberal/Country Party/DLP, 1 Liberal Movement, 31 ALP/Gorton.

As the Liberal Movement Senator Steele Hall has unequivocally stated that he would not reject supply and as the Liberal-CP could always count on DLP support in a crunch such a result would ensure a Fraser Government's ability to

govern without challenge from the Upper House.

TABLE 1

	H of R		
	Nov 1	Nov 8	Nov 15
ALP	43	47	44
AP	2	4	2
L-NCP	47	43	46
DLP	3	3	3
Others	4	3	5

Senate

	Senate		
	Nov 1	Nov 8	Nov 15
ALP	42	44	41
AP	4	5	3
L-NCP	46	43	46
DLP	2	2	4
Others	6	6	6

TABLE 2

	Senate Vote					
	Qld	NSW	VIC	TAS	SA	WA
ALP	35.8	42.6	41.3	38.8	40.4	45.1
AP	2.6	4.8	3.0	—	2.1	—
L-NCP	50.7	43.7	45.7	52.3	41.9	49.7
DLP	5.5	3.4	6.6	1.4	3.3	—
LM	1.0	—	0.6	—	11.3	—
Others	4.4	5.8	2.9	7.5	1.1	5.2

To be selected to the Senate a candidate needs a "quota" of 9.09 percent of the vote. To have five senators elected, a party of coalition

THE BULLETIN, NOVEMBER 29, 1975

the candidature of ex-Liberal Prime Minister John Gorton. His election is by no means certain. (See our story page

know what awful economic facts Labor had concealed as a piece of deliberate sensationalism to advertise his address or whether he really thought he had some

itself trapped into promising revelations, sensational news. Then when it could not deliver the goods it was denounced for the fraud and the anti-climax.

needs 45.45 percent of the vote and for six senators it needs 54.54 percent of the vote.

Senate elections, because of the complexity of the system (a great deal depends on who goes out first and where the preferences go) are more in the nature of a pack-a-poo ticket. But if unexceptional circumstances prevailed, the State-by-State situation (referring back to table 2) would go something like this:

**QUEENSLAND:** Liberal/CP, DLP — six Senate seats, ALP four. At this stage this State looks fairly clear cut as the Liberals have a clear five and the ALP is struggling for four quotas. The remaining seat would probably be a tussle between the government and the DLP.

**NSW:** Here the situation is far from clear cut. By simply apportioning the AP votes to the ALP and the DLP to the Liberals the result would probably be five Senate seats each. The DLP candidate, ex-Senator Jack Kane is, however, planning what is probably a more aggressive campaign than the Australia Party. Much will depend on who goes out first between the AP and the DLP.

**VICTORIA:** This poll result is probably the most surprising of all and if it proved similar at the time of the vote could mean the ALP was left with only four seats. However, for the purposes of this exercise we believe it is safer to assume that it will go Liberal-CP-DLP 5, ALP, 5.

**TASMANIA:** Again there appears a chance the Fraser government could take six seats with the DLP, particularly if there is a strong Liberal-inclined independent candidate. But, again, we will assume the State divides evenly five seats each.

**SOUTH AUSTRALIA:** This is likely to be disappointing for the ALP. On the basis of this result the Liberals would get five seats, Liberal Movement, one, and the ALP, four.

**WESTERN AUSTRALIA:** This State appears to be the most clear cut of all dividing five seats each.

That leaves the four seats in the Senate allocated two each to Northern Territory and the Australian Capital Territory.

Though some optimists in the Liberal-NCP camp and some pessimists in the ALP camp have suggested both Senate seats in the Northern Territory would go to the Fraser government, this is highly unlikely as a "quota" when only two seats are being contested is only 33 percent. The NT would most likely divide one seat each.

The ACT, however, is complicated by the candidature of ex-Liberal Prime Minister John Gorton. His election is by no means certain. (See our story page

22.) The only certainty in the ACT is that the ALP will get one seat with the Liberals and Gorton fighting for the other. If Gorton does win, however, we still finish up with the Fraser government being able to count on getting its supply bills through the Senate.

One of the major anomalies which is beginning to show up, however, is the support for "other parties" in the last line of Table 2. One of the factors in this could be the newly emergent Worker's Party which is attracting an extraordinary degree of minority support and campaign contributions.

There is a possibility that the high votes for other parties in Queensland, New South Wales and Western Australia could in fair measure be Worker's Party support. Of all the minority parties the WP is probably planning the most aggressive advertising campaign and could result in its being one of the major small parties at the election.

The right-wing nature of the party would suggest that it would draw most of its support from the Liberal Party but at the recent by-election in the WA State seat of Greenough where it polled nearly 14 percent of the vote nine percent came from previous Liberal voters and five percent from previous ALP supporters. Preferences held 90 percent for the Liberals.

One thing that does appear to be emerging with consistency throughout these polls is that support for minor parties reflects the disillusion of some electors with the leadership of both major parties.

In this latest Morgan poll, for example, both Fraser and Whitlam lost ground.

This poll showed Mr Whitlam's

handling of his job as Prime Minister was approved by only 39 percent (down 7 percent on the week) and he was disapproved by 47 percent with 14 percent undecided. The 39 percent who approved Whitlam included 76 percent of ALP voters and 6 percent of L-NCP voters, while the 47 percent who disapprove included 11 percent of ALP voters and 83 percent of L-NCP voters.

Whitlam as Prime Minister

	Approve %	Disapprove %	Undecided %
March 22	46	42	12
July 12, 19	29	59	12
Oct 18	37	51	12
Oct 25	39	48	13
Nov 1	39	49	12
Nov 8	46	46	8
Nov 15	39	47	14

Fraser's handling of his job as Leader of the Opposition was approved by 31 percent (down 2 percent on the week). He was disapproved by 50 percent (down 4 percent) and 19 percent were undecided. The 31 percent who approved Fraser included 55 percent of L-NCP voters and 11 percent of ALP voters, while the 50 percent who disapproved included 78 percent of ALP voters and 24 percent of L-NCP voters.

Fraser as Opposition Leader

	Approve %	Disapprove %	Undecided %
March 22	36	29	25
July 12, 19	47	24	29
Oct 18	34	46	20
Oct 25	29	53	18
Nov 1	30	53	17
Nov 8	33	54	13
Nov 15	31	50	19

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## THE CAMPAIGN

# Libs off and fumbling

By PETER SAMUEL

MOST election campaigns are a continuing series of improvisations to paper over past mistakes. Chaos on the go. If the week before the election campaign was any indication of the campaign itself, then the Fraser campaign effort will be even more disorganised than most others.

First up was the address to the nation on the economy. It is unclear whether Fraser had promised to let the nation know what awful economic facts Labor had concealed as a piece of deliberate sensationalism to advertise his address or whether he really thought he had some

revelation to break to the nation. The economic record of the Whitlam administration has been so woeful it was difficult to imagine there could be any skeletons in the cupboard.

It all seemed a repeat of earlier mistakes following the revelations syndrome in the case of Mr Karidis and Mr Khemlani, when instead of analysing the damning implications of the available material the opposition got itself trapped into promising revelations, sensational news. Then when it could not deliver the goods it was denounced for the fraud and the anti-climax.

# Time for us all to pause

MR WHITLAM says the survival of parliamentary democracy is the key issue of the general election and if ever there were a contradiction in terms this is it. How is it possible to destroy parliamentary democracy by going into a polling booth and casting a secret ballot? There is an element of the con-man about Mr Whitlam these days and The Sting is not so much in what is going to happen to parliamentary democracy at the hands of the people but what could happen to it if it were left to Mr Whitlam.

It would be a simple enough exercise for us to turn Mr Whitlam's words back upon him and argue that, yes, indeed, parliamentary democracy is imperilled. For it was Mr Whitlam who refused to resign when denied Supply, and presumably told the Governor-General, Sir John Kerr, that he would not resign. It was also Mr Whitlam who tried to mislead the public and the Parliament with the frequent statements indicating that he had succeeded in bullying the Governor-General into accepting his position — a stratagem that was most ruthlessly undone when Sir John published his explanation of the double dissolution and revealed that Mr Whitlam had persistently indicated his refusal to abide by the accepted processes. These were, and continue to be, quite simply that when a government is denied Supply and the Parliament becomes unworkable it is the proper course — as the former Governor-General, Sir Paul Hasluck, has stated most clearly — for the Prime Minister to offer himself for re-election.

## Botched

The duty of a government is to govern; the duty of an opposition is to oppose. That the Whitlam Government made a botch of governing has long been clear.

But among all these anxieties Mr Whitlam remains an enigma. Among the people, generally, it seems fair to say that there is much concern about his TV spectacular on Monday night. Mr Whitlam appealed to us all to do things in the "Australian way," but this was by no means the Australian way of doing things. Instead of an argument we got an harangue; instead of facts we got half-truths; instead of reason we got rabble-rousing. And, throughout it all, the sad, repetitive chanting of the herd. What ever happened to applause?

But Mr Whitlam has been changing in front of our eyes over the past few months and his TV spectacular was part of the process. It is well that we should all note what is happening to him for it does, indeed, go to the heart of our parliamentary processes, if not yet of parliamentary democracy. What we need to recognise today is that Mr Whitlam is changing from a parliamentary candidate into a presidential candidate. The power, the perquisites and the patronage of office seem to have converted him from a Prime Minister with the utmost promise into a man who, in his frustration and obsession with office, would bring all down around him rather than concede that he made a single mistake.

Mr Whitlam's feeling for the presidential approach to politics has long been with him. Indeed, since he first took office the flair for executive fiat has been strongly demonstrated. Which will forget the haste with which he

went into action in 1972, unencumbered by the burden of a large Cabinet of quarrelling ministers, uninhibited by the compromises imposed by Caucus. Throughout his three years in office Mr Whitlam constantly sought to rule rather than to lead and beckon the rest of us on with reason and persuasion: there were the flights of fancy to the farthest places of the world with a VIP airliner packed with the privileged and their wives; there were the attempts to override the States and eliminate the sovereignty from which they made our Federal system; there was the sad attempt to run a competition for a national anthem, the repetitive "my" government, "my" ministers, "my" Cabinet — and, like some leitmotif off-stage, Mrs Whitlam's "My Day," a sad echo of the late Eleanor Roosevelt.

Yet, if the insinuation of presidential ambitions was there in the past for us to find, there is much more evidence of a predilection for a republic and a presidency in what Mr Whitlam has lately been about. He has said that he would "smash the power of the Senate" — the popularly elected Upper House; he keeps referring to the House of Representatives, the Lower House, as "The People's House," as if we were in some TV drama from Mission Impossible, set in the People's Own Republic of Ruthenia. He has gone along with the ritual utterance of God Save the Queen, but he has made it impossible for the present Governor-General to remain in office, if Labor is elected, by declaring that he will have none of him.

So the scene is set for us. Sir John Kerr, clearly, would be obliged to resign and a toady put in his place, stripped of all power to uphold anything but Mr Whitlam's will. Next, it is clear, the Senate would be rendered impotent. And after that? A parliamentary democracy or a republic?

Certainly, there is not much to choose between the efficacy of the one as against the other. But if we are to be turned into a republic by Mr Whitlam we all need to be aware that it will mean complete rewriting of the Constitution and a fundamental diminution of the power and status of the States and the role of State parliaments, turning them from legislative assemblies into large-sized county councils.

## Borrowed

Mr Whitlam's TV spectacular had about it all the finesse and the flair of an American presidential nominating convention with borrowed songs (The Battle Hymn of the Republic) and borrowed phrases (Government of the people, by the people). It lacked only the residual background framework of the safeguards of checks and balances built into America's Constitution — the trinity of an independent executive, judiciary and legislature with, above all, its Senate, a States house with immense authority and power; a power, indeed, deployed through its probing committees which can, in the end, even get rid of a President. No doubt a Prime Minister, too, if need be.

Perhaps we should all pause. Perhaps, as Hilaire Belloc put it, we all have need to keep a hold of nurse, for fear — quite soon — of finding a something worse.

**Whitlam socks it to the crowds, but ...**

**Liberals scent victory**

THE Liberals are almost certain that they are home and hosed in the December 13 election.

They are especially buoyed up by this week's opinion polls and by the enthusiastic response to Mr Fraser's policy speech in Melbourne last night.

They have also been very happy with their advertising campaign and what has appeared in most of the media.

Much to the dismay and surprise of the Labor camp, the polls show that Sir John Kerr's action in sacking Mr Whitlam as Prime Minister looks like being a winner for Mr Fraser.

Before he stepped in and dismissed Mr Whitlam on November 11, and made Mr Fraser caretaker Prime Minister, the polls had been swinging back to Labor.

Mr Fraser's action in blocking the Budget in the Senate did not appear to be going as well as he had hoped with the electorate.

The Governor-General's action on November 11, however much its political and constitutional propriety might be argued, did

**CAMPAIGN OBSERVED**  
by  
**Brian Toohey**

not produce the sympathetic reaction that Labor clearly thought was occurring — if the opinion polls are any guide.

As Mr Fraser has often said, the only poll that counts is the one on December 13.

But at this stage, the two polls which have been taken and released since Sir John's intervention, show a resurgence for the Liberal-Country Party.

The Morgan poll showed the Liberals 47 per cent, Labor 43, and

the McNair Poll, published yesterday, showed the Liberals 51 to Labor's 42 per cent.

Both polls were taken last weekend prior to the delivery of the policy speeches this week.

There are still one or two doubting Thomases in the Liberal hierarchy, with persistent reports of problems in Melbourne and concern about how Mr Fraser will be able to put across a credible economic policy being the main concern.

The latter fear is based mainly upon what might appear as inconsistencies under press questioning, although the support for Mr Fraser is expected to be enough to over-ride any problems here.

Campaign trails are most deceptive.

The party faithful can boost the hopes of Party leaders to dizzy heights.

Supporters are notorious for bringing only glad tidings.

In this case, Labor has found more fervent support and larger audiences than most party workers can remember.

**Continued page 10**

**ON THE CAMPAIGN TRAIL**

- Mr Whitlam — page 8
- Mr Anthony — page 9

**LIB**

From page 1

There was a desire to disbelieve the opinion polls.

But there was a feeling that something had to be done to the whole strategy.

The trouble is just should be.

Launching into a series of promises is viewed by the overall that they have been interrupted mid-term.

However, it was surprising to see a put on policies along pipeline such as that compensation clause seen by some as a parable appeal to

The most likely Labor is to try to do that what they see their popular preference at risk under Government.

One scene being is to ask how Mr Fraser is trusted to decide "essential" spending health and welfare.

(In his policy night, Mr Fraser essential spending would be maintained

The risk is that there might be a sufficiently Labor's program sufficiently fearful Fraser might do to

The irony is that Labor's spending on these programs accounts for a considerable, although by no means the only part of the explanation for what went wrong with the economy,

early copy of Mr Fraser's policy speech getting into the hands of Mr Whitlam, following the attack of influenza that laid Mr Fraser low.

And yesterday in Adelaide, a minor example involved the first sentence of a press statement from Mr Fraser, promising a revival in unemployment in South Australia, under a Liberal-Country Party Government.

There is some concern that

**Company news**

Sales of Hanimex Corporation Ltd. since the beginning of

drain on revenue.

One example is the restoration of the home-savings grants scheme.

"The grant will be \$1 for \$3 savings with the grant being a maximum of \$2,000 for savings over three years.

Future savings from January 1, 1976 will be eligible.

On this basis no cost to revenue will occur until 1979, by which time another election would have to have been held.

There are signs that Mr Whitlam is now coming around to concentrating on concrete issues

1976 to encourage business expansion.

• Quarterly tax collections of company tax will be suspended.

• Australian industry will be given the protection it needs on the basis that jobs are better than dogma.

In what could amount to a major switch on the tariff front, the Industries Assistance Commission will be instructed to take note of the Government's policy.

• The PJT will be abolished.

• Tax rules will be changed to operate more fairly for small businesses.

**356 ACRES**  
E. 6th DECEMBER at 10.30 a.m.  
AL FOR 28 BLOCKS OR AS  
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With panoramic views of the Gold Coast from Stradbroke Island to Coolangatta. This mountain

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# LIBERALS SCENT VICTORY

From page 1

There was a definite tendency to disbelieve the accuracy of the opinion polls.

But there was also a strong feeling that something had to be done to the whole campaign strategy.

The trouble is just what this should be.

Launching into a whole host of promises is virtually ruled out by the overall Labor claim that they have been unfairly interrupted mid-term.

However, it would not be surprising to see more emphasis put on policies already in the pipeline such as the new national compensation claim, which is seen by some as having a comparable appeal to Medibank.

The most likely tack for Labor is to try to sell the idea that what they see as many of their popular programs would be at risk under a Fraser Government.

One scene being contemplated is to ask how Mr Fraser could be trusted to decide what is "essential" spending in education, health and welfare.

(In his policy speech last night, Mr Fraser promised that essential spending in these areas would be maintained.)

The risk in this strategy is that there might not be enough people sufficiently grateful for Labor's programs; or sufficiently fearful of what Mr Fraser might do to them.

The irony is that Labor's spending on these programs accounts for a considerable, although by no means the only part of the explanation for what went wrong with the economy,

under their first two-and-a-half years in office.

If the spending has not managed to 'buy the votes it will be a tremendous letdown to Labor.

If Mr Fraser's spending promises — be they in terms of subsidies or tax cuts much of which are directed at the business and rural community — succeed in this direction, Labor's political readings of the Australian electorate will have proved disastrously awry.

Of course, it could be that their administrative spiral which led to so many sensational headlines, brought them unstuck rather than any lack of satisfaction with programs such as legal aid, child care, health centres, etc, which they managed to get off the ground.

For Mr Fraser, the hurdles in front of him between now and December 13 seem remarkably few according to his surrounding team.

The main aim is to simply keep cool and confident, avoiding any repetition of the disastrous OECD inflation figures incident.

The campaign so far has not been without its administrative setbacks, despite the elaborate apparatus and cost involved.

Many observers do not see the actual technical operations of the campaign as flowing any more smoothly than in Mr Sneddon's effort in the May 1974 election.

There was the incident of an early copy of Mr Fraser's policy speech getting into the hands of Mr Whitlam, following the attack of influenza that laid Mr Fraser low.

And yesterday in Adelaide, a minor example involved the first sentence of a press statement from Mr Fraser, promising a revival in unemployment in South Australia, under a Liberal-Country Party Government.

There is some concern that

## Company news

Sales of Hanimex Corporation Ltd since the beginning of

Mr Fraser's tax cuts by way of indexation in line with the Mathews report, and the 40 per cent investment allowance and the restoration of the super-phosphate bounty, and so on, can be added up to a package which would be so expensive to revenue as to preclude promises of electorally acceptable cuts in Government spending, sufficient to reduce the deficit the size of which has been such a central point in the Liberals' criticism of Labor.

Although some promises are clearly spelled out as a hard and fast commitment for a three-year program, others are contingent upon sufficient money being available to implement them without dislocation to the economy.

A statement to this effect appeared clearly in the policy speech and can be used in attempts to rebuff arguments about how Mr Fraser might face the same problem of "paying off" a large deficit that he has accused Mr Whitlam of failing to deal with.

No doubt, if Mr Fraser gains power on December 13, he will be able to point to this caveat that some essential reforms will be introduced "as and when the money is available."

In the past, it has paid people wishing to predict Mr Fraser's future actions, to give particularly careful attention to the precise wording he has used.

Not all the promises would seem to involve an immediate drain on revenue.

One example is the restoration of the home-savings grants scheme.

"The grant will be \$1 for \$3 savings with the grant being a maximum of \$2,000 for savings over three years.

Future savings from January 1, 1976 will be eligible.

On this basis no cost to revenue will occur until 1979, by which time another election would have to be held.

There are signs that Mr Whitlam is now coming around to concentrating on concrete issues

such as Mr Fraser's promise of a new Commonwealth-State financial arrangement in which tax surcharges could be imposed by States on top of the basic Commonwealth income tax rate.

But so far the great preponderance of Mr Whitlam's electoral thrust has rested upon the repeated use of words such as "parliamentary democracy," "fair go," "political instability," and so on.

But as one worried Labor insider put it yesterday "if the polls are right and we are wrong, it's all being treated as just another bit of show business. We are really socking it to 'em."

In his policy speech last night, Mr Fraser made the following economic promises:

- Adopt the stock valuation provisions of the Mathews Report in the next Budget.

The full report, which also includes indexation of asset depreciation, will be introduced over three years.

The stock valuation provisions involve, in essence alterations on replacement prices for taxation purposes.

- A 40 per cent investment allowance as well as accelerated depreciation allowances from January 1, 1976.

The investment allowance will be available for leased as well as purchased equipment.

- Conditions attached to convertible secured debentures will be relaxed from January 1, 1976 to encourage business expansion.

- Quarterly tax collections of company tax will be suspended.

- Australian industry will be given the protection it needs on the basis that jobs are better than dogma.

In what could amount to a major switch on the tariff front, the Industries Assistance Commission will be instructed to take note of the Government's policy.

- The PJT will be abolished.
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With panoramic views of the Gold Coast from Stradbroke Island to Coolangatta. This mountain

AUSTRALIAN

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# Whitlam won't sack G-G, says Speaker

THE former Prime Minister, Mr Whitlam, will not sack the Governor-General Sir John Kerr, if Labor is returned to power, the Speaker of the House of Representatives, Mr Scholes, said yesterday.

"It would be up to Sir John to decide if he should resign of his own accord," he said in Sydney.

"It is most unlikely the situation where the Governor-General dismisses the Prime Minister will ever occur again, so Sir John is on safe ground there.

"I doubt the Constitution will be re-written to change his powers but a more orderly position will be taken with respect to deadlock provisions.

"For example, it would be far more sensible to have a joint sitting of Parliament before a double dissolution was called rather than afterwards."

Mr Scholes said he thought the Governor-General's dismissal of Mr Whitlam was legal but morally wrong.

"There is an Act in NSW that dispenses with elections," he said. "It is perfectly legal but no one would dream of using it."

He said he was not surprised the Queen refused his request to reinstate Mr Whitlam.

"I did not expect the Queen to reinstate him but I felt I had to write the letter as a form of protest.

"I don't see her refusal as an endorsement of the Governor-General's action, it was simply a legal stand."

"But her reply could have serious ramifications in the future. As has happened in other countries where figure-heads have sought power a governor-general could, if he had military interests, sack a pacifist government and institute the one of his choice and Australia could be involved in a war in no time."

'Whatever happens... the constitutional issue will not lie down'

by H. V. HODSON\*

BY COINCIDENCE Australia and Britain have been simultaneously struck by clashes between two Houses of Parliament.

That might be thought a fact from which nothing more interesting can be drawn than from the statement that when it is twilight in London it is dawn in Sydney. For the two conflicts are very different. By comparison with the Australian political somersault, the British affair is a mere bending-and-stretching exercise.

But calisthenics, as well as acrobatics, can strain muscles. And complete coincidences hardly ever happen. Is it a mere accident that both countries had Governments of the Left which right-handed Upper Houses sought to restrain? It is certainly no accident that in both countries the frustrated Labour forces are depicting the outcome as a St. George-and-the-Dragon battle between democracy and privilege, between the People and the Establishment. Despite their great differences we can still learn something from what the two conflicts have in common.

Readers of this article will need no second-hand account of the Australian conflict. The British one may be less familiar. It starts with a bill to amend trade-union law which was part of the Wilson Government's plan of dismantling its predecessor's Industrial Relations Act, hated by the unions. As such, the House of Lords would have let it go with minor amendments, as a measure for which Labour had an electoral mandate. But its revival of legal sanction for the "closed shop" (ie, compulsory membership of an approved union as a condition of employment) raised a different issue.

That issue was the freedom of the press. If editors were compelled to belong to a union (from which they could be expelled, and so lose their jobs, if they disobeyed union orders) and could be coerced as to what they should publish by a monopoly union of journalists, or for that matter of printers, where would be the freedom of the press of which they were custodians?

The Lords were up in arms. The point on which they finally broke with the Commons was whether the defence of editorial freedom should lie with a legally toothless body of the press itself, or should be enshrined in law to which appeal could be made in the courts. The Commons rejected the Lords' amendments, the Lords insisted on them, and the bill consequently lapsed, just as the parliamentary session ended.

Labour ministers say the Lords are defying the democratic will. The Lords say they are defending a fundamental principle. They also claim that the Government represents a minority of the electorate and was given no popular mandate to interfere with the freedom of the press.

From a distance, the Australian Senate's refusal to pass the Whitlam Government's financial measures does not seem to have the



The protagonists in "the Byng incident": the Canadian Prime Minister, Mackenzie King, (left), and the Governor-General, Lord Byng.

# A British view of Australia's political crisis

same claim to be a matter of fundamental freedoms. On the other hand, whereas the vote in the House of Lords could only be a delaying tactic, since the Wilson Government can bring in its bill again in the new session without the Lords being able to block it, the conflict between Senate and Representatives in Australia could be resolved only by a political war of attrition or by a general election.

The result of the Governor-General's choosing the latter course, starting with the dismissal of Mr Whitlam, was to bring the whole position of the Crown representative into the popular debate. A political breeze in Britain, a constitutional tempest in Australia.

## The likenesses

Nevertheless, the likenesses as well as contrasts are important. In both cases the powers of the Upper House are laid down by statute. And it can be asserted as an axiom that if a House of Parliament has certain statutory powers it has a right to exercise them. If they exist, they exist to be used.

The statutory powers of the two Upper Houses are very different. The Lords (who, of course, unlike the Senate, are not elected) have no authority over the financial measures, and they can only delay non-financial measures, though the delay may sometimes be long enough to cover a general election which clarifies the will of the people. The constitutional rights of the Australian Senate are of a totally different order.

The next vital point is this: whatever the statutory powers are, they are not to be

used to the limits of the letter of the law. Legal rights of this sort are to be used with discretion, guided by the thesis that the country is a democracy, and that the democratic will must ultimately prevail.

This means, I think, that the proper exercise of the crucial powers of an Upper in relation to a Lower House should generally be confined to two classes of case. The first is where a principle of democracy, of constitutional structure, of law or of individual freedom is at stake.

The second is where the Upper House seriously and credibly believes that what is proposed is contrary to the will of the people as expressed in the last vote for the more democratic Assembly.

In either of those two classes of conflict, the baulking action is taken to defend democracy, not to defeat it. (In the Australian context, there is a third class — issues that confront States' rights, which the Senate was constituted to protect.)

We who stand on the sidelines of politics can advise or warn those who have to take such decisions, and criticise them afterwards, but the responsibility is theirs, not ours. Those who will a deed will its consequences. Both in Canberra and in London the immediate constitutional consequences were no doubt taken into account by the Upper House.

The Lords knew that the bill they stopped could be passed into law within a year, unamended by them. The Australian Senate majority knew that their action might (and one assumes they hoped it would) precipitate a general election. If they did not foresee that the Governor-General might dismiss Mr Whitlam and place the onus

for a dissolution upon a minority Government, they had not fully read the constitutional chessboard.

For it is established in unwritten British constitutional law that the Queen or Governor-General must take the advice of the Prime Minister on when to dissolve Parliament. That principle was accepted after what experts on British Commonwealth constitutions call "the Byng incident."

In 1926, Lord Byng, Governor-General of Canada, refused Prime Minister Mackenzie King's request for a dissolution. King resigned, Arthur Meighen formed a minority Government which struggled on (after proroguing Parliament) until he himself had to ask for a dissolution, which Lord Byng granted.

King made the Governor-General's conduct the major issue of the general election, and won handsomely, since when it has been held that the Queen or Governor-General must dissolve Parliament when the actual Prime Minister advises it, and — so it logically follows — must not dissolve Parliament when the actual Prime Minister does not so advise.

There is an established principle of unwritten constitutional law on the Prime Minister's side, too. A Prime Minister who has a parliamentary majority is not obliged to go to the country; but there is a strong and eventually decisive obligation on him to go to the country if he has no parliamentary majority, or an insufficient one to carry on the government. What, then, is the test of the existence of sufficiency or a parliamentary majority?

History points to only one answer — ability to get "Supply," that is money by

vote of Parliament. The Commons' money power humbled Stuart and Hanoverian monarchs: money power was wrested from the House of Lords in the greatest political battle of this century. When Mr Whitlam could not get Supply, it was his duty to advise a dissolution. When he neither did so nor was prepared to compromise, Sir John Kerr had a right to dismiss him.

British opinion is keenly and anxiously concerned. It could not believe that the Governor-General had intrigued with the Leader of the Opposition; a more far-fetched rumour which had some credence was that it was a plot between Sir John Kerr and Mr Whitlam to give Labor a battle-cry for an election, and that the row was all play-acting. Serious people, however, take the story seriously on its face value. Their prime anxiety is to keep the Queen herself out of the political arena.

I have heard it argued that since the Governor-General is the Queen's representative, she is responsible for him; that in exercising his discretionary powers without the advice of Australian ministers he should have sought her approval; and that if, not having been consulted, she were to disapprove of that exercise she would have the right to dismiss him. As a student of constitutional affairs I do not agree.

One formal reason is that the Governor-General's commission by the Queen is countersigned by the Australian Prime Minister. It follows, not only that the commission can be withdrawn only with the counter-signature of the Australian Prime Minister, but also that it is he, if anyone, who gives constitutional advice on how it is to be interpreted.

## Indian example

Consider the example, with all its differences, of the Governor-General of India before the transfer of power in 1947. He was undoubtedly the representative of the King-Emperor, by whom he was appointed not only as the supreme consul of British India but also as controller of the Crown's relations with the Indian princely States. Yet he never sought or took instructions from the King-Emperor himself, but always from the Secretary of State for India.

Why? Because on all matters concerning him the King-Emperor had to be advised by the Secretary of State. So in all matters concerning the Governor-General, the Queen as Queen of Australia has to be advised by the appropriate minister, who can be none other than the Prime Minister of Australia.

The repercussions of Sir John Kerr's action are bound to be grave. Obviously much will depend on the outcome of next month's election. Here the historical omens are not favourable for the Liberal-NCP coalition.

On the Senate versus Representatives issue, when Mr Asquith fought the second general election of 1910 on the platform of the Lords versus the people he increased his already large majority. On the dissolution issue, Mackenzie King won a decisive victory against the minority Meighen Government (corresponding to Mr Fraser's) and Governor-General Byng was discredited.

Circumstances alter cases, and those ancient portents may prove false. A month's electoral campaign, as we in Britain know well from recent experience, can altogether change the decisive issues. Whatever happens electorally, we may be sure that the constitutional issue will not lie down. The need for a referendum to change the Australian Constitution may yet prove a vital safeguard.

Meanwhile, in both our countries one unhappy outcome is a still sharper split between organised labour (particularly the trade-unions) and the rest of the country. It is here perhaps, rather than in the strictly constitutional field that we should look both for the worst wounds and for the most necessary healing.

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# The intelligent voter's guide to the crisis



By JULIUS STONE,  
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at the University of  
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THREE hard truths dominate this crisis. One is that few of the "principles" with which lawyers and politicians juggle are as absolute as they imply.

The second is that to ignore this truth in a national crisis is mortal sin.

The third is that intelligent, responsible electors may still even now be able to do something about it.

On normal, run-of-the-mill matters, when survival and sanity of society are not at risk, the lawyers' and politicians' use of principles to bolster causes is useful and not too dangerous.

In crisis, however, when new circumstances are testing the unsettled boundaries of life, this talent can lead to national disaster.

In the present crisis, party leaders were so fired by their own selected "principles" that they made sensible "compromise" into a dirty word.

Yet it was Aneurin Bevan, a beloved British Labor leader, who challenged thoughtful democrats "to achieve passion in the pursuit of qualified objectives". He summoned us to regard each other a rational and moral agents, between whom "the dialogue of politics" is possible on a basis of equality.

It was Bevan's inspiration which led me, at the very start of the present crisis, to call for a moratorium on the war of "principles", and for a compromise under which Supply would be voted and normal government proceed, after the Labor Government fixed an acceptable date during the

next 12 months for a new House of Representatives election.

This would have been no dull or sordid compromise, but a testimony to the passionate concern of our political leaders for the sanity, welfare and freedom of the nation, rather than mere party gain.

Instead, the ghoulish poker game went on for control of our national life. And the only thing certain was its disastrous impact on national life.

I am not going as far as Dick the Butcher in Part II of Shakespeare's Henry VI, who told Jack Cade: "The first thing we do — let's kill all the lawyers." But I am saying that the crisis we are living through raises ultimate issues, of both power and ethics, which are too important to be left to either lawyers or politicians.

Practically every "principle" which each side flourishes is matched by no less persuasive but conflicting principles from the other.

Take "the will of the people"! For Whitlam, the majority will in the House of Representatives must prevail; for Fraser, the will of Parliament in both House and Senate.

Whitlam exalts the House as representing electors voting one person-one value. But Fraserites agree that electors' opinions are supreme; so why not a House election now? Why is electoral 1974 opinion holier than that of 1975?

## Answer

Whitlamites have a better answer to this than they have given; but it is an answer of practicalities, not high-faluting "principles". It is that government cannot work at all if you keep going back to the people; I will return later to that.

Take the Senate. Whitlam says that a Ministry rests on the confidence of the House, not the Senate, and so the Senate may not block Supply. Fraser says that the law requires votes of both chambers for Supply, and a government which cannot get Supply must resign.

Or, take the Governor-General. Whitlam says that he can and must act solely on the advice of a Ministry with a House majority. But Fraser says a Ministry without Supply from Parliament cannot govern, and that for a Governor-General to be

guided by such a Ministry would be to aid and abet despotism, and violate his duty to protect the law and Constitution.

Whitlam claims that Sir John should have given him what amounts to an ultimatum — either to secure Supply, or resign and call an election.

Dismissal without this is said to be a "coup d'etat" or "putsch".

Sir John relates in his Letter of Dismissal that Whitlam himself told him that the only way there could be an election would be if Sir John dismissed the Ministry.

Sir John did not refer in that Letter to the likely response of the Prime Minister if he had received a mere ultimatum.

From later events it is clear that Mr Whitlam would have tried to get Sir John dismissed first, the Queen being more susceptible to sitting Prime Minister Gough Whitlam than to Speaker Scholes.

Professor Geoffrey Sawer's stricture of Sir John's failure to deliver an ultimatum ignores the complex realities of power struggle in such an unsettled area of constitutional practice.

Democratic "principle" says Whitlam, forbids that one man, even the Governor-General, should dismiss a Government with a majority in the House.

But for Fraser, the truer principle is that sovereignty is divided between the Governor-General in Council and the two Houses. And it is a main function of the Governor-General to ensure, as he did, that government does not break down or become illegal.

Was Sir John Kerr wrong, as Whitlam claimed, to take legal opinion other than that of the Whitlam Government's Law Officers? Yes, says Whitlam. No, says Fraser.

Even the Government's Law Officers did not dispute that there was a "reserve power" to dismiss a Ministry. They only said that Sir John should not exercise it.

But what sense does it then make to say that he could only dismiss on the advice of the Ministry to be dismissed?

If a Ministry is willing to advise its own dismissal, will it not surely resign?

The Whitlamite complaint that Sir John Kerr asked Sir Garfield Barwick for a legal view and that Sir Garfield

The most essential and urgent step is to insist on clear commitments from both sides to institute and support a constitutional amendment forbidding the Senate to block supply . . .

responded, has two other thrusts.

The Governor-General should not have sought outside legal opinion without Mr Whitlam's permission. But would this not deprive the Governor-General of any advice other than of the Ministry, resulting again in the above absurdity?

The other Whitlamite thrust is that Sir Garfield, as a former Liberal Party Attorney-General, was biased.

Fraserites retort that even if he were biased, that would only balance the bias of the Ministry's own Law Officers.

But they might also say men change their views after they become judges, just as they may do on becoming Governor-General.

Ought Sir John Kerr to have given Mr Whitlam another week or two till money really ran out, and to test the Senate's nerve to the limit?

## Timetable

The trouble here is that not Sir John, but Mr Whitlam, set the timetable by proposing a half-Senate election in face of Sir John's known view that a House dissolution was necessary.

That confrontation also raised the stark issue — who was to get the chance of dismissing whom?

But what right, then, had Sir John to reject the advice for a half-Senate election? His reason was that such an election gave no assurance of "prompt and sufficiently clear" continuity of Supply.

Even if Whitlam won, Supply would run out before counting finished; and because of the holiday season disruption would continue into January or February. If he lost, the breakdown could last for months.

Could and should Sir John have tried to force a House election while leaving Mr Whitlam as Prime Minister, by serving on him the Letter of Dismissal, and then inviting him to become caretaker Prime Minister on conditions like those he later laid down for Mr Fraser?

Would this not have avoided the injustice of depriving him of the election advan-

tages of a sitting Government?

If Sir John had been able to do this, I think he should have done it. But here, too, the criticism may be ignoring hard facts.

In the light of Mr Whitlam's outburst after his dismissal, Sir John Kerr may, in all prudence, have felt that Mr Whitlam would use even a caretaker commission to have the Governor-General himself removed.

Even then, say the Whitlamites, Sir John Kerr had another choice. Fraser had offered to consider carefully any proper direction from the Governor-General.

Why didn't Sir John ask the Senate to accept or reject rather than defer the Supply Bills? Since rumor had it that at least one Liberal Senator would then have crossed the floor, didn't Sir John's failure to ask make him an ally of the coalition parties?

This, too, cuts both ways. Sir John may well have thought that to make such a request in these circumstances would have made him an ally of the Labor Party.

That brings us to the second point that politicians on both sides have been guilty of mortal political sin, whatever the self-righteousness or even sincerity with which they went about it. We can understand the agonies of President Lincoln when, for the sake of abolishing slavery, he put at risk the institutions of American democracy.

No such lofty and harrowing choices mitigate the sin of our leaders' game of absolute "principles", which has so undermined some of our basic institutions.

Their obduracy forced the Governor-General into a position where, however impartially he might try to act, he was bound to seem party-politically motivated.

The consequences of their conduct have clouded the hitherto hallowed pre-eminence of the House of Representatives, and turned the Senate, in our era of close divisions, into a dagger permanently poised against the heart of good government.

They have torn almost to

shreds the rules without which parties cannot peacefully succeed each other in government and opposition, and tempted the maniacs who send letter bombs. They have gratuitously sturred the office of Chief Justice of the Court which is a vital lynch-pin of our federal policy.

Yet, after recognising their mortal sins, electors now still have to choose between the sinners. What can we do? Even when, as most no doubt will, we follow accustomed party or personal loyalties, we should make an extra effort to ensure that whichever side wins, certain steps will be taken towards healing the national wounds.

The most essential and urgent step is to insist on clear commitments from both sides to institute and support a constitutional amendment forbidding the Senate to block supply, and for each side to commit itself firmly in the meanwhile not to use the blocking power should it secure a Senate majority in the present election.

## Precedents

After the damaging precedents now set, there can be no stable government (and probably no responsible government) in Australia without such an amendment.

Only bipartisan commitment can secure it; and our only hope of getting that commitment is during the election, not after it.

Without this change, we face the dire prospect that whenever an Opposition (of whatever party) controls the Senate (as is increasingly frequent), our whole system of government will constantly be breaking down.

Even if we could imagine having one month in every year as savagely destructive as the last one, our society could not long survive it.

Whatever party leaders roar from the hustings, the electors should roar back even louder on this issue.

The leaders' readiness to be committed on it is the final test of their concern for the interests of the nation.

Let them know that we know this, and that we demand their answers.

# Sir John Kerr was right

MELB HERALD

24-11-75



By PAUL GERBER  
Reader in Law at the  
University of Queensland

WAS Sir John Kerr's action constitutional?

Australians have become so polarised by recent events that it has become difficult to obtain an objective comment on the situation which is not, somehow, tainted by the political bias — conscious or unconscious — of the commentator, ranging from the "conspiracy" theory, involving the leaders of the coalition, the Governor-General and the Chief Justice of the High Court, to the even more bizarre proposition that the whole scenario was a cleverly engineered plot organised by Mr Whitlam.

It is, therefore, perhaps not inappropriate briefly to review events of the past few months against the constitutional background of what may well prove an historic tragedy.

The Khemlani affair, having failed to produce the "extraordinary and reprehensible circumstances" if, for no better reason than the impossibility of making silk purses out of empty sows' ears, the Opposition was finally compelled to try "deception," "economic mismanagement" and "inflation" and used its numbers in the Senate to defer Supply.

Meanwhile, Labor had lost NSW Senator Murphy to the High Court, and Queensland Senator Milliner by death.

These casual vacancies were filled in NSW by Senator Bunton (who indicated that he would never block or defer Supply, and didn't) and in Queensland by Senator Field, who thereafter became for all relevant purposes irrelevant.

Both appointments were contrary to previous parliamentary tradition, but in the result it mattered little.

Labor never had a majority in the Senate, and Senator Steele Hall's felicitous phrase that Supply was deferred "over a dead man's body" could be demonstrated to be political necrophagy.

The then Opposition would, in all probability, have closed ranks and blocked Supply by a tied vote even if the casual vacancies had been filled by Labor appointees.

do the right thing and advise a general election or resign.

Instead, he carries on as though nothing had happened in the hope that it will all soon blow over.

Different members of the government come up with various ideas that the government can, somehow, carry on without Supply and that it is all "wholly constitutional."

In my opinion, this is nonsense. On the day before Mr Whitlam was dismissed, I asked Mr Enderby on the ABC's program "Monday Conference": "Is there a political or constitutional convention that a government which has been denied Supply ought to resign rather than look for constitutional loopholes to try and find some other way to hang on?"

The reply was "Certainly not."

Again: "There is no such convention?" Reply: "Certainly not."

It was emphatic, but it was wrong. I have little doubt that a government, denied Supply, must go to the people.

## Parliament

Sec. 83 of the Constitution provides that "no money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law." I believe this to mean that no money may be spent from the Treasury except pursuant to the authorisation of an Act of Parliament.

I do not believe that there are any lawful ways for a government to carry on beyond the point where existing appropriations are exhausted.

It is a matter of political morality whether a government should hang on to the end, in the hope, like Mr Micawber, that "something will turn up."

On November 11, the Governor-General withdraws Mr Whitlam's commission and invites Mr Fraser, the Leader of the Opposition, to form a government "for temporary purposes" with limited powers, and subject to the undertaking that Supply will pass in the Upper House.

He is promptly defeated

solved and an election scheduled for December 13, a day, one hopes when this drama, be it Richard III or a School For Scandal, will come to an end.

And now to the constitutional issues.

1. I have no doubt — professorial dicta not withstanding — that the Senate was acting constitutionally when it deferred Supply. Section 53 of the Constitution makes it quite plain that the Senate shall have equal power with the House of Representatives in respect of all proposed laws, save that it cannot introduce Bills imposing taxation or appropriating money.

2. Having been denied Supply, Mr Whitlam, with whatever good grace he could muster, had no alternative but to advise an election or resign. He did neither.

3. This created a void, a no-man's cloud-cuckoo land, with a government at the helm acting in clear breach of basic principles of parliamentary government, including a refusal to recognise the unqualified right of the Upper House to do just what it did — deny Supply.

Whilst it is undoubtedly true that the Senate has long departed from its traditional role as a States' house, and become more and more a house of review, that is no answer for Mr Whitlam to ignore it simply because he cannot dominate it.

Whether Mr Whitlam liked it or not, he was faced with a deadlock which the "deadlock" provision of the Constitution (Sec. 57) simply could not cure since the machinery it provides is so lengthy that it is quite inappropriate to deal with the problems posed by a denial of Supply.

4. At this point the Governor-General steps in and withdraws Mr Whitlam's commission and commissions his opposite number: an unusual but not unprecedented step.

Was it constitutional? Section 61 of the Constitution vests the executive power of the Commonwealth in the Queen and provides that it is exercisable by the Governor-General as the Queen's representative, and extends to the Executive the execution and maintenance of the Constitution and of the laws of the Commonwealth.

Section 62 creates an Executive Council "to advise the Governor-General in the government of the Commonwealth." Suffice it for present purposes that the Governor-General in practice takes his advice from his Prime Minister.

5. Can the Governor-General act independently

"yes," but it must be qualified to the extent that this "reserve power" should only be exercised where a government is acting in clear breach of the principles of parliamentary government or constitutional rules. That the Governor-General has these reserve powers has not been seriously questioned.

Mr Byers, the Solicitor-General, in his advice merely denied a constitutional obligation or duty to dismiss a Prime Minister in a situation where there is a deadlock over Supply between the two houses, whilst not questioning the constitutional power.

Sir Garfield Barwick likewise advised that the Governor-General has the constitutional authority. Having read the abbreviated version of Sir Garfield's advice, I am unable to see any fundamental difference in substance between the two opinions proffered for the guidance of the Governor-General.

Both maintain the existence of the power. The decision to exercise it was taken by Sir John Kerr.

Whether the Governor-General should or should not have consulted the Chief Justice of the High Court is a matter of much public debate.

Whilst in "normal" times courts will not act in an advisory capacity, and do not determine abstract questions of law, in the instant case an issue going to the constitutional rights and duties of the Governor-General was involved, which is not otherwise justiciable.

## The Queen

If the Governor-General cannot consult with the Chief Justice of the High Court, whom can he consult?

In England, the Queen has the benefit of the advice of her Privy Council.

Do Sir John Kerr's critics honestly suggest that he should have summoned to Canberra the cluster of Privy Councillors who happened to be in the country?

Professor Sawyer's view that the Chief Justice is already "involved" in the light of the recent challenge before the High Court (now reserved) of Electoral Boundaries, and the validity of some sections of the Representation Act of 1905 is, I must confess, beyond my comprehension.

I fail to see how a question going to the reserve powers of the Governor-General can impinge on issues going to the constitutional guarantee that the states are to be represented by the number of members chosen in proportion to the

... the Governor-General acted with complete propriety in the use of his undoubted powers in dismissing a Prime Minister acting in clear breach of the principles of parliamentary government ...

respective numbers of their people.

This decision is not unprecedented. In 1918, Mr Hughes, then Prime Minister of Australia, having been "defeated" in a referendum on the issue of conscription, announced that the government had resigned.

He refused to offer any advice to the Governor-General as to who should be asked to form a government.

His excellency then stated in a memorandum that he was of the opinion "that in granting a commission for the formation of a new administration, his choice must be determined solely by the parliamentary situation. Any other course would be a departure from constitutional practice, and an infringement of the rights of parliament."

Premier Lang's dismissal in 1932 by the then Governor, Sir Philip Game, is not dissimilar from the present situation. Lang, having defaulted to the Commonwealth in interest payments, was dismissed by Game who communicated with the Leader of the Opposition (Stevens) who was sworn in as Premier. At that time Lang had 55 supporters in a house of 90. Stevens formed an administration, prorogued parliament and dissolved it and was subsequently overwhelmingly successful at the election.

Evatt, in his definitive work on the King and his Dominion governors, published in 1936, had this to say: "At the outset it should be emphasised that the success of the Stevens Government should not, of itself, be regarded as concluding the matter. It can hardly be accepted as correct that the sovereign or his representative may at any time dismiss a ministry possessing the confidence of parliament and force a dissolution and, so long as the popular verdict goes against the dismissed ministers, the action of the king or governor must necessarily be treated as right. In point of fact, during the history of many, perhaps all assemblies, there are occasions when, if an immediate election is held, the ministers are very likely to be defeated. This is so well recognised that it is often

noticed that "unpopular" measures are passed into law at a comparatively early stage in the life of a parliament, but, as the elections approach, "window-dressing" proposals become the order of the day. If the time and occasion of a general election are to be selected by the adversaries of an administration, the chances of the Opposition are enormously increased." (p. 165).

If nothing else, these precedents indicate how uncertain are the boundaries in which these reserve powers are confined, and how lonely is the task of the Governor-General faced with having to decide the issue.

Right or wrong, he will be vilified, and the Queen's representative brought into disrepute.

This sad state of affairs will continue whilst the guidelines for the exercise of these exceptional prerogatives are so uncertain and undefined.

## Propriety

Whatever the guidelines, on this occasion, and in these extraordinary circumstances, this writer is satisfied that the Governor-General acted with complete propriety in the use of his undoubted powers in dismissing a Prime Minister acting in clear breach of the principles of parliamentary government. He must be exempted from any form of criticism.

I have no doubt that the Senate acted constitutionally. Whether it acted wisely, whether it was right or wrong, I do not presume to judge.

I leave that to the politicians, the historians and all the artists, poets, playwrights and actors whose firm convictions are clearly based on profounder insights than mine.

My faith in parliamentary democracy remains unshaken.

It would appear, however, that it is more fragile than we suspected, and can be emasculated with ease by men intoxicated by power.

All power corrupts, including the power delegated by the masses through the ballot box.

# Most swingers think Labor deserves to win

## Swinging voters blame Fraser but like Kerr

By DAVID DALE

A survey of swinging voters in the capital cities made after the sacking of the Whitlam Government has shown that they see the constitutional crisis as the crucial election issue.

The events surrounding the dismissal of Gough Whitlam outnumbered economic problems two-to-one as the nominated election issue.

A large majority of swinging voters said they disapproved of the way Malcolm Fraser became Prime Minister. But they were evenly divided on whether the Governor-General was right or wrong to sack Mr Whitlam, and most think Sir John Kerr has been a good Governor-General.

The survey, carried out last Wednesday and Thursday by ANOP on behalf of The National Times and ABC-TV Four Corners also showed:

- A large majority of swinging voters feel that Labor should not be critical of the Governor-General.

- Most swingers think Labor deserves to win.

- Most swingers think neither Mr Fraser nor Mr Whitlam is telling the truth about the economy.

- Slightly more swingers think Mr Fraser could solve the country's economic problems

than think Mr Whitlam could solve them.

The survey suggests that so far, the Liberals have failed to turn the campaign into a fight

the Governor-General.

Whether the Liberals' intensive advertising campaign on economic issues has its desired effect will show up in the

### Irrespective of the party you support, which party deserves to win the election?

Labor	56 per cent
Liberal-NCP	29
Neither	10
Unsure	5

### Who is telling the truth about the economy?

The Liberals	15 per cent
Labor	12
Both	14
Neither	48
Unsure	11

### Was Sir John Kerr right to dismiss Mr Whitlam?

Right	45 per cent
Wrong	46
Unsure	9

about inflation and unemployment, and that Mr Whitlam's emphasis on constitutional issues is paying off. It also suggests that Mr Whitlam may choose to cease his attacks on

analysis of the swingers in next week's National Times.

The 120 swinging voters were selected from the random sample of 1,600 voters in capital cities, whose survey results

were reported in the National Times last week.

The ANOP polling organisation asked the 1,600 people in their original sample a set of questions designed to establish the strength of their party loyalties, and chose a sub-group who were uncommitted in their vote, or only weakly committed. All capital cities except Perth were included.

This group will form a panel which will give an indication of how the issues and the party tactics are affecting swinging voters as the election campaign progresses.

The group will be surveyed twice more before the December 13 election to assess how their attitudes change, and the results will be published in the National Times.

Last week's interviews were done in the panel members' homes on Wednesday and Thursday nights — a week after the dismissal of Mr Whitlam, and immediately after letter bombs were found posted to Mr Fraser and to the Queensland Premier Mr Bjelke-Petersen.

In the survey taken early in November, about a quarter of the swingers leaned slightly towards Labor, about a quarter leaned towards Liberal and about half were uncommitted.

But in last week's survey, that situation had changed considerably. Many of the Liberal and Labor-leaners had become uncommitted, and the uncommitted voters tended to have drifted slightly towards the Labor party rather than to the Liberal Party.

The swingers were asked, "What do you think the main issue of the election campaign is?"

About 41 per cent nominated issues like the blockage of Supply, the sacking of the Prime Minister, the Constitution and the rights of an elected government. About 21 per cent nominated economic management, inflation, Australia's prosperity, and issues of that kind.

About 15 per cent nominated the leadership of the country, and whether Fraser or Whitlam was the better man.

Only 2 per cent nominated unemployment and only 1 per cent nominated terrorism and bombings.

Asked whether Sir John Kerr was a good or bad Governor-General, 54 per cent said "good," 17 per cent said "bad," 10 per cent said "good, except for the dismissal of the Prime Minister," and 19 per cent were unsure.

But when asked if Sir John had been right to dismiss Mr Whitlam, 45 per cent said right, 46 per cent said wrong and 9 per cent were unsure.

Most of those who thought Sir John was right said he had

no other alternative, and the problem was unsolvable.

Most of those who thought he was wrong said that only the people should decide the fate of governments, and that a government should be allowed its full term. About a quarter of them said the Governor-General should not have the power to dismiss a government.

Asked how they felt about the way Mr Fraser became Prime Minister, 72 per cent of the panel said they disapproved, 20 per cent said they approved, and nine per cent were unsure.

Asked if the Labor Party should or should not be criticising the Governor-General, 79 per cent said they should not.

Asked which party was telling the truth about the Australian economy, 48 per cent said both parties were not telling the



**Swingers Survey Week 1**

truth, 15 per cent said the Liberals were telling the truth, 12 per cent said Labor was tell-

*Continued on page 53*

### THE MAIN CAMPAIGN ISSUE TO SWINGING VOTERS

<b>RULES AND CONVENTIONS.</b> Breaking rules. Blockage of supply. Sacking of PM. The Constitution. Unfair tactics. Rights of elected Government .....	41%
<b>ECONOMIC MANAGEMENT.</b> Economy. Inflation. Australia's prosperity .....	21%
<b>LEADERSHIP.</b> Whitlam vs Fraser. The better man. The best leader .....	15%
<b>STABLE GOVERNMENT.</b> No elections every six months. Government to see out elected term .....	8%
<b>POWER OF THE GOVERNOR-GENERAL.</b> Limits of vice regal power. ....	6%
<b>LABOR SCANDALS.</b> Totality of Labor gaffes .....	3%
<b>UNEMPLOYMENT.</b> .....	2%
<b>TERRORISM.</b> Bombings. Radical fringe groups. ....	1%
<b>OTHERS</b> .....	5%
<b>UNSURE</b> .....	6%

*Responses total more than 100% since some respondents offered more than one main issue*

*Continued from page 7*

ing the truth, 14 per cent said both were telling the truth, 11 per cent were unsure.

Asked whether Mr Fraser and the Liberal-National Country Parties could solve the economic problems facing Australia in the next few years, 53 per cent said they could, 22 per cent said they could not, and 25 per cent were unsure. Asked the same question about Mr Whitlam and the ALP, 49 per cent said they could solve the problems, 30 per cent that they could not, and 21 per cent were unsure.

Finally, the swingers were asked, "Irrespective of which party you support, which party do you think deserves to win the general election on December 13?" About 56 per cent said Labor deserved to win, 29 per cent said the Liberals, 10 per cent said neither, and five per cent were unsure.

This is how the Managing Director of ANOP, Mr Rod Cameron, describes the swinging voters survey:

"The ANOP swinging voter panel has been established in an effort to analyse the campaign performances of the major political parties amongst the key target group — the so-called swinging voters. We will be re-contacting this group of swinging voters on two other occasions

— fieldwork will be on the Wednesday and Thursday of each week and results will be published in the next two editions of the National Times.

"In the first ANOP political survey published last week, a total of 1,600 voters in the six capital cities comprised the sample. Some 9 per cent of the Australian urban electorate was classified as the swinging voter element — a figure considerably lower than swinging voter frequencies we have encountered at other times during the last few years . . . at a comparable period prior to the 1974 campaign the swinging voter element totalled some 18 per cent of the similar electoral population.

"It should be emphasised that the ANOP swinging voter panel is not an attempt at a statistically reliable analysis of the fluctuations of voting intention over the campaign period.

"The ANOP definition of the swinging voter is based on a series of commitment and party loyalty scales and demographic measures. It is not based on the respondent's own statement of past vote versus intended vote. Political researchers have known for a number of years that opinion polls are not necessarily a good means of measuring past vote."

Government House,  
Canberra. 2600.

24 November 1975.

*My dear Private Secretary,*

Thank you for your letter of 17 November.

It has been, of course, a difficult time. Mr Whitlam's reaction after leaving Yarralumla turned out to be in fact, one of very great rage which came through in many of his public utterances, the earliest of which were made on the steps of Parliament House at the time when David Smith read the proclamation dissolving both houses. The proclamation finished with the words "God Save The Queen", whereupon Mr Whitlam shouted, "You may well say God Save The Queen, but nothing will save this Governor-General". He also referred on the same occasion to the new Prime Minister as "Kerr's Cur".

Some people are asserting, including a very old friend of mine who has now, of course, broken off relations with me so far as I am concerned forever - I refer to Senator James McClelland - that I have been in conspiracy with Mr Fraser from the beginning. This is false as Senator McClelland knows because he was party to some of the compromise activities in which I engaged. However, I knew there would be a certain amount of execration and had to warn my wife about this in advance.

The rage seems to be to some extent subsiding and could be, throughout the country, counter-productive. However Mr Whitlam appears to believe the opposite and will, I think, try to keep the issue as the main one till the end. There is, however, a very widespread support for the Monarchy and the Vice-Regal office.

We cannot yet tell what will happen in the election but I attach a cutting from The National Times which has by no means been supportive of me in the controversy. It deals with a poll which was conducted, after my decision, amongst so called "swinging voters" - 120 - selected from a random sample of 1,600 voters in capital cities who had been the subject of a survey the previous week.

The previous survey was confined to capital city dwellers excluding, as I understand the position, Perth. It accordingly took no account at all of what was happening in the country electorates. The attempt to discover what 120 so-called swinging voters thought is summarised in the attached cutting.

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The points the survey appears to make are: (1) A large majority of swinging voters feel that Labor should not be critical of the Governor-General - 79%. (2) As to whether I am supposed to be a good or bad Governor-General, 54% said good, 17% said bad, and 10% said good except for the dismissal of the Prime Minister, 19% were unsure. (3) On the question whether I was right or wrong to dismiss Mr Whitlam, 45% said right, 46% said wrong and 9% were unsure. 120 swinging voters out of a population of 13½ million is a peculiar sort of sample and, as you will see from the cutting, the method of selecting the swinging voters appears to have been strange because at the end of the cutting it is stated that "the A.N.O.P. definition of the swinging voter is based on a series of commitment and party loyalty scales and demographic measures. It is not based on the respondent's own statement of past vote versus intended vote."

I have no idea, except to the extent that my own correspondence shows it, how the people generally are reacting to my decision but I have no regrets about it. In Australian terms and in the situation in which we found ourselves there was no escape. If I ever have an opportunity to report personally to Her Majesty I shall be able to give her some more colourful impressions of the main characters in this Australian crisis.

The debate about what I did has been contributed to partly by lawyers but dominantly by academics who are not lawyers and who clearly do not understand anything at all about our Constitution.

They are not quite as bad as Alan Ashbolt who is wellknown to me and indeed was a neighbour of mine when I lived in Turrumurra on the outskirts of Sydney for 20 years before coming here. Alan Ashbolt wrote an article in last week's New Statesman in which he made a serious suggestion that I am mad, not perhaps clinically mad but, as he put it, at least as mad as George III. If you have not had the excruciating pleasure of reading the Ashbolt article in last week's New Statesman, please get hold of it and glance at it.

There is one important point which I should mention. My few close friends and advisers have counselled me very strongly to keep right out of the campaign and to answer nothing that is said. This is difficult for an extrovert and activist but it is wise advice and I have so far followed it. Others however press me to speak to the nation about my constitutional position, what I did and why and to answer criticisms. I do not think this would be sensible but am keeping a small corner of my mind open in case the calumnies and criticisms become unbearable. But do not fear, despite Ashbolt, I am still rational and will do nothing silly. Silence is I suppose inevitable.

.../3

Your reply to the Speaker arrived this morning and I had it taken to him right away. For my part I thought it an excellent statement of the Constitutional position. Later today Mr Scholes released the text.

I was particularly interested in the penultimate paragraph of your letter of 17th November to me in which you permitted yourself a reflection to the effect that, should the Member for Werriwa be returned to power, he ought to be extremely grateful to me. You will by now know from my earlier letters that in effect I said to him, at the time of dismissal, that I was giving him this opportunity for a possible victory of considerable significance. By making a double dissolution a condition of the step I had decided to take, I made it possible for him, if he wins the House of Representatives and has a majority in the combined Houses, to get a Joint Sitting which would enable him to pass 21 stored-up bills.

If this were to happen the result would be something of a social revolution in Australia and it could happen even if Mr Whitlam lost the Senate if he won the House by a margin sufficient to outnumber even by one what must be inevitably either a deadlocked or almost deadlocked Senate. However, he is hardly likely to be in fact grateful to me as you suggest.

The question arises as to what I should do in the event of a Whitlam victory. I opened this subject up with you before as a hypothetical question. My mail is starting to show indications of a desire on the part of correspondents that I should not resign. This does not operate, in any significant way, upon my mind but I have been thinking that, for the sake of history, I ought to consider forcing Mr Whitlam, if he wins, to ask Her Majesty for my dismissal. I would not allow the position to develop to the point where she would have to take such advice. If she were minded upon receipt of a request for my dismissal to communicate with me before feeling it necessary to act, I should do what I could to answer whatever it was that Mr Whitlam had said to justify dismissal but would wish to resign and would do so.

Her Majesty in this way would be relieved of any need to take any action at all in the matter but history would record the story rather differently from what might be the case if I were to resign, more or less automatically upon Mr Whitlam's victory. I am, in other words, considering whether I should make any concession which could be wrongly interpreted as an indication that I had in some way erred in what I had done. I think I should rather produce a situation in which a Prime Minister,

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who has in fact got an extra three years of power plus the prospect of a successful joint sitting asks for my dismissal, rather than offer an immediate resignation capable of erroneous interpretation. However, for the moment the matter is very much an open one and I say with the greatest sincerity that I would do whatever the Palace judges to be the best interests of the Monarchy in Australia.

For the time being my wife and I are resting after the burdens of the crisis. We are not doing this willingly but under security advice. The security people are not anxious for me to leave Yarralumla, which they feel able to protect, and certainly do not want us to go into residence at Admiralty House which is much more difficult from the security point of view. I do not think violence is feared so much as demonstrations or indignities which would not be good for the Vice-Regal office or the Monarchy. Personally I do not think there would be very much, if any of this but I am taking their advice until after the campaign opens and the two policy speeches are delivered. They are prepared to approve of a visit to Admiralty House on Wednesday and Thursday next for an Executive Council meeting and we shall judge the position then.

I have some engagements before the election which I feel bound to keep unless there is some real sign of abiding animus and militant demonstration against me personally. I think such demonstrations, were they to occur, would be counter-productive and would help Mr Whitlam's opponents. He and his supporters will, I think, try to quieten down any attempts to criticise in any violent or ugly way my actions or to subject me to real indignity.

The polls have not yet given us much indication of what will happen throughout the electorate as a whole, but they are a better guide in Australia than they are in England because we enjoy here compulsory voting and this seems to enable the polls to predict more accurately. I shall let you know what they show as each week goes by.

I would be grateful if you would thank Her Majesty for her good wishes in this difficult time and assure her of the loyalty and humble duty of my wife and myself.

Yours sincerely,

JOHN R. KERR

Lieutenant Colonel the Right Honourable Sir Martin  
Charteris, K.C.B., K.C.V.O., O.B.E.,  
Private Secretary to The Queen,  
Buckingham Palace,  
LONDON ENGLAND



BUCKINGHAM PALACE

Personal and  
Confidential

17th November, 1975.

*Dear Governor General*

Thank you very much for your letter of 11th November which I, of course, showed to The Queen as soon as possible after it arrived.

Her Majesty read your statement with close attention as she has also the opinion of Sir Garfield Barwick, as given in his letter to you of 10th November. You may be sure that the confidentiality of Sir Garfield's letter and, indeed, everything you have written to me about the crisis for The Queen's information, will be strictly observed.

It seems to me, as a very interested observer, though one not very well versed in the Australian Constitution, that your action, buttressed as it is by the opinion of the Chief Justice, cannot easily be challenged from a constitutional point of view however much the politicians will, of course, rage.

I have no doubt that Mr. Whitlam will try to make the constitutional issue the heart and soul of his campaign but as an extremely shrewd politician who does not live very far away from this house said to me on 11th November "It is never possible to fight an election on one issue."

David Smith will have reported to you that Mr. Whitlam telephoned to me at 4.15 a.m. (our time) on 11th November. I had been out and had not heard the news which David passed to Bill Heseltine sometime before. Mr. Whitlam prefaced his remarks by saying that he was speaking as a "private citizen"; he rehearsed what had happened, the withdrawal of his Commission, the passing of Supply and the votes of no confidence in Mr. Fraser and of confidence in the Member for Werriwa, which had been passed by the House of Representatives, and said that now Supply had been passed he should be re-commissioned as Prime Minister so that he could choose his own time to call an election.

He spoke calmly and did not ask me to make any approach to The Queen, or indeed to do anything other than the suggestion that I should speak to you to find out what was going on. I said I knew you would be reporting what had happened, to The Queen, not realizing at that time that you had already done so. I understand that a letter from him is on the way and I shall, of course, consult you through David Smith before replying to it.

I have, as I expect you know, consulted David on how best to reply to Mr. Scholes' letter. I enclose a copy of my reply to him. I have sent the letter itself to David with instructions not to deliver it without your approval. If, therefore, there is anything in my reply which you think inappropriate, please do not hesitate to say so.

As you can imagine the crisis in Australia has been in everybody's mind and on everybody's lips here during the last day or two. There have been some who have questioned what you have done but I have as yet found no one who has been able to tell me what you ought to have done instead to resolve the crisis: and this is something which I think your critics have an obligation to do.

If I may say so with the greatest respect, I believe that in NOT informing The Queen what you intended to do before doing it, you acted not only with perfect constitutional propriety but also with admirable consideration for Her Majesty's position.

If I may permit myself a last reflection it is that should the Member for Werriwa be returned to power he ought to be extremely grateful to you !

The Queen sends you her best wishes in this difficult time.

*Yours sincerely*  
*Martin Charteris*

His Excellency the Governor-General  
of Australia.



BUCKINGHAM PALACE

17th November, 1975.

I am commanded by The Queen to acknowledge your letter of 12th November about the recent political events in Australia. You ask that The Queen should act to restore Mr. Whitlam to office as Prime Minister.

As we understand the situation here, the Australian Constitution firmly places the prerogative powers of the Crown in the hands of the Governor-General as the representative of The Queen of Australia. The only person competent to commission an Australian Prime Minister is the Governor-General, and The Queen has no part in the decisions which the Governor-General must take in accordance with the Constitution. Her Majesty, as Queen of Australia, is watching events in Canberra with close interest and attention, but it would not be proper for her to intervene in person in matters which are so clearly placed within the jurisdiction of the Governor-General by the Constitution Act.

I understand that you have been good enough to send a copy of your letter to the Governor-General so I am writing to His Excellency to say that the text of your letter has been received here in London and has been laid before The Queen.

I am sending a copy of this letter to the Governor-General.

M. CHARTERIS

The Honourable G.G.D. Scholes.

Government House,  
Canberra. 2600.

20 November 1975.

*My dear Private Secretary,*

There have been a few developments upon which I should report. I should also like to explain in a little detail psychological factors involved in what happened on November 11th.

As to the new developments, the former Attorney-General Mr Enderby, (I suppose it was he, or done with his approval) leaked to the Press a draft legal opinion which was meant when finalised to be a joint opinion by himself and the Solicitor-General. I had asked the Prime Minister for such an opinion because I did not myself accept the view that although the reserve power existed, I should, as Mr Ellicott believed, as a matter of law and duty, exercise it when the Senate first denied supply. I therefore asked an opinion on whether I was compelled by law or legally obliged to act in the way Mr Ellicott suggested at an early stage in the political crisis.

It took some time for any response to occur to this request and it was not until 6th November that Mr Enderby, at my request, came to see me. He brought what he said was a draft of a joint opinion. It had been signed by the Solicitor-General but not by himself and the signature of the Solicitor-General had been crossed out to emphasise that it was only a draft. The opinion conceded the existence of the reserve power of the Crown but said that because of the rarity of its exercise there was grave doubt whether it could still be said to exist for the purposes of what has been called a forced dissolution.

By the time of the critical weekend before November 11th, I still had no firm or final opinion from the law officers though I had come to the conclusion myself that the truth lay between the Ellicott and the Byers (the Solicitor-General) point of view. My understanding of the position was that I did not have to act as soon as supply was denied for the first time or at an early stage in the political crisis but that the reserve power, in respect of a forced dissolution, continued to exist and that I could and in certain circumstances should exercise it. As you know, I decided to do so if the two leaders failed to agree on the 11th November and I obtained Sir Garfield Barwick's views on the 10th November.

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After the Byers opinion was leaked, the Financial Review wrongly concluded that he had said that the reserve power of the Crown no longer existed. I was annoyed at the leaking of an opinion, which in any event was only a draft opinion, and which, if it could be regarded as a real opinion at all, was part of the private advice given to me by the Attorney-General.

I therefore sent for the new Attorney-General and asked him to bring the Solicitor-General and the Permanent Head of the Attorney-General's Department. The Solicitor-General was very concerned about the publication of his draft opinion and in particular about the false impression that had been created that he had denied the existence of the reserve power of the Crown.

He has consequently, with my approval, written to the Press to make his position clear. In the process, of course, it became clear that his view was that there was grave doubt about its existence in the case of a forced dissolution. In these circumstances I discussed with Sir Garfield Barwick whether he had any objection to the publication of his opinion to me. He not only had no objection, but appeared to be quite anxious to have it published.

I have been under continual pressure from the Press to answer questions relating to the exercise of my discretion. One journalist wrote in yesterday a many-paged letter asking 20 questions, most of them political in character. Another journalist has acted in a somewhat similar fashion. I have also been challenged publicly to answer questions which, in my opinion, it would be most improper and unwise to answer. However, bearing in mind the distortion and lies that were being told about the factors operating in my mind, it seemed a permissible step, with the Chief Justice's approval, to publish his opinion. We both considered the effect of the publication on his Court but he had no doubt at all that he wanted it published.

The result has been to raise the constitutional issue again although it was by no means dead. But it has been given some new life. I enclose three clippings indicating the way in which the matter is being debated. One, the editorial page of today's "Age", 20th November, two a report in today's "Canberra Times" of an address given yesterday by Professor Geoffrey Sawer, and three a rather amusing article published in last Wednesday's "Bulletin" written by Mr Peter Samuel and describing what happened on November 11th as though it were a kind of western movie.

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3.

I feel in all the circumstances that I should make clear the psychology of the situation as it existed on November 11th.

As you know, when the Senate launched upon its tactic of deferring supply I became concerned that the two parties were on a collision course which, if maintained could cause enormous chaos and even political disaster.

The two leaders were both stubborn and proud men. This feeling of mine became accentuated day by day especially as Mr Whitlam, in effect, challenged Mr Fraser's manhood and said something along the lines that he would in the end not have "the guts" to deny supply in fact.

As you know, and I will not go into the details again, I did my best to try to arrange some kind of compromise.

The Senate denied supply for the third time during the week after the Melbourne Cup. Zero hour was getting closer and closer. It was known, and indeed Mr Whitlam told me himself, that if there were to be an election before Christmas the 13th December was the last practical date.

Keeping things going in this way was an example of brinkmanship on both sides. Mr Whitlam believed that the Senate would give in but its third denial of supply showed continuing determination.

I believe that apart from a high order of brinkmanship on other matters, Mr Whitlam made a fundamental mistake in believing, as he apparently did, that I would let him do exactly what he advised and let him govern without supply and without going to the people.

At all times during the crisis he stated in the clearest terms that he intended to govern without supply and would never recommend a dissolution of the House or a double dissolution whilst supply was denied. He said both publicly and privately that it was his intention to break the power of the Senate over money bills forever. There could be no doubt, and I had no doubt, of the absolute irreversibility of this decision. Mr Whitlam was engaged in a crusade based upon a single minded determination to destroy the power of the Senate on money bills. No one talking to him privately at that time could come to any other conclusion. The matter was not discussable. He was prepared and said he was prepared to take the country through makeshift banking arrangements, if he could achieve this, over Christmas and on into the new year - governing without supply.

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As to the gambit to get a kind of pseudo supply from the banks there was a meeting with the Banks at which no decision was made but I was told before my decision was made that at least some of the banks regarded the scheme as highly dubious legally as an attempt to avoid the constitutional requirement of parliamentary appropriation and most dubious on grounds of banking policy. I was later sent copies of legal opinions obtained by the Banks. My opinion at the time of the decision was that no real substitute for supply would be available through the Banks.

My own view was that he could not make even remotely satisfactory banking arrangements; that in any event, they would cover only part of the problem; and that the chaos and confusion would be enormous. Mr Whitlam towards the end, as I have told you, whilst implacably maintaining his policy, said that there could only be one way in which an election could be obtained and that was by his dismissal - if I were willing "to do a Sir Philip Game". This was very revealing, because although I have no doubt he believed I would not dismiss him, he was taking into account the possibility that I might just conceivably exercise the reserve power. Being of the opinion that I would not be strong enough to do it, he was warning me of the likely consequence - exacration - if I did. I made no comment.

I should say that in my last talk with Mr Fraser he told me that the last moment was arriving when the reserve power of the Crown could be exercised and that, with the greatest respect, he would be constrained to say publicly that if I did not exercise it, it would have been a grave blow to the powers of the Crown, which everyone of substance admitted to exist, but which if not used in the present crisis would be destroyed forever. This statement was not given by way of advice but really by way of warning and it, like Mr Whitlam's reference to Sir Philip Game, had an element of threat about it.

There is one other statement that Mr Whitlam has made to me during the crisis. As you know from earlier letters, on occasions, some times jocularly, some times less so, but on all occasions with what I considered to be underlying seriousness, he said that the crisis could end in a race to the Palace to see who could get there first. Of course, though I did not say this to him, only he had to go to the Palace. I could act, if necessary, directly myself under the Constitution. I am sure that he would have known this and the talk about a race to the Palace really constituted another threat.

I have referred in an earlier letter to the conversation with Mr Whitlam at the point of dismissal. The issue has arisen here as to whether I should have given him say twenty-four hours to consider whether, after being told of my intention to dismiss him, he would advise a dissolution of the House of Representatives or a

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double dissolution and go to the people himself. History will doubtless provide an answer to this question but I was in a position where, in my opinion, I simply could not risk the outcome for the sake of the Monarchy. If in the period of say twenty-four hours, during which he was considering his position, he advised The Queen in the strongest of terms that I should be immediately dismissed, the position would then have been that either I would in fact be trying to dismiss him whilst he was trying to dismiss me, an impossible position for The Queen, or someone totally inexperienced in the developments of the crisis up to that point, be it a new Governor-General or an Administrator who would have to be a State Governor, would be confronted by the same implacable Prime Minister. This assumes that there would be no alternative in the Crown's hands but to comply with the demand for instant dismissal. If the Crown delayed I would still be here with the same problem but impotent or with much more serious decisions to make.

It may be argued that Mr Whitlam conceivably could have gone back on his oft-repeated, unqualified statement of his intentions to break the power of the Senate and so on. As often happens in these historical moments the man with the discretion has to make up his mind. I have done so and taken some odium from the decision although there has been a remarkable amount of relief and support, in many quarters, for what I did. I hope in this way that I have got the country into a position where, when things settle down, there will be an orthodox if bitter election campaign.

You will know by now that there have been a couple of letter bombs, doubtless produced by a madman, and I hope that this kind of un-Australian activity will not be repeated. I believe the Labor Party is trying to keep street violence and other forms of unsavoury demonstrations at low ebb.

I should say that, although elections are not fought in as tough a manner here as they are in America, the "big lie" is used. I have, of course, no idea whether any dirty attack will be made on me during the campaign, particularly towards the end. The dirty side of politics is one reason why I gave up long ago any desire to participate in a direct party way.

Attached is a cutting which has just arrived from our High Commissioner in New Zealand which indicates interest there in our constitutional crisis. The New Zealand Governor-General has sent me a very kind and supportive private letter.

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After some doubt and much careful consideration I have decided to attach a copy of a letter I have received from Sir Robert Menzies marked "Personal for himself". I do this on the basis of confidentiality of the complete kind. I should not like even Sir Robert to know that I have sent it because I have not had an opportunity to clear it with him, though I know that he understands that I report fully and with complete frankness to The Queen. Doubtless you will hear through other channels of Sir Robert's views. I send the letter with due humility, because it may help you in your assessment of the situation here, and in some embarrassment about his unduly kind words about myself.

As I have said in my other letters I have attempted to act in what I believe to be the interest of the Monarchy and I trust Her Majesty understands my continued motives of loyalty and humble duty.

Yours sincerely,

JOHN R. KERR

Lieutenant Colonel the Right Honourable Sir Martin  
Charteris, K.C.B., K.C.V.O., O.B.E.,  
Private Secretary to The Queen,  
Buckingham Palace,  
LONDON ENGLAND



# Professor Sawer criticises Sir John's actions

By GAY DAVIDSON, Political Correspondent



Professor Sawer

THE Pro-Vice Chancellor of the Australian National University and one of Australia's authorities in constitutional law, Professor Geoffrey Sawer, criticised yesterday the judgments and actions of the Governor-General, Sir John Kerr, in dismissing Mr Whitlam, commissioning Mr Fraser to form a caretaker Government, and proclaiming a double dissolution of the Parliament.

Addressing a lunch meeting of the university Convocation, Professor Sawer said it was improper for the Governor-General to ask for Sir Garfield Barwick's advice without encouragement to do so from Mr Whitlam, and it was even more improper for Sir Garfield to respond.

While he agreed that the Governor-General would have had to act some time, it was "arrant nonsense" to say as Sir Garfield had, that the Government was responsible to the whole Parliament.

The Governor-General had acted too soon — the Government was entitled to test the Senate to the limit, and should have been allowed to.

At the point of settling the issue, there was an obligation for the Governor-General to put the issues to Mr Whitlam in the form of a 24-hour ultimatum, thus allowing Mr Whitlam to advise a dissolution and remain Prime Minister during the election period.

However, Professor Sawer said that the Governor General, unlike the Queen or any State Governors, operated in "terrible isolation", so it was unreasonable to criticise him personally.

The double dissolution, he said, rather than a prorogation (which would have allowed Parliament to be recalled) simply indicated that the Governor-General was "sick of the whole blooming thing".

He pointed out, too, that the Senate had not objected to the Appropriation Bills, but had been concerned only with putting pressure on the Government for an election — so the sensible course would be to adopt provisions similar to NSW, removing the Senate's powers to reject money Bills.

And asked for his own opin-

ion on what should be the basic campaign issue. Professor Sawer said, "I don't think you can possibly, sensibly, deny to Mr Whitlam and the Labor Party the opportunity to win on this issue — without it, there would never have been this election".

He began his address to a packed hall at University House by remarking that the Queen was the only member of the Australian Parliament who still commanded general love and respect.

## Dubious

Explaining the impropriety of Sir Garfield Barwick's acceptance of Sir John's invitation to give advice, he said the broad reason was that the High Court should keep out of political rows; the specific reason was that there was a case before it seeking to restrain the holding of any elections under the present electoral distribution, based on the one-vote one-value provision in the Constitution.

He was dubious of the advice indicating that the Governor-General had a "duty" to act — that implied moral rather than legal judgment.

Disagreeing with the contention that the Government was responsible to the whole Parliament, Professor Sawer said that the basis for election for the Houses was different and they were intended for different purposes.

If the Government was responsive to the whole Parliament, that could mean elections every month, or a permanent total coalition of all factions; the Government was responsible to the lower House — that was why the lower House had specific advantages in regard to money Bills.

Professor Sawer canvassed several possible reasons put to him in the past few days, to explain Sir John's actions.

There was the difficulty of holding an early election if the situation had continued much longer. He dismissed this as "a completely improper consideration", and one which "probably was not likely to have counted much with the Governor-General".

There was possibly fear on Sir John's part that the Senate would reject the Bills outright, thus creating a worse deadlock.

But the probability was that the House of Representatives would keep on putting the Bills before the Senate, and there were bound to be later intervals when action would have been possible.

There was the urgency of getting Supply — but, "in my view, there has never been an independent, distinct convention that a Government must resign if it is denied Supply. The Governor-General must give some consideration for the claims of the House of Representatives over the Senate".

There may have been a fear that Mr Whitlam would take steps for Sir John's dismissal. "One cannot say such a fear would be unreasonable. It's extremely likely that conversations in the previous few weeks could have roused Sir John to such fears, even if that were not intended by Mr Whitlam — it could explain such precipitate action".

Later, in answer to questions, Professor Sawer said there was no question that Mr Whitlam had overplayed his hand. But it was not known if he had ever been presented with an ultimatum.

On the running out of Supply, he said that there had been no breaches of contract, and the Government was entitled to dodge and put off the final moment.

## Parallel lines

And on the election campaign, he said that he would have preferred to see a campaign in which people were dealing with the matters they were accustomed to, especially as the constitutional issues were unlikely to be fully explained.

However, it seemed likely that it would be run on two parallel lines which would never meet. But this would raise people's consciousness so, undoubtedly, the election was bound to settle some constitutional questions in the long term.

If Mr Whitlam won there would be a good deal of attention paid to constitutional issues — "and I would like to see that". And in Professor Sawer's opinion, as quoted earlier, the former Government should have the opportunity to win on the constitutional issue, without which there would not be an election.

# Constitutional issue back in the limelight

POLITICS

By GAY DAVIDSON

EARLIER this week the economy and the Whitlam Government's management of it had begun to take the lead as the major issues in the election campaign.

However, on Tuesday night the Governor-General stepped into the political arena again, issuing a letter written by the Chief Justice, Sir Garfield Barwick, setting out the advice he gave Sir John on November 10.

It is widely believed in Parliament House that Sir John was prompted by the news that the Solicitor-General, Mr Byers,

had written to a newspaper setting out part of his opinion on the Governor-General, in which he denied that there was a constitutional obligation and duty to dismiss Mr Whitlam, and expressed grave doubts that the power to dismiss might properly be exercised solely to procure a forced dissolution.

Sir John received the opinion on November 6, in draft form. In his statement on November 11 he said, "I should be surprised if the Law Officers [Mr Byers is the second Law Officer] expressed the view that there is no reserve power in the Governor-General to dismiss a

Ministry which has been refused supply by the Parliament and to commission a Ministry, as a caretaker Ministry which will secure Supply and recommend a dissolution, including where appropriate a double dissolution".

Sir Garfield, in his letter, stated that the Governor-General had the constitutional authority to withdraw a Prime Minister's commission if the Prime Minister could not ensure Supply and refused to either call an election or resign.

The Governor-General's constitutional authority and duty would then be to invite the Leader of the Opposition, if he

could undertake to secure Supply, to form a caretaker Government pending an election.

Publication of the conflicting opinions has put the constitutional issue back on page 1 of newspapers, and once again raised questions about Sir John's role.

It may well be the Governor-General's only action which will find favour with Mr Whitlam, in aiding him to focus attention on the actions which led to the election campaign.

It certainly ensured a large and attentive audience for Professor Sawer yesterday, when he was critical of Sir Garfield's advice, and Sir John's actions.

# Was it a Whitlam plot?

By PETER SAMUEL

GOVERNOR-GENERAL Sir John Kerr was involved in something like a classic western suspense scene when he shot Gough Whitlam down. In those western movies the two principal characters, guns in the holster, edgily approach one another, each knowing that his life might depend on the speed of his draw, and the sureness of his shot. Whitlam had made it plain that he intended to sack Kerr if Kerr acted against him. There was a firm report about a month ago that Gough Whitlam said very deliberately that any conflict between himself and Kerr would be "a race to the Queen." He would simply sack Kerr — through the Queen — if he failed to take advice. At Press conferences and in TV interviews during the period of the deadlock Whitlam repeatedly denied that Kerr had any right at all to act independently. He denied the existence of any reserve powers by which a Governor-General can in a crisis overrule a Prime Minister. An Australian head of State could "never" act independently of advice, he insisted.

Whitlam repeatedly implied that the Governor-General was merely his cipher, someone entitled only to act out the ceremonial roles of head of State, but in matters of substance a mere subordinate. At the Press conference after his dismissal, Whitlam, asked if he had had the chance to contact the Queen about Kerr's action, said grimly: "The Governor-General prevented me from getting in touch with the Queen by just withdrawing the commission immediately. I was unable to communicate with the Queen as I would have been entitled to do, if I had had any warning of the course that he, the Governor-General, was to take."

Government House sources have expressed the view that the Queen would undoubtedly have acceded to any request by Whitlam as Prime Minister to sack Kerr from the Governor-Generalship. It was clearly a High Noon situation in which Kerr was quicker on the draw, and deadly with his first shot.

It was Whitlam's braggadocio which certainly persuaded Kerr that it was prudent to kill him politically with one quick surprise shot to the heart. If he dithered or tried to negotiate, Kerr not only risked being shot himself, but he saw the nation risking a period without a sheriff at all. Whitlam, being in a mood to sack his Governor-General, could



"... did my Christmas chopping early this year."

leave the country for many days without any Governor-General.

As Government House sources explain it, the Governor-General could not negotiate because to do so is to get involved in the party politics of the situation. But Whitlam in his grandest imperial style was so insistent there could be no compromises — "democracy itself" was invoked as being under threat if there were elections! — that Kerr was probably justified in thinking that he simply had to dismiss Whitlam if the deadlock was to be resolved.

Not enough attention has been paid to the detail of the letter Kerr handed to Whitlam when telling him of his dismissal at lunchtime on Remembrance Day:

"You have previously told me that you would never resign or advise an election for the House of Representatives or a double dissolution and that the only way in which such an election could be obtained would be by my dismissal of you and your colleagues." Whitlam left no room for Kerr to negotiate. He left no room for compromise. He simply hoped that by repeatedly describing Kerr as his puppet that he would remain on his strings.

Some might see Whitlam's enormous ego as his undoing. Another thesis is that

the dismissal was deliberately provoked, that such a shock event would give Whitlam the kind of legal-political issue he likes to campaign around, something tailor-made to distract attention from issues his opponents want to campaign about — the economy and his management. After all, Whitlam seemed to be doing well in swinging the electorate back his way by campaigning around the supposed improprieties and convention breaking involved in the blocking of supply by the Senate. How better to continue this kind of campaign than to provoke his own sacking and have his opponents projected shockingly into power in the election interregnum?

But that is probably branding Whitlam too much as a cunningly cold, Machiavellian character. He is much more cerebral and intuitive, following his instinct, which is always inclined to take the big risk in the faith that he will be able, in his favorite phrase, to "crash through."

So, by proudly and straightforwardly declaring himself the emperor, who had completely unlimited powers to override the Senate and the Governor-General, he may have hoped to intimidate his opponents into acquiescence.

That was undoubtedly his first objective. But the second theme of provocation of dismissal need not be entirely discarded. Whitlam may in moments of doubt have thought to himself that the second best outcome was dismissal by the Governor-General. His closest and long-standing personal staff member, speechwriter Graham Freudenberg, has more than once predicted that Whitlam would be dismissed by a Governor-General. Whitlam seems desperately keen to have some important place in history, to be at least grand and noteworthy in the manner of his disappearance. Whitlam must have mentioned dismissal in his conversations with Kerr. Mostly it was bluff, a belief that Kerr would not dare. But partly it may have been a statement that if "I go down, I go down amid fire and tempest."

Whitlam has always loved to be the first, the greatest and to be able to quote historic comparisons. Within an hour of his dismissal he said: "I am the first for 200 years — since George the third sacked Lord North." It would have been cruel to have corrected him by pointing out that the more parochial scene in Sydney with Jack Lang's dismissal was a more accurate analogy.

Post: WELLINGTON

Newspaper: THE DOMINION

Dated 17.11.75

# Canberra's crisis explained

PROFESSOR R. Q. Quentin-Baxter, Professor of Law, Victoria University of Wellington, writes to the editor of The Dominion on the constitutional significance for New Zealand of the fall of the Australian Government:

Sir,—Although the Australian constitutional crisis arose out of a conflict between the two Houses of the Australian Parliament, there is one important aspect of this crisis that has equal significance for New Zealand.

The concept that in extremity the Queen, or her representative the Governor-General, may need to refuse the advice of the head of her existing Government is designed to fill two gaps in our constitutional machinery. First, there is no other legal mechanism that can compel a Prime Minister to resign, or to seek a new mandate from the electorate, if he has lost the confidence of Parliament. Secondly, there is — at least in New Zealand's case — no other constitutional check upon a flagrant abuse of the law-



MR QUENTIN-BAXTER

making power by a parliamentary majority.

The very knowledge that a reserve power will in certain circumstances be exercised should be enough to avoid the need for its use. The clearest example is probably that of the British Government's desire in 1910 to curb the power of the House of Lords. In order to ensure that the House of Lords would itself agree to

such a measure, the Prime Minister, Mr Asquith, proposed to swamp the Upper House with up to five hundred newly created peers.

King George V let it be known that he would accept advice to create the new peerages if Mr Asquith's Government were returned to power in a general election in which its intentions for the reform of Parliament were before the electorate. That condition being met and the King's willingness to accept Mr Asquith's advice being known, the House of Lords submitted to the popular will.

In such situations the Crown can be seen to fulfil its exceptional, independent role — that is the role of ensuring that the supremacy of Parliament does not become an alibi for an irreparable breach of faith with the electorate. There is, however, in the cases of Australia and New Zealand a complicating circumstance. A Governor-General is appointed, and may be recalled, by the Sovereign on the advice of the Government of the country in which he serves. There is no instance in which the Sovereign is known to have refused such advice, or even to have considered the propriety of such a refusal.

It is this conflict of traditions — the vesting of an ultimate power in a Governor-General who serves at the will of the Government over which he presides — that marks the present Australian crisis. When such a crisis becomes foreseeable, a Prime Minister and his potential successor need to know with certainty how and when the Governor-General will feel obliged to act in the exercise of a reserve power. It is against this background that the political leaders should finally choose their courses. There is then the least risk that the position of the Crown will be compromised,

be seeming to serve the interest of one or another party.

These conditions are, however, impossible of fulfilment if the disclosure of the Governor-General's intentions may lead to his recall. The choices then open to the Governor-General appear to be these. He may act on the premise that the Crown is now bound absolutely to accept whatever advice a Prime Minister may tender; but no one who has sworn to uphold the constitution would so lightly put off the burden of his office. Conversely, the Governor-General may warn the Prime Minister of the stand he intends to take, even though this warning may precipitate an immediate request for his own recall, thereby posing a still more difficult problem for the absent Sovereign.

## Whirlpool

The third course of action aims to steer between the rock and the whirlpool. The Governor-General acts first. The dismissed Prime Minister has no opportunity for retaliation. Yet the Governor-General cannot move to dismiss a Prime Minister, unless he has assurance that an alternative Prime Minister will take responsibility for the dismissal. The inevitability of recrimination is obvious. The reserve powers lose their credibility if the Governor-General and the Prime Minister are seen as antagonists, manoeuvring for the pre-emptive strike.

In Australia these problems may be obscured by the heat of controversy and complicated by other issues which are peculiar to the Australian Constitution. In New Zealand we have the opportunity to look for the solutions that are best in our own context, rather than to allow our attitudes to be moulded subconsciously by the reverberations from Australia.



SIR ROBERT MENZIES

95 COLLINS STREET  
MELBOURNE C.1 VICTORIA  
TELEPHONE 63 9463

PERSONAL  
FOR HIMSELF.

19th November, 1975

Your Excellency,

I have refrained from writing to the press because I do not want to encourage any continuation of the 'smoke screen' that has been put up about your decision. But after much thought, I have decided that I ought to write to you personally. I write, of course, as a man with a considerable knowledge of the Constitution, both in its interpretation and in its practice, and I want to tell you, if I may, do so without appearing to be impertinent, that your conduct in this matter has been, in my opinion, beyond reproach.

You were right as a matter of constitutional law. You exercised a power which you undoubtedly have and you exercised it at a time when any failure to act to resolve the political crisis would have inflicted great injury on many many thousands of people who look to the Commonwealth for their payments. It is quite clear that the last thing that Whitlan wanted was a Double Dissolution. The last thing he wanted was an election that would clear the air. You had a complete right to do what you did. No competent Constitutional lawyer has offered a view to the contrary. The future Constitutional historian will unquestionably say you did what it was your power and duty to do.

My second comment is that you displayed remarkable moral courage in doing what I believe to have been your duty. Indeed when competent people have assessed these events in a study of our constitutional history, they will say, not only that you were right but that you did something which has established your term of office as one of the most remarkable in our constitutional history.

I fear that some people when they nominate some distinguished man to be Governor-General of Australia imagine that he is their humble, obedient servant and that he must do as they say. This is, of course, pathetic nonsense. It is not only an insult to the holder of the office, but it converts the Governor-Generalship into a merely automatic post in which the Governor-General must, under all circumstances, do what his advisers tell him to do. If this is what a Governor-General is for, we might just as well not have one; we might as well have an automatic machine--a kind of robot. And if that is what we are to have, then plainly we do not need a Governor-General at all, but merely a recording machine.

2.

I beg of you not to be unduly worried. No man ever ought to be when he has done the right thing.

In this purely private letter, I offer you my congratulations and my profound admiration.

With my warmest personal regards,

Yours sincerely,

*Robert Menzies*

(R.G. MENZIES)

His Excellency

The Honourable Sir John Kerr, K.C.M.G., K.St.J., Q.C.  
Governor-General of Australia.

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Government House,  
Canberra. 2600.

17 November 1975.

*My dear Private Secretary,*

You will, I am sure, be up to date, both through your own papers and from the clippings which have been sent to you by David Smith, with the developments in the crisis in Australia. My decision was by far the most difficult I have ever made or expect to have to make.

November 11 was the last day for action if an election of any kind was to be held before Christmas. This was due to practical matters connected with the Electoral Office. December 13 was the last practical date for actually holding an election. A half Senate election without supply (with or without all the States participating) would have meant a very black Christmas. The Senate might I suppose have given in, but after three refusals of Supply and with the then Leader of the Opposition asserting that it definitely would not be granted for a half Senate election I felt I had to act. There is a grey area or twilight zone for personal discretion about the seriousness of the situation warranting a forced dissolution. Many people whose judgment I trust, including Sir Robert Menzies, agree that I really had no choice and that it was right to act. I am sure I had to get the matter to the people. The historians and academics can argue about it for years.

My mail is now running quite well. The opinion polls for the time being are still "pre-decision" and will probably indicate further loss of support for the new Government. I understand that private polls since the decision show a reverse in this but we must wait and see.

I probably will not attempt to stay on here as Governor-General if Mr Whitlam wins the election, as he may well do. He has been seeking to keep the issue firmly on the constitutional crisis and made a foolish unrestrained attack on me on 11 November which did him much harm. There has been, as I expected, a continuing attack on me both in militant circles and elsewhere within the Labor Party for doing what I did. This may well abate during the next week or so and the leaders of the Labor Party appear to want to cool things.

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I think I told you in my last letter that when I dismissed Mr Whitlam I said to him, "The polls are going well in your favour. I have held up my decision till the last possible moment. You have campaigned well in the meantime. I think you could well win the election. Good luck." I proffered him my hand and he took it. Nevertheless it would be impossible for me to work with him or for him to work with me if he wins the election. My probable best course of action would be to stay to commission him and to hand him, at the same time, a letter of resignation which I would already have dispatched to the Palace. The other school of thought is that I should make him dismiss me. As things stand I do not favour this.

He has said publicly that he would expect me to resign and that he will not have to dismiss me. I therefore conclude that, if he remains consistent on this point, he would not seek to reach the Palace first with dismissal advice if he already knew that I had myself sent a resignation to Her Majesty.

On the other hand, if Mr Fraser wins the election there will still be some difficulties. Australia has been, to use the fashionable word, "polarised" for some time now and the process has been accentuated by recent events. A section of the people will probably retain an animus against me at least for some time after the election. How big that group of people will turn out to be is a matter for conjecture.

I have accordingly given some consideration to whether or not I should, here and now, announce that come what may in the election I shall commission the new Prime Minister and then resign.

I have discussed this with the present Prime Minister, Mr Fraser who is emphatically and unreservedly against me taking any such course (a) on the ground that it would in all probability be misunderstood by the electorate despite all attempts on my part to clarify my motives (very many people he says would believe that I had either changed my mind or felt that I should not have done what I did) and (b) that if he wins he would wish to urge me to remain on as Governor-General and would, if it became relevant, so advise Her Majesty.

I have decided to let things rest for the time being. This will enable me to see how the opposition to my action develops and how big an issue it becomes in the campaign, but I should like to assure Her Majesty that I shall put the Monarchy and the Governor-Generalship first and I should not wish to stay on here, even if pressed to do so by Mr Fraser if he wins, if I judge that tensions might adversely affect the basic institution of the Monarchy and the Governor-Generalship.

3.

Mr Fraser has urged me once the election is over, if he wins it, to pay an early visit to London to report personally to Her Majesty. I would, I think, accept this advice in the event of his victory and leave ultimate decisions till after I have had an audience with The Queen if she is minded to grant one. If however it is thought over there that I should not do this I shall probably make a visit, by way of leave to France for a month or so, for reflection about my future.

Throughout all of this troubled time I have thought constantly of the seriousness of the burden upon me supported by continued feelings of loyalty and humble duty to The Queen.

Yours sincerely,

JOHN R. KERR

Lieutenant Colonel the Right Honourable Sir Martin  
Charteris, K.C.B., K.C.V.O., O.B.E.,  
Private Secretary to The Queen,  
Buckingham Palace,  
LONDON ENGLAND



BUCKINGHAM PALACE

PERSONAL AND  
CONFIDENTIAL

5th November, 1975.

*My dear Governor General*

This letter may reach you in the same bag as my last letter dated 4th November. It is principally in answer to yours of 27th October.

I gave this to The Queen this morning and I know she will read and absorb it during the next day or two. In the meanwhile, however, I particularly drew Her Majesty's attention to the passage on page 3 in which you gave some forecast of your personal plans and your hope that you will be able to take some leave in January and make an unofficial trip to Paris. If this plan comes off, as I hope it will, you will be in extremely bad odour if you do not also come to England. The Queen will be in Norfolk during January but she has told me to say that she will be delighted to receive you and Lady Kerr there more or less at any time that suits your convenience. I am not quite sure how we would organize this at the moment as Sandringham House is in the hands of the builders and The Queen herself will be living at Wood Farm where there is no accommodation for guests. I expect, however, that there will be a "guest house" near by where the guests will stay. May we leave it therefore for the moment that you and Lady Kerr will be most welcome in January and we will fix the details when you can let me know something definite? You will enjoy Norfolk!

Your letter raises another specific point on page 4. You say that there has been the odd reference in the Press to "The Queen having been kept informed and this having been confirmed by the Palace." This, I believe, springs from a call I received on the telephone from the A.B.C. some time ago asking if The Queen knew what was going on in the Australian political crisis. The query was made with particular reference to Sir Colin Hannah's indiscretion. I replied that The Queen was regularly kept informed of what was going on in Australia by her personal representative, the Governor-General, and that he had not failed to keep her in touch with the latest developments.

I think it is good that people should know that The Queen is being informed but, of course, this does not mean that she has any wish to intervene, even if she had the constitutional power to do so. The crisis, as you say, has to be worked out in Australia.

It is, of course, true that anything you may do could indirectly affect the Monarchy in Australia. This places you in what is, perhaps, an unenviable, but is certainly a very honourable position. If you do, as you will, what the constitution dictates, you cannot possibly do the Monarchy any avoidable harm. The chances are you will do it good.

Just in case you do not know it I should like to quote to you Arthur Meighen's splendid phrase about the role of the Crown/Governor-General in the Canadian Constitution. I hope you will forgive me for quoting a Canadian to an Australian but I think it is good stuff.

"The sphere of discretion left to a Governor-General under our constitution and under our practice is a limited sphere indeed, but it is a sphere of dignity and great responsibility. Within the ambit of discretion residing still in the Crown in England, and residing in the Governor-General in the Dominions, there is a responsibility as great as falls to any estate of the realm or to any House of Parliament.... Within the sphere of that discretion the plain duty of the Governor-General is not to weaken responsible government, not to undermine the rights of parliament...it is to make sure that responsible government is maintained, that the rights of parliament are respected, that the still higher rights of the people are held sacred. It is his duty to make sure that parliament is not stifled by government, but that every government is held responsible to parliament, and every parliament held responsible to the people."

*Yours very sincerely*  
*Martin Charteris*

His Excellency the Governor-General  
of Australia.



BUCKINGHAM PALACE

PERSONAL AND  
CONFIDENTIAL

4th November, 1975.

*My dear Governor General*

This is to thank you warmly for your letter which began on 22nd October and was completed the next day. The Queen has read it with much interest and also with much concern for the pressures to which you are being subjected by the crisis. I will make this a brief reply as your letter of 27th October, which arrived this morning demands a more detailed answer. I shall hope to send this off within a day or two. I hope you will forgive me, therefore, if in this letter I restrict myself to one or two comments which may sound very ingenuous to you who are in the thick of the conflict.

When the reserve powers, or the prerogative, of the Crown, to dissolve Parliament (or to refuse to give a dissolution) have not been used for many years, it is often argued that such powers no longer exist. I do not believe this to be true. I think those powers do exist, and the fact that they do, even if they are not used, affects the situation and the way people think and act. This is the value of them. But to use them is a heavy responsibility and it is only at the very end when there is demonstrably no other course that they should be used.

With the greatest respect, I am sure you are right in taking the line that your crisis has not yet crossed the threshold from the political into the constitutional arena. Mr. Fraser wants to believe it is already a "constitutional" crisis because he wants you to bring about an election which he thinks he can win. If the tide of public opinion continues to flood against him he may well modify his view, and look for a way of retreat.

Again, with great respect, I think you are playing the "Vice-Regal" hand with skill and wisdom. Your interest in the situation has been demonstrated, and so has your impartiality. The fact that you have powers is recognized, but it is also clear that you will only use them in the last resort and then only for constitutional and not for political reasons.

*Yours very sincerely*  
*Martin Charteris*

His Excellency the Governor-General  
of Australia.



Government House,  
Canberra. 2600.

11 November 1975.

*My dear Private Secretary,*

I asked David Smith to ring to let you know in the Palace that I have taken a decisive step and terminated the commission of the former Prime Minister, Mr Whitlam and commissioned Mr Fraser as a caretaker Prime Minister upon certain conditions which will appear from the attached documents.

Our position in this country is rather different from yours and so that you will understand at least the way I look at things I am attaching the following documents,

- (1) A letter which I today handed to the Prime Minister with its attachment. He had come out to recommend a Half Senate election at a time when he did not have any guarantee of supply. On the contrary, the Senate had three times refrained from granting supply, the money was running out and the Prime Minister was seeking to organise some kind of credit from the banks for public servants and others.
- (2) Before taking the final step, although I had already made up my mind, I consulted Sir Garfield Barwick as to my authority and duties in the present situation. On a confidential basis, because it is not to be disclosed without his permission except ultimately for historical purposes, I send you a copy of the letter which he wrote to me after our discussions.
- (3) I attach also a letter which Mr Fraser wrote to me at my request and upon the basis of which I commissioned him as Prime Minister. When this was done supply was immediately passed by the Senate and today, on the advice of the Prime Minister, I have dissolved both Houses of Parliament. It is now for the electors to decide.

When Mr Whitlam came to see me before he had said anything about his proposal for a Half Senate election I told him that I had decided to terminate his commission. He said, "I shall have to get in touch with the Palace immediately". To this I replied that this would be useless as he was at that time no longer Prime Minister. I had already signed the document terminating his commission.

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I realise of course, that if he wins the election and he may well do so, he will have advice to tender to Her Majesty. I accept all the consequences.

I should say that I decided to take the step I took without informing the Palace in advance because under the Constitution the responsibility is mine and I was of the opinion that it was better for Her Majesty not to know in advance, though it is, of course, my duty to tell her immediately.

I would like to add that after the Senate passed supply the House expressed its confidence in the Member for Werriwa, Mr Whitlam and the Speaker attended upon me to make the point that I should send for Mr Whitlam and commission him to form a Government. However, by the time I saw him I had already dissolved both Houses, a step which I took immediately after assenting to the Appropriation Bills. I did this in the continued exercise of my discretion under the reserve powers of the Crown which were open to me to exercise in the light of all the circumstances up to the last moment.

I was advised by the Solicitor-General and the Secretary of the Attorney-General's Department that such a course of continued exercise of the reserve powers was open to me in all the circumstances. Of course, the House has been regularly expressing its confidence in Mr Whitlam. This has been part of what ultimately constituted the deadlock which I have attempted to resolve as set out in the attached documents.

Please assure Her Majesty of my loyalty and humble duty.

Yours sincerely,

JOHN R. KERR

Lieutenant Colonel the Right Honourable Sir Martin  
Charteris, K.C.B., K.C.V.O., O.B.E.,  
Private Secretary to The Queen,  
Buckingham Palace,  
LONDON ENGLAND

Government House,  
Canberra. 2600.

11 November 1975

Dear Mr Whitlam,

In accordance with section 64 of the Constitution I hereby determine your appointment as my Chief Adviser and Head of the Government. It follows that I also hereby determine the appointments of all of the Ministers in your Government.

You have previously told me that you would never resign or advise an election of the House of Representatives or a double dissolution and that the only way in which such an election could be obtained would be by my dismissal of you and your ministerial colleagues. As it appeared likely that you would today persist in this attitude I decided that, if you did, I would determine your commission and state my reasons for doing so. You have persisted in your attitude and I have accordingly acted as indicated. I attach a statement of my reasons which I intend to publish immediately.

It is with a great deal of regret that I have taken this step both in respect of yourself and your colleagues.

I propose to send for the Leader of the Opposition and to commission him to form a new caretaker Government until an election can be held.

Yours sincerely,

JOHN R. KERR

The Honourable E.G. Whitlam, Q.C., M.P.



## Statement by the Governor-General

I have given careful consideration to the constitutional crisis and have made some decisions which I wish to explain.

### Summary

It has been necessary for me to find a democratic and constitutional solution to the current crisis which will permit the people of Australia to decide as soon as possible what should be the outcome of the deadlock which developed over supply between the two Houses of Parliament and between the Government and the Opposition parties. The only solution consistent with the Constitution and with my oath of office and my responsibilities, authority and duty as Governor-General is to terminate the commission as Prime Minister of Mr Whitlam and to arrange for a caretaker government able to secure supply and willing to let the issue go to the people.

I shall summarise the elements of the problem and the reasons for my decision which places the matter before the people of Australia for prompt determination.

Because of the federal nature of our Constitution and because of its provisions the Senate undoubtedly has constitutional power to refuse or defer supply to the Government. Because of the principles of responsible government a Prime Minister who cannot obtain supply, including money for carrying on the ordinary services of government, must either advise a general election or resign. If he refuses to do this I have the authority and indeed the duty under the Constitution to withdraw his Commission as Prime Minister. The position in Australia is quite different from the position in the United Kingdom. Here the confidence of both Houses on supply is necessary to ensure its provision. In the United Kingdom the confidence of the House of Commons alone is necessary. But both here and in the United Kingdom the duty of the Prime Minister is the same in a most important respect - if he cannot get supply he must resign or advise an election.

If a Prime Minister refuses to resign or to advise an election, and this is the case with Mr Whitlam, my constitutional authority and duty require me to do what I have now done - to withdraw his commission - and to invite the Leader of the Opposition to form a caretaker

government - that is one that makes no appointments or dismissals and initiates no policies, until a general election is held. It is most desirable that he should guarantee supply. Mr Fraser will be asked to give the necessary undertakings and advise whether he is prepared to recommend a double dissolution. He will also be asked to guarantee supply.

The decisions I have made were made after I was satisfied that Mr Whitlam could not obtain supply. No other decision open to me would enable the Australian people to decide for themselves what should be done.

Once I had made up my mind, for my own part, what I must do if Mr Whitlam persisted in his stated intentions I consulted the Chief Justice of Australia, Sir Garfield Barwick. I have his permission to say that I consulted him in this way.

The result is that there will be an early general election for both Houses and the people can do what, in a democracy such as ours, is their responsibility and duty and theirs alone. It is for the people now to decide the issue which the two leaders have failed to settle.

#### Detailed Statement of Decisions

On 16 October the Senate deferred consideration of Appropriation Bills (Nos. 1 & 2) 1975-1976. In the time which elapsed since then events made it clear that the Senate was determined to refuse to grant supply to the Government. In that time the Senate on no less than two occasions resolved to proceed no further with fresh Appropriation Bills, in identical terms, which had been passed by the House of Representatives. The determination of the Senate to maintain its refusal to grant supply was confirmed by the public statements made by the Leader of the Opposition, the Opposition having control of the Senate.

By virtue of what has in fact happened there therefore came into existence a deadlock between the House of Representatives and the Senate on the central issue of supply without which all the ordinary services of the government cannot be maintained. I had the benefit of discussions with the Prime Minister and, with his approval, with the Leader of the Opposition and with the Treasurer and the Attorney-General. As a result of those discussions and having regard to the public statements of the Prime Minister and the Leader of the Opposition I have come regretfully to the conclusion that there is no likelihood of a compromise between the House of Representatives and the Senate nor for that matter between the Government and the Opposition.

The deadlock which arose was one which, in the interests of the nation, had to be resolved as promptly as possible and by means which are appropriate in our democratic system. In all the circumstances which have occurred the appropriate means is a dissolution of the Parliament and an election for both Houses. No other course offers a sufficient assurance of resolving the deadlock and resolving it promptly.

Parliamentary control of appropriation and accordingly of expenditure is a fundamental feature of our system of responsible government. In consequence it has been generally accepted that a government which has been denied supply by the Parliament cannot govern. So much at least is clear in cases where a ministry is refused supply by a popularly elected Lower House. In other systems where an Upper House is denied the right to reject a money bill denial of supply can occur only at the instance of the Lower House. When, however, an Upper House possesses the power to reject a money bill including an appropriation bill, and exercises the power by denying supply, the principle that a government which has been denied supply by the Parliament should resign or go to an election must still apply - it is a necessary consequence of Parliamentary control of appropriation and expenditure and of the expectation that the ordinary and necessary services of government will continue to be provided.

The Constitution combines the two elements of responsible government and federalism. The Senate is, like the House, a popularly elected chamber. It was designed to provide representation by States, not by electorates, and was given by Sec. 53, equal powers with the House with respect to proposed laws, except in the respects mentioned in the section. It was denied power to originate or amend appropriation bills but was left with power to reject them or defer consideration of them. The Senate accordingly has the power and has exercised the power to refuse to grant supply to the Government. The Government stands in the position that it has been denied supply by the Parliament with all the consequences which flow from that fact.

There have been public discussions about whether there is a convention deriving from the principles of responsible government that the Senate must never under any circumstances exercise the power to reject an appropriation bill. The Constitution must prevail over any convention because, in determining the question how far the conventions of responsible government have been grafted on to the federal compact, the Constitution itself must in the end control the situation.

Sec. 57 of the Constitution provides a means, perhaps the usual means, of resolving a disagreement between the Houses with respect to a proposed law. But the machinery which it provides necessarily entails a considerable time lag which is quite inappropriate to a

speedy resolution of the fundamental problems posed by the refusal of supply. Its presence in the Constitution does not cut down the reserve powers of the Governor-General.

I should be surprised if the Law Officers expressed the view that there is no reserve power in the Governor-General to dismiss a Ministry which has been refused supply by the Parliament and to commission a Ministry, as a caretaker ministry which will secure supply and recommend a dissolution, including where appropriate a double dissolution. This is a matter on which my own mind is quite clear and I am acting in accordance with my own clear view of the principles laid down by the Constitution and of the nature, powers and responsibility of my office.

There is one other point. There has been discussion of the possibility that a half-Senate election might be held under circumstances in which the Government has not obtained supply. If such advice were given to me I should feel constrained to reject it because a half-Senate election held whilst supply continues to be denied does not guarantee a prompt or sufficiently clear prospect of the deadlock being resolved in accordance with proper principles. When I refer to rejection of such advice I mean that, as I would find it necessary in the circumstances I have envisaged to determine Mr Whitlam's commission and, as things have turned out have done so, he would not be Prime Minister and not able to give or persist with such advice.

The announced proposals about financing public servants, suppliers, contractors and others do not amount to a satisfactory alternative to supply.

Government House,  
Canberra. 2600.

11 November 1975



HIGH COURT OF AUSTRALIA

CHAMBERS OF THE CHIEF JUSTICE  
TAYLOR SQUARE  
DARLINGHURST, N.S.W. 2010

10th November, 1975.

*Dear Sir John*

In response to Your Excellency's invitation I attended this day at Admiralty House. In our conversations I indicated that I considered myself, as Chief Justice of Australia, free, on Your Excellency's request, to offer you legal advice as to Your Excellency's constitutional rights and duties in relation to an existing situation which, of its nature, was unlikely to come before the Court. We both clearly understood that I was not in any way concerned with matters of a purely political kind, or with any political consequences of the advice I might give.

In response to Your Excellency's request for my legal advice as to whether a course on which you had determined was consistent with your constitutional authority and duty, I respectfully offer the following.

The Constitution of Australia is a federal Constitution which embodies the principle of Ministerial responsibility. The Parliament consists of two houses, the House of Representatives and the Senate, each popularly elected, and each with the same legislative power, with the one exception that the Senate may not originate nor amend a money bill.

Two relevant constitutional consequences flow from this structure of the Parliament. First, the Senate has constitutional power to refuse to pass a money bill; it has power to refuse supply to the Government of the day. Secondly, a Prime Minister who cannot ensure supply to the Crown, including funds for carrying on the ordinary services of Government, must either advise a general election (of a kind which the constitutional situation may then allow) or resign. If, being unable to secure supply, he refuses to take either course, Your Excellency has constitutional authority to withdraw his Commission as Prime Minister.



There is no analogy in respect of a Prime Minister's duty between the situation of the Parliament under the federal Constitution of Australia and the relationship between the House of Commons, a popularly elected body, and the House of Lords, a non-elected body, in the unitary form of Government functioning in the United Kingdom. Under that system, a Government having the confidence of the House of Commons can secure supply, despite a recalcitrant House of Lords. But it is otherwise under our federal Constitution. A Government having the confidence of the House of Representatives but not that of the Senate, both elected Houses, cannot secure supply to the Crown.

But there is an analogy between the situation of a Prime Minister who has lost the confidence of the House of Commons and a Prime Minister who does not have the confidence of the Parliament, i.e. of the House of Representatives and of the Senate. The duty and responsibility of the Prime Minister to the Crown in each case is the same: if unable to secure supply to the Crown, to resign or to advise an election.

In the event that, conformably to this advice, the Prime Minister ceases to retain his Commission, Your Excellency's constitutional authority and duty would be to invite the Leader of the Opposition, if he can undertake to secure supply, to form a caretaker government (i.e. one which makes no appointments or initiates any policies) pending a general election, whether of the House of Representatives, or of both Houses of the Parliament, as that Government may advise.

Accordingly, my opinion is that, if Your Excellency is satisfied in the current situation that the present Government is unable to secure supply, the course upon which Your Excellency has determined is consistent with your constitutional authority and duty.

*Your respectful*

*(GARFIELD BARWICK)*

His Excellency The Honourable Sir John Kerr, K.C.M.G.,  
Governor-General of Australia,  
Admiralty House,  
SYDNEY.



11 November 1975

Your Excellency,

You have intimated to me that it is Your Excellency's pleasure that I should act as your Chief Adviser and Head of the Government.

In accepting your commission I confirm that I have given you an assurance that I shall immediately seek to secure the passage of the Appropriation Bills which are at present before the Senate, thus ensuring Supply for the carrying on of the Public Service in all its branches. I further confirm that, upon the granting of Supply, I shall immediately recommend to Your Excellency the dissolution of both Houses of the Parliament.

My Government will act as a caretaker Government and will make no appointments or dismissals or initiate new policies before a general election is held.

Yours sincerely,

A handwritten signature in cursive script, reading "Malcolm Fraser".

(J.M. Fraser)

His Excellency the Honourable Sir John Kerr,  
A.C., K.C.M.G., K.St.J., Q.C.,  
Governor-General of Australia,  
Government House,  
CANBERRA A.C.T. 2600

Government House,  
Canberra. 2600.

6 November 1975.

*My dear Private Secretary,*

It has been a busy week during which I have had some discussions with the Leaders here.

First, on Monday last (3 November) Mr Fraser sought leave to see me. After mentioning this to the Prime Minister I agreed to let him do so. It turned out that the purpose of his call was to say that he and his colleagues had come to the conclusion that they would be prepared to agree to a scheme under which the House of Representatives would go to an election at the same time as any Senate election was called. This would mean that whether a Half Senate election was called early or late they would retreat from their demand for an immediate House election to one for an election for the House at the same time as the Half Senate election. This could be as late as the end of May or the beginning of June.

Mr Fraser said that he was calling as a matter of courtesy to tell me this, but that he wished to make a public statement and having regard to the fact that he had had earlier conversations with me did not wish to make it without telling me in advance. He had no objections to me mentioning his intention of making a statement to the Prime Minister but said he proposed to issue his statement as soon as his talk with me was concluded.

I saw the Prime Minister half an hour later at a pre Melbourne Cup Reception at Government House, Victoria and told him what Mr Fraser had said. He indicated that he had already heard the substance of the press statement but that he would have nothing whatsoever to do with any election for the House of Representatives. He said that he would never recommend an election for the House of Representatives until he himself was ready to do so and certainly would not do it at the behest of Mr Fraser or the Senate. He later said that the only way in which an election for the House could occur would be if I dismissed him.

I have had conversations today with Mr Fraser, the Prime Minister, the Attorney-General, and the Treasurer. I have done this simply to keep up to date with what is happening and have done so with the approval of the Prime Minister.

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PERSONAL AND CONFIDENTIAL

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As to Mr Fraser, he indicated that he regarded the position as being so serious that the Senate would go on deferring Supply indefinitely and that his Party would hold together for this purpose. This was a factual statement in which he merely repeated to me what he was saying publicly, but I judge that he meant it.

As to the Prime Minister, his position remains the same though he is obviously in two minds about whether he will recommend a Half Senate election early or late. I will not summarise or repeat the various problems associated with the attitudes of the Premiers and their Governors to such a Half Senate election. The Prime Minister does not seem to care whether the Premiers co-operate at this stage or not. In any event he has not yet made up his mind.

As to the Treasurer, he has told me exactly what the Government propose~~s~~ to do to try to carry on without Supply. In effect the scheme is to issue certificates of indebtedness to public servants, members of the defence forces, suppliers of and contractors to the Government. It is hoped that the banks will accept these as security for advances of the amount covered by the certificates taking assignments of the certificates by way of mortgage. The interest on the advances would have to be met in due course by the Commonwealth and this payment would ultimately require legislation.

*was* Discussions were taking place this morning between Treasury officials and the banks, the outcome of which at this moment I do not know. The Prime Minister ~~is~~ confident that they would co-operate. Mr Fraser seems to have considerable doubt about this. In any event the scheme would be messy as the Government itself admits and would by no means cover all matters covered by the Appropriation Bills.

The Attorney-General has explained to me the reasons why the Government is of the opinion that this scheme would be legal to the extent that it operated, that it would not be unconstitutional and would otherwise be within the law. There is every prospect that it will be challenged by someone in the High Court and I would assume that the Chief Justice would do his best to have an urgent hearing of the matter.

I do not see any point, unless you are interested, in outlining the complicated legal story involved in the Government's scheme, certainly not at the present time, if there is prospect of the matter being clarified by litigation. Whether it is so clarified

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PERSONAL AND CONFIDENTIAL

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or not, it obviously is an unsatisfactory way of carrying on Government both because of what has been described as its messy elements and because it does not cover all of the requirements of the Government under existing legislative provisions which need to be supported by Appropriation Acts including the health scheme "Medibank".

The crisis is now a very serious one and if both parties and their leaders remain adamant, an important decision one way or the other may have to be made by me this month. I may say that Public Servants and others, with some exceptions, will probably be able to be paid until the last pay period in November but there will not be Supply, unless the scheme with the banks works, for the first pay in December, namely the 11th December.

Please assure Her Majesty of my continued loyalty and humble duty.

Yours sincerely,

JOHN R. KERR

Lieutenant Colonel the Right Honourable Sir Martin  
Charteris, K.C.B., K.C.V.O., O.B.E.,  
Private Secretary to The Queen,  
Buckingham Palace,  
LONDON ENGLAND



BUCKINGHAM PALACE

PERSONAL AND  
CONFIDENTIAL

27th October, 1975.

*My dear Governor General*

In your letter of 20th October you question whether the material you are sending on the crisis is too detailed. I can assure you that it is not. The Queen is absorbing it with interest and is very grateful to you for taking so much trouble to keep her informed.

I fear any comments I am able to send in return are not of much value but on the other hand I hope that the mere act of writing these letters, for The Queen's information, is of help to you in formulating your ideas as the situation develops.

The impression here is that the political battle is swinging in the Prime Minister's favour. I suppose there was always a good chance that the Opposition's threat to deny supply in the Senate, in the face of the convention not to do so, would boomerang on them and, of course, in this sort of political in-fighting, Mr. Whitlam is tremendously formidable.

I was extremely interested in the Prime Minister's new tactic which you describe in your letter. It sounds very ingenious but I have, of course, no idea whether it would work.

On our side of the world the revocation of Sir Colin Hannah's Dormant Commission has been taken up by the press in a mild way. I enclose a cutting from

this morning's "Guardian" which has got much of it just wrong ! I need hardly say that in this matter there was no question of consulting the Foreign and Commonwealth Secretary. I did, of course, inform the Foreign and Commonwealth Office of what was going on as we are unavoidably dealing with them over the Petition for Sir Colin's removal from the Governorship.

The Queen sends you her best wishes, as do I.

Yours sincerely  
Maurice Chantrem.

His Excellency the Governor-General  
of Australia.

# Queen issues rebuke

By PETER NIESEWAND

The Queen has sternly rebuked the State Governor of Queensland, Sir Colin Hannah, for intervening in Australian party politics.

Acting on advice from Mr Gough Whitlam, the Australian Prime Minister—and after consultations with the British Foreign Secretary, Mr James Callaghan—the Queen withdrew a "dormant commission" issued to Sir Colin in April last year which in certain circumstances allowed him to succeed as governor-general of Australia.

This clear royal snub comes only 10 days after Sir Colin had publicly criticised Mr Whitlam's Government. Sir Colin had said he would be failing the Queensland people if he did not support Opposition party calls for an election.

Sir Colin had prefaced his remarks to businessmen in Brisbane, the Queensland capital, by acknowledging that his position as the Queen's representative should be a neutral one.

His refusal to remain strictly aloof from party politics created a storm in Australia with petitions being circulated calling for his dismissal.

There are three channels through which the Queen receives advice on Australian matters: and all of them are reported to have run strongly against Sir Colin.

Mr Whitlam sent his advice—that Sir Colin should be rebuked by stripping him of some of his responsibilities—through the Australian High Commission. The Governor-General, Sir John Kerr, also came down in favour of a rebuke, and at the Foreign Office in London Mr Callaghan also backed Mr Whitlam's Labour Government.

The Queen's action—although falling short of the sacking demanded by many in Australia—is likely to be the end of the matter for Sir Colin unless he decides his authority has been so badly undermined that his best course would be to resign.

The Labour Party recently suffered a run of serious defeats in the Queensland elections, and Mr Whitlam's Government was not considered strong enough to force the dismissal of Sir Colin.

The Queen may now re-issue Sir Colin's "dormant commission" to another state governor, thus allowing him to take over in the event of the death, incapacity, removal or absence of the Governor-General.



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CONFIDENTIAL



BUCKINGHAM PALACE

23rd October, 1975

*My Dear Governor General*

Your letter of 17th October has been read with the greatest interest by The Queen, who has you and your difficult problems very much in mind. She is closely following events as they unfold.

We must of course still hope that the crisis will somehow become de-fused and I am sure you are doing all that you can, properly, to see that this happens. I fear, however, that you are dealing with two resolute and obstinate men, neither of whom will find it at all easy politically or temperamentally to withdraw from the positions they have taken up.

It must be a very long time since a political storm of comparable magnitude has burst over Yarralumla. Your friends in this house can take comfort that your long training in the Law equips you singularly well to cope with it.

It is a pity that Sir Colin Hannah should have added to the problems by his speech attacking the Australian Government. I was grateful for the message you sent me through David Smith about the Petition from Mr. Burns. I gather there may also be others on the way. I am, like you, sure that The Queen has no alternative but to refer these to the Foreign and Commonwealth Secretary, and I have no alternative but to inform Mr. Burns and others that this has been done. It is unfortunate that the spotlight may as a result be focussed on this matter of the British Foreign and Commonwealth Secretary coming into the act. But, as we have said in the past, that is the constitutional position and until the ground rules are changed we must play the game by them.

Luckily, as far as The Queen is concerned, the revocation of Sir Colin's Dormant Commission presents no constitutional problem. In revoking it she will be acting on the clear constitutional advice of someone who has an unquestioned right to give it.

We all send you our best wishes.

*Yours sincerely*  
*Martin Charteris*

His Excellency the Governor-General of Australia.

Government House,  
Canberra. 2600.

27 October 1975.

*My dear Private Secretary,*

In the current crisis, both sides are appealing to the people for support. Massive campaign meetings are being held in the hope, on the one side, of precipitating a huge back-lash against Mr Fraser and on the other side of obtaining endorsement for what has been done in deferring supply.

The month of November, or a great part of it will be taken up with this kind of activity with bitter debates in Parliament and with further exploration of the loans debate and other political issues.

As to the Loans Affair, Mr Khemlani is said to be coming back to Australia to vindicate himself for having said that he was sure that the Prime Minister knew all about the dealings between himself and Mr Connor after the revocation on 20th May last of the Executive Council minute authorising discussion. The Opposition has fixed upon the allegation that the Prime Minister knew of Mr Connor's dealings but has had no success so far in getting any confirmation of this from the Prime Minister or anywhere else.

The allegation against the Prime Minister is that he has implied that he knew nothing about the dealing after 20th May whereas Mr Khemlani asserts that he did.

As I understand what happened, Mr Connor was dismissed not for continuing to have dealings with Mr Khemlani but for saying that he had tabled all substantial documents which came into existence after 20th May. There will be a lot more coming and going on the Loans Issue.

The campaigns will proceed in public and the debates will continue in Parliament which is being kept in session. In due course the Gallup Polls will begin to give some indication of where the people stand.

The crunch will not come, so far as I am concerned, until the state of public opinion becomes much clearer. If it becomes obvious that Mr Fraser has made a serious mistake he may wish to retreat and allow supply to pass. There is a suggestion that he may hope to be helped to retreat by some "advice" from me.

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If it appears that the state of public opinion is that a high proportion of people believe that Mr Whitlam should go to an election, the question will ultimately arise as to what I should do on the assumption that supply is rejected and the money is about to run out or has already done so. He will have tactics for obtaining credit for public servants and others inconvenienced. How this affects the matter has yet to be ascertained.

In Australia, the Senate is said by most lawyers to have a legal right to reject supply though this has just been denied by a very able lawyer, Sir Richard Eggleston, a former judge, in today's "Age". Assuming however that the Senate has the legal power to reject supply, whether it should do so is a political question involving argument about whether there is a constitutional convention that it should not do so. Some say it should never do so, others say that it should do so only in extraordinary and reprehensible circumstances which it is claimed have arisen.

As I see the matter, it is not for me certainly at this stage, to judge the political question especially as there is a political background going back to the Federation debates in the '90's as to what was the State compact on money bills. (See enclosed clipping.)

It could easily happen that Parliament will, by the end of November, have finally and unequivocally denied supply and the Government will be attempting to govern without it. This will be so if one of the quite likely courses of events takes place, that is to say, if total deadlock persists. In such a situation it will become necessary to consider whether the Prime Minister and his Government should resign or recommend a dissolution. I should have to consider whether I should ask for this.

I do not need to spell out the problems involved in such a course of action if the Prime Minister refuses to do either of these things as he says he will. On these questions, some opinions expressed by Sir Paul Hasluck in his Queale Memorial Lecture in 1972 have been widely canvassed. In case you do not have a copy of this lecture I attach one together with a summary of it published in the Australian on Friday last. A relevant passage from the lecture is -

"In normal times when customary practices and procedures are being followed and the Constitution and laws of the Commonwealth are being scrupulously observed, the role of the Governor-General in Parliament would seem to be a matter of unbroken routine. In abnormal times or in case of any attempt

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to disregard the Constitution or the laws of the Commonwealth, or even the customary usages of Australian government, it would be the Governor-General who could present the crisis to Parliament and, if necessary, to the nation for determination. It is not that the Governor-General (or the Crown) can over-rule the elected representatives of the people but in the ultimate he can check the elected representatives in any extreme attempt by them to disregard the rule of law or the customary usages of Australian government and he could do so by forcing a crisis."

Not everyone agrees with Sir Paul Hasluck but in conditions of momentous deadlock over supply the question whether the Hasluck doctrine should be accepted and a final constitutional crisis precipitated by Vice-Regal act will have to be thought about. This would force an election. Any Vice-Regal decision either to act or not to act in this kind of situation will be, I suppose, the subject of debate and criticism. I am simply looking into the future and exploring options. I have still not made up my mind.

I enclose a couple of clippings which you may find of interest.

Depending on what happens I am thinking of taking some leave from just before Christmas to the end of January. This is a dead season in Australia. No election could possibly take place in January and very little national business is done. It is something like Paris in August. If the crisis is over there will be nothing to worry about. If it is not over but an election is to take place I will have to remain in a completely neutral position and absence may be the best way to ensure this. Of course, if we have the running sore of a continuing crisis I probably would not be able to take leave. If however, one way or another I can take some leave I shall explore the possibility of a completely unofficial trip to Paris for a short period of time with an informal visit to the United Kingdom.

This is all speculative and I should need The Queen's approval and I should not ask for it unless it is a feasible proposal. If by any chance I am in London for part of January and there were a possibility of an audience with Her Majesty for a short period anywhere in the United Kingdom I should be very happy and grateful but I should not ask for this unless it is a sensible and defensible thing to do in the light of whatever is happening. Of course I appreciate that until the crisis is over Her Majesty may in any event prefer not to receive me.

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I am remaining calm about it all and seek no "man of destiny" role in all of this.

There is one point I should like to raise. There has been the odd reference in the press to The Queen having been kept informed and this has been confirmed from the Palace. I appreciate that, except on such matters as those upon which the Prime Minister advises Her Majesty direct, she would be anxious - or at least so I assume - for this crisis to be worked out in Australia. However anything I may do or not do could indirectly affect the Monarchy in Australia and I should welcome any observations on a private and personal basis which you may care to make and which, as you see it, should be taken into account in the interests of the Monarchy in Australia.

In mentioning this I have no desire to escape from any responsibility which the Constitution places on my shoulders or to lessen it or have some excuse for any particular course I may take, but I feel that I should consider, in deciding what I ought to do, anything which may directly or indirectly affect The Queen.

29 October 1975.

I can state shortly the developments which have taken place since the typing of the first part of this letter.

The controversy rages as before. My impression is that Mr Fraser has lost ground in the struggle and this was today confirmed by the latest Gallup Poll. I enclose the details which speak for themselves. Since the date of the poll (18 October) I think Mr Fraser has lost more ground.

Mr Khemlani has come back to Australia and has offered to give evidence before the Senate on his assertion that the Prime Minister knew all about his dealings with Mr Connor after May 20th when the Executive Council revoked the minute authorising Mr Connor to obtain a loan. Mr Khemlani brought an enormous number of documents with him and went into session with advisers of Mr Mynch, the Deputy Leader of the Liberal Party.

No documents appear to exist to prove that the Prime Minister knew of the dealings between Mr Connor and Mr Khemlani. Mr Ellicott has examined the documents and has said that they do not directly show the Prime Minister's knowledge of the dealings. Nevertheless, the

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Opposition continue to assert that in fact the Prime Minister must have known and did know that Mr Connor was doing business with Mr Khemlani. The Prime Minister has been very careful in handling questions on this subject.

Mr Khemlani has asked to be heard at the Bar of the Senate. Both sides are being cagey about calling him. The Government has said so far that it does not propose to call him though it does not oppose his being heard if the Opposition move to hear him. The Opposition seems to be concerned that if he does appear on the floor of the Senate it may not be in the long run to their advantage. Today will be a day of decision on this point.

As to the general crisis, there is little that I can add to what I have already said. I attach a copy of a letter which was published this morning in the Sydney Morning Herald. It is a letter of Sir Norman Cowper whom I know very well as an elder statesman in Sydney and with whom I have worked on various matters in the Institute of Political Science and the Council on New Guinea Affairs for 15 to 20 years. He is a wise old man. I have not talked to him about the crisis but I was pleased to see his exposition in his letter of what the whole thing is about.

The Government is being attacked because the Treasurer has conceded that on the afternoon of the day of the Budget, some hours before the Budget Speech Mr Hawke, the President of the Australian Council of Trade Unions and the President of the Australian Labor Party, was given a secret briefing on the contents of the Budget. This was done, according to the Treasurer, because an important aspect of the Budget was wage restraint and he did not want to run the risk that Mr Hawke would make an adverse "off the cuff" comment after the Speech was made. This Budget "leak" is being used as part of the overall attack on the Government which is being made to justify deferring supply.

One of the consequences of the crisis is an economy campaign which includes a cut-back on couriers to London. This letter will not go until a bag is sent on Tuesday next. But I shall finish at this point. I shall send another if events warrant this.

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My wife and I shall have the pleasure of seeing Her Royal Highness The Princess Margaret in Sydney on Friday and Sunday next.

Please assure Her Majesty of my continued loyalty and humble duty.

Yours sincerely,

JOHN R. KERR

P.S.

30 October 1975.

This morning's paper disclosed a new poll conducted in the capital and major provincial cities. This shows that 70% of Australia's capital city voters believe the Senate should allow Supply to pass, and 54% believe that Labor should continue to govern, rather than resign and hold a general election. There is apparently quite a big swing against Mr Fraser and in favour of the Government. The swing is not yet enough to produce a victory for Mr Whitlam were there to be an election but as you know now that the gap has been significantly narrowed, the campaign itself could produce a further swing. However, Mr Whitlam has not yet moved in the direction of accepting that the time is ripe for a double dissolution nor even, though this is much more possible, for a Half Senate election. Some people believe that he will ask for a Half Senate election this week or early next week. If there is to be such an election before Christmas he really should move in the next few days. Even if he seeks a Half Senate election there is no guarantee that supply will be granted even to get the country through the period of the campaign. Such an election would, if it were held, probably take place on 6th or 13th December. I enclose two editorials, one from The Age and one from The Financial Review of today's date and a clipping about a suggested role for the Governor-General from today's Age.

Lieutenant Colonel the Right Honourable Sir Martin  
Charteris, K.C.B., K.C.V.O., O.B.E.,  
Private Secretary to The Queen,  
Buckingham Palace,  
LONDON ENGLAND

THE AGE, MONDAY, OCTOBER 27, 1975.

THE AGE, MONDAY, OCTOBER 27, 1975.

# Sir Richard disagrees with Sir Robert

FROM SIR RICHARD  
EGGLESTON

LETTERS TO THE EDITOR **The Canberra crisis**

SIR, — Like Sir Robert Menzies, I have so far abstained from publishing my views about the current constitutional crisis. But having read his statement, and having heard it called in aid by Mr. Anthony on Saturday, I feel bound to enter the discussion to point out that there is another view of section 53 of the Constitution which, in my opinion, is the correct one.

Sir Robert quoted what he said were the material provisions of section 53. He omitted, however, two sentences which seem to me to have an important bearing on the matter. I think it is time that the section was quoted in full; it reads as follows:

"53. Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate. But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law.

"The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government.

"The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.

"The Senate may at any stage return to the House of Represent-

tatives any proposed law which the Senate may not amend; requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modifications.

"Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws."

The two sentences to which I refer are those in black above. There are several things to notice about these provisions.

First, if the Senate desires that any part of a "money bill" (to use a convenient term) should be omitted, its course is specifically pointed out — it should return the bill to the Lower House with a message requesting the omission. It is hardly consistent with these words that the Senate should be able to omit the whole of the bill by some other means, i.e. by rejecting the whole measure.

Secondly, the final decision as to whether the omissions or amendments requested by the Senate shall be made rests with the Lower House, which "may, if it thinks fit, make any of such omissions or amendments". This language hardly marches with the idea that, if the Lower House does not think fit, the Senate may throw out the whole measure.

Thirdly, the words "equal

power with the House of Representatives in respect of all proposed laws" do not contain any necessary implication of the right to reject "money bills". The section is dealing with the powers of both Houses in respect of all legislation, and if the preceding provisions of the section mean that the Senate has no power to reject a "money bill", the words just quoted mean that in respect of laws other than money bills, the rights of the Senate are equal with the Lower House. The earlier words must be construed first, before we can determine what the final sentence means.

I am aware that there is a history behind the wording of the section, and that the smaller States wanted the Senate to have more power over money bills than the larger States wished to concede; but the question is not what they wanted, but what the words which were finally agreed to mean.

I am, of course, also aware that the Senate has not purported to reject the bills, but has amended the motion before the Senate with words to the effect that the bills will not be passed until the Government has agreed to an election for the Lower House. As to this, if the Senate had purported to amend the bills to provide that they should not come into effect until such an election had been called, this would have been clearly contrary to section 53; but the present con-

duct of the Senate has exactly the same effect.

I note that Sir Robert said: "Let me repeat, the Senate may not amend these measures, but it may reject them, or, of course, in the ordinary process of debate, it may adjourn them." The italics are mine. It seems that Sir Robert would agree with me that the present behavior of the majority of the senators is not only not warranted by the Constitution, but is contrary to its clear intent.

R. M. EGGLESTON (Toorak).



# It couldn't happen in the Lords

THE constitutional crisis that is shaking Australia is very reminiscent of the ten-year battle that raged over the framing of the Constitution at the turn of the century.

That battle, too, was fought out most of all on the issue of the powers of the Senate versus those of the House of Representatives. And the upshot of that was that the smaller colonies overwhelmingly defeated the NSW and Victorian delegates who wanted to make the Senate subservient to the Lower House.

As Sir Edmond Barton, leader of the Australasian federal convention which in 1897-8 produced the final constitution put it:

"We cannot fail to remember that the Constitution designed the Senate to be a house of greater power than any ordinary second chamber."

"Not only by its express powers, but by the equality of its representation of the States, the Senate was intended to be able to protect the States from aggression."

And indeed the Senate's powers are more far-reaching than those of any other Upper House in the world, except the U.S. Senate on which it is partly modelled.

Except for its inability to initiate or amend money bills or tax measures, it has equal powers with the House of Representatives. In the ten years of constitutional debates, committees and the three key constitutional conventions — in Sydney, Melbourne and Adelaide — in the 1890s some 20 per cent of the debates revolved around the Senate's powers over money bills and the resolution of conflicts between the two Houses.

It boiled down to a fight between NSW and Victoria, on the one hand, who wanted to give supremacy to the lower house, and the other, smaller States on the other who wanted the Senate to be the "watchdog" of their interests.

Australia has reached the critical stage where the Constitution's provisions are inadequate to overcome the Budget deadlock.

For 74 years the Senate has not used its greatest power — the power to reject the Budget — and it is now threatening to do so. Yet the constitutional means for breaking the deadlocks between the two Houses — a double dissolution — cannot be applied until three months after the Budget has been rejected.

Did the framers of the Constitution have such a situation in mind when they wrote the Constitution? The evidence of their lengthy debates indicates that they discussed the issue almost to the point of exhaustion. And the Constitution, as written, is the result of a series of compromises worked out by politicians over this decade.

**GRAHAM WILLIAMS**  
with the background to the formation of the world's second most powerful upper chamber

Sir Henry Parkes, the big, bearded Premier of NSW, hosted the crucial 1891 constitutional convention of 35 delegates from all the colonies and New Zealand at Parliament House, Sydney.

Not only was present the 75-year-old Parkes, and Edmond Barton, an up-and-coming barrister for NSW, but also the venerable builder of an empire, Sir George Grey, from New Zealand, Sir Samuel Griffith, the Queensland Premier, and Alfred Deakin, one of eight Victorian delegates.

## Venerable

Parkes put forward his resolution providing for a Federal Constitution in which the House of Representatives was to have "sole power for originating and amending all bills appropriating revenue or taxation."

In the discussion that followed, Sir Samuel Griffith argued that the Senate should have absolute power of veto. To refuse it the power of amending money bills, he said, would be to refuse it the power of "veto in detail" of those bills.

He admitted that the principle of equality of the two Houses was new in responsible government, but argued that the Constitution was elastic enough to enable the Minis-



SIR EDMUND BARTON . . . protecting the States

ters to work out its development.

In the debate, Sir John Downer, who had been Premier of South Australia, and had an impressive reputation at the Bar, put the extreme case of the smaller States when he moved an amendment that the Senate should have the power to "reject in whole or in part" any bills including money bills.

Mr J. Wrixon, of NSW, replied with another amend-

ment stating that the powers of the Houses should be equal except in relation to money bills, which the Senate should be entitled to affirm or reject, but not to amend.

At last, in a "spirit of compromise," both sides agreed to withdraw their amendments and make no decision at that stage.

Sir Henry then put the draft Constitution to the NSW Parliament — but it remained in suspended animation for six

years. Many of the citizens and parliamentarians in NSW and Victoria — especially the radicals — were opposed to the terms of federation as proposed in 1891. Labor men criticised the 1891 draft as "undemocratic" because it lacked provisions for "One Man, One Vote," and provided for the election of Senators by State Parliaments, whose Upper Houses were not popularly elected.

At the Adelaide convention in 1897, the critical question was the power of the Senate to deal with money bills.

Again it was a battle between NSW and Victoria, on the one side, and the smaller States.

Sir John Forrest, Premier of Western Australia, announced cheerfully and often "we have a majority" — and they used it to the hilt to give the Senate as much power as possible.

George Reid, the NSW Premier, moved that the Senate have the right to reject money bills, but not to amend them. Sir George Turner, Premier of Victoria, supported him and said he had gone a long way in conceding equal representation in the Senate between States.

## Impair

But Mr McMillan, a NSW delegate, argued with Downer that the Senate, without the power to amend money bills. Finally, after a long and bitter debate, Reid's amendment to prevent the Senate amending money bills was passed by 25-23.

The debate over the deadlock provisions of Section 57 (which provide for double dissolution after three months) was also continued almost to the point of exhaustion.

The outcome is a Constitution which, as Professor L. Zines, Professor of Law at the Australian National University says, is incomplete — and depends on practices and conventions for stability of government.

"One such practice is that the Senate does not exercise its power to reject money bills, he says. "It is an important practice that if thrown aside by the Senate will impair responsible and stable Government."

But the Leader of the Opposition in the Senate, Senator Reg Withers, is adamant that the power to veto money bills should remain with the Senate.

"It's only because the Senate was given this power that Federation was able to occur in the first place," he said.

The Prime Minister, Mr Whitlam, is relying on the basic premise of the Westminster system — that the party with a majority in the Lower House should have the sole rights in money bills.

If Mr Whitlam wins the struggle, the Senate's powers will be, de facto, abridged. If Mr Fraser emerges victorious, the Senate will be even more powerful than in the last 74 years.

**YARRALUMLA** in the spring. More like 132 acres of slumbering convent garden than the arena for settling Australia's gravest constitutional crisis.

The rhododendrons and azaleas that skirt the drive beneath the new-leaved oaks and elms have burst forth in new-season reds, purples and pinks for the occasion. In nunnery-like peace, the ten gardeners chip, weed and mow the acres of green carpet that roll down to Lake Burley Griffin and around the ponderous 60-room Government House.

Slowly, steadily the bitter constitutional struggle that has brought 45,000 people out on to the streets in the past week to cheer and jeer both sides is moving, almost by a process of osmosis, to Yarralumla.

Will the Governor-General, Sir John Kerr, intervene? Can he slip in and push us back from the brink of economic chaos? Is he working on a compromise solution to the political deadlock?

Kings are born to their thrones. And until recently it seemed that blood rather than brains was also the most important qualification for royalty's vice-regal representatives. Suddenly the post of Governor-General assumes a new shape and character no longer an anachronistic hangover from the days of imperial rule.

Now the monarch's representative in Australia is seen to be at the very heart of a fragile constitutional structure. He very likely has to play an active, galvanising, above all conciliatory role.

Few doubt that John Kerr, the man for all seasons, the boiler-maker's son from Balmain who made it to Buckingham Palace via the Bar, is the man of the hour.

He went into action this week. At 5.30 on Tuesday night after a day of pressure-cooker tension at Parliament House, Sir John's secretary rang Malcolm Fraser's office to summon him as Leader of Her Majesty's Opposition. Mr Fraser left Parliament House soon after 7 pm for the eight-kilometre trip and returned, his hair in some disarray, at 8.30.

It was no cordial chat about the weather. Mr Fraser's press secretary, David Barnett, issued this statement on his behalf: "The Governor-General asked me to go. I went as was my duty. We discussed the current political situation. I have nothing further to add."

**Right royal banquet**

Sir John received Mr Fraser in his study. The walls are lined with books—Australian constitutional tomes and Sir John's own extensive library of legal books. On one wall is a copper beating which his old friend Michael Somare, Prime Minister of Papua New Guinea, gave him two years ago.

Sir John and Mr Fraser sat on the conversation suite beside the desk, near the window that looks out over the lake and up to Black Mountain. The Governor-General probably asked Mr Fraser to explain the Opposition's actions in blocking Supply.

On Wednesday Mr Fraser seemed to be anxious to get a solution from the Governor-General. "If he (Sir John) gave a decision, we would respond and accept it absolutely," he told a press conference. "If he gives advice we would give the greatest possible weight to it because of the respect we have for the office and for the man."

That night the lion of Government House, the man of destiny whose silver mane sits like a judge's wig, presided over a right royal banquet. It was only a five-course feast (because Princess Margaret is trying to lose weight), washed down with reds and whites. Sir John presided at the table at which sat Gough and Margaret Whitlam and Malcolm and Tamara Fraser.

John Kerr has always had the uncanny ability of being in the right place at the right time — and doing the right thing.

People can't resist the poor-boy-makes-good romance, so Sir John Kerr has never been allowed to forget the circumstances of his birth. He was born in 1914 (a Virgo if that makes any difference) — Balmain — a solid cheek-by-jowl Sydney working-class suburb. His father was a boiler-maker, so inevitably the romantics have dubbed him the Boiler-maker's Boy from Balmain. But the reality is that most of Sir John Kerr's adult life has been steered in a firmly patriotic direction.

Fort Street Boys' High School, where he was schooled, was hardly patriotic. But Kilgour, the outstanding headmaster of that time, produced a number of proteges who rose to the highest ranks of position and influence. Men such as Ewart, Barrick, Spender — and Kerr.

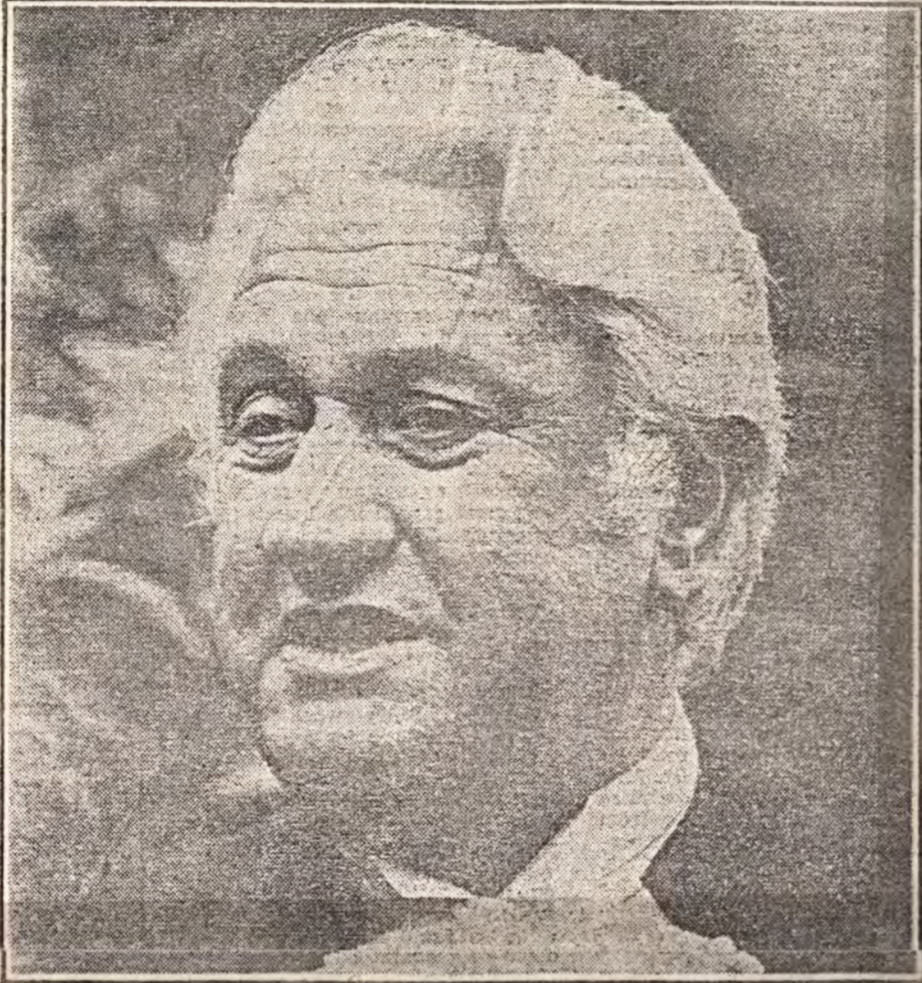
He scored a near maximum pass (two first-class honors, three As and a B) for the Leaving Certificate.

His parents knew Bert Ewart and had campaigned hard to get him elected as independent member for the State seat of Balmain in 1925 and 1927. Bert, at 35, in the mid-1920s was a High Court judge. And John Kerr, who had won a bursary in arts to Sydney University, wanted to follow in his footsteps and do the more costly law course. His dad packed him off to seek Bert's advice. "Don't hesitate, do law, and come back and see me whenever you can," advised Bert.

So the Kerr family scraped together the money so that John could do law. He won several prizes on his way through his degree, was never part of

# THE MAN IN THE MIDDLE

**SIR JOHN KERR, 18th Governor-General, may have the gravest responsibility ever thrust on a Vice Regal representative in Australia — the decision he makes in the current constitutional crisis may reshape Australian politics. Who is the man behind the anonymity of the office? GRAHAM WILLIAMS and JOHN LAPSLEY report**



the "social set," and soon he was one of the most promising young barristers in Phillip Street.

He was drawn inevitably into the Labor Party. From the earliest days he had a purposeful air. A young man of destiny. When the war came he joined General Sir Thomas Blamey's staff — three years after he had been admitted to the Bar. There began his intense interest in the South Pacific countries.

When he was admitted to the NSW Bar in 1938 war was looming, and one colleague remembers him stating: "We are the doomed generation." But the fact is that the war proved the making of John Kerr. He went into it a virtual unknown and came out as a man with great prospects.

In 1942 he was seconded to the newly established Directorate of Research and Civil Affairs under Colonel Alf Conlon. It was a high-flown affair numbering in its ranks men like Sir James Plim-soll, Professor Wal Stanner, publisher Peter Ryan, geographer John Andrews, Professor Jim McAuley, and other men destined for post-war prominence.

Many of the directorate's functions are still a mystery. But it is known that it operated as an unorthodox "fix-it" unit working out Australia's post-war strategies for Papua New Guinea and the South Pacific — and attempting to drag Britain and the United States around to the Australian viewpoint.

Sir John Kerr once referred to the unit in a radio interview as "existing for the purpose of the Commander-in-Chief's relations and the army's relations of a slightly unorthodox character, with outside institutions in this country and abroad. . . the Commander-in-Chief felt the need of a group of people to advise him on what were non-orthodox military problems, not merely internally but in relation to Whitehall, the British Army, and also, as time showed, colonial problems in New Guinea and Borneo and relations with the Americans in Japan and so on."

Conlon had close contact with General Blamey and two Labor Prime Ministers — John Curtin and Ben Chifley. And young Kerr, as Conlon's chief assistant, was quite suddenly rubbing shoulders with the mighty.

Inevitably, experience like this gave him political acumen. It also stirred

ambitions which some people around him saw as transparent. "He was very pushy, and a self-seeker," one war-time colleague maintains. "The man has a very good brain, but I don't think he could be regarded as an original thinker."

He returned to the Bar in 1948 and as a member of the A.L.P. began doing very well in industrial practice. It was a time of great industrial unrest. The Labor Party was factionalising into two dominant groups: the extreme left, many of whom supported communists when Sir Robert Menzies saw them as the country's greatest enemy, and the extreme right.

The right wing was dominated by the Catholic "Groupers" — the "Movement" which marshalled all true Catholic unionists in great secrecy to overthrow the left-wing union leaderships.

In the Labor split of 1954 Kerr sided with the Groupers, and left the party. In fact, he made his reputation as an industrial lawyer with the right-wing unions — especially with his success for the Ironworkers' secretary, Mr Laurie Short, in the drawn-out court battle against the communist sections of the union.

His politics drifted to the right of centre and at one stage he was sounded out as a candidate for a Liberal seat.

Yet somehow he managed to steer clear of the lasting bitterness many A.L.P. men felt towards the Groupers. But in some circles at least Kerr's change of political heart still rankles.

Tom Dougherty, secretary of the Australian Workers Union, claimed that Kerr did legal work for the movement — a claim which Kerr denied. But so strong were the hatreds in those days that those who weren't "for" were considered "against."

## Establishment membership

John Kerr joined a group of budding young Labor lawyers — Lionel Murphy, Jim McClelland, and Neville Wran — who between them in the 'fifties handled a vast quantity of legal work for competing unions. Murphy appeared for many left-wing unions, Kerr for right-wing unions.

The pragmatic lawyer left the A.L.P., never to return, when the party split in 1954 after Ewart denounced the Movement publicly.

He took up a variety of cases — he defended Richard Neville successfully in the Oz obscenity trial, argued the cattlemen's case against Aboriginal stockmen who sought full award wages, and appeared as the Liberal Government's advocate for wage restraint in a national wage case.

The 'sixties saw him jump the barrier to membership of the Establishment.

John Kerr plunged himself into a host of jobs. Everything from presidency of the NSW Marriage Guidance Council to vice-presidency of the NSW Bar Association; and the following year the presidency of the Law Council of Australia. He was also deputy president of the Trade Practices Tribunal and on the Copyright Tribunal and the Medical Board of NSW.

These posts were heading Kerr on an inevitable path — the Bench and, eventually, knighthood. And they were Liberal Government appointments. In 1966 he became a judge in the Common-

wealth Industrial Court and the A.C.T. Supreme Court. By 1972 he'd made it up to Chief Justice of NSW.

In the early 'sixties his wife, Alison, fell sick and the indefatigable John Kerr, then in line for the High Court Bench, had to spend much of his time caring for her. The High Court would have involved him in a lot of travel between cities. He needed a job where he could stay to look after her.

In 1966 he was appointed a judge of the A.C.T. Supreme Court. An unexpected posting for a formidable Sydney QC. But he came down with his wife, and they stayed at the Canberra Hotel on weekdays.

He mixed easily with his friends on both sides of the political fence, with reporters, unionists, diplomats, departmental heads. "He always liked to have a good chat on anything over a beer at the Canberra," says one friend.

In 1972 Robert Askin (then Premier of NSW) unexpectedly appointed him Chief Justice of NSW and it sparked off a wave of correspondence in the columns of the Sydney Morning Herald. Some of the professionally anonymous writers said that Sir John had ruled himself out of the job by leaving the NSW Legal Service to enter the Commonwealth jurisdiction. Their resentment went deeper, because Sir John had several envious colleagues at the Bar.

Everything suddenly fell into place for John Kerr when he became Chief Justice. He rose rapidly. In 1973 he was appointed Lieutenant-Governor of NSW and was knighted in the New Year Honors of 1974.

A few months later Gough Whitlam proposed that Sir John forsake his old Yarralumla mansion for Yarralumla. It was the final accolade. Without question Sir John Kerr's elevation to that position was one of the most popular vice-regal appointments made in Australia.

On July 16 he walked into what many thought was an anachronistic post, staffed by a valet, head housekeeper, five footmen, five housemaids, five kitchen staff and a laundress.

But his official staff of six and the nine xpists have had their heads down working flat-out ever since he arrived. He entertains on a prodigious scale. First, at a series of buffet dinners, all the members of Parliament, and 40 members of the press gallery.

This remarkably gregarious man, who will throw open Government House for public inspections from next weekend,

says he wants to get to know as many people from diverse walks of life as possible. He sees artists, trade unionists, heads of departments, church groups, scout leaders in an endless round of meetings, receptions and chats.

He works so hard — he is often up at 6.30 am and not in bed until after midnight — that some of his advisers worry that he could damage his health. But this is Sir John's style. He is in touch with everything. He closely monitors the pulse of public life.

And for weeks now he has been examining the growing constitutional crisis from every angle. He has been advised by the Prime Minister on the course of events. But he cannot be partisan. As the representative of the monarchy his job is to act in the interests of all the people.

In a crisis, he has residual powers to intervene and dissolve the House of Representatives — though he may not call an election, except on the advice of his Executive Council, which consists of the Prime Minister and his ministers. But his powers are really very limited. As the former Governor-General, Sir Paul Hasluck, put it in his William Queale Memorial Lecture in 1972: "The Governor-General's only advisers are his ministers. His only experts are those whom he chooses to consult in the whole of the Commonwealth structure of government."

## Dependence on Government

He does not receive advice from the Leader of the Opposition — a point which Sir John probably drove home diplomatically when he saw Mr Fraser. This very dependence on the Government of the day circumscribes and severely limits his ability to act. Indeed, Sir Ivor Jennings, the great British constitutionalist, makes it clear that there is no precedent for the monarch to dismiss her ministers since 1834 when Lord Melbourne was removed from office.

Sir John doubtless knows off by heart Mr Asquith's memorandum to King George V over the contentious Home Rule Bill in 1911: "If the king were to intervene on one side — which he could do only by dismissing ministers in de facto possession of a parliamentary majority — he would be expected to do

the same on another occasion, and perhaps for the other side.

He would, whether he wished it or not, be dragged into the arena of politics and at the dissolution (of Parliament) following such a dismissal of ministers it is no exaggeration to say the Crown would become the football of contending factions. This is a constitutional catastrophe which it is the duty of every wise statesman to do the utmost in his power to avert."

So the old hand at mediating and settling squabbles is now faced with the biggest crisis of his career; the man who sees the Governor-Generalship as an evolving role did not envisage it coming to this when he took the job.

A miscalculated act, anything that could be interpreted as partisan or interfering in the processes of government, could destroy the integrity of his office.

He is receiving advice from the Government in private — and he has received a lot from the Opposition in public. It is clear that Mr Fraser would be happy for Sir John to intervene. But Mr Whitlam wants him to stay out of it.

## Ancient mystique

But if the blockage continues and the place gradually comes to a standstill, the guardian of the Constitution will — say the constitutional lawyers — have to act. For the money supply has to be maintained.

But does he have to act? Twice in Victoria last century, when the Upper House blocked Budgets, the Governors acquiesced in the Government's wishes not to intervene. Those crises lasted for six months. We are far from that desperate stage. But the Governor-General's role is vital.

The point is that he will be active whatever he does — intervenes, stays out or calls the warring factions together for consultations.

There are strange difficulties involved in unravelling personal information about a Governor-General. Friends will prattle on happily about the teenage pimples of a leading politician. But a man's selection as Governor-General quite suddenly throws some ancient mystique about him. He inherits a divine right to privacy — relatives and friends overnight gain the belief that they have some social obligation to cloak him in secrecy and that breaking that rule could involve some fearful retribution.

When a man's path to the vice-regal position has taken him through the judiciary, which has its own independent tradition of private-life secrecy, it means that only a select few can have the slightest inkling of what is really wrapped inside the top hat and morning suit.

There seems a certain justness that it is Sir John Kerr who is the Governor-General facing a situation that has dramatically highlighted the importance of a post that had long been passed off by the general public as something of an anachronism.

Quite recently Sir John told an old friend: "Politics is still my first love."

His vice-regal position does not involve political participation. But it would be impossible to think that Sir John Kerr — certainly a political creature in many ways — does not deep down feel some sense of fulfillment.

To arrive where he is, Sir John had to be an ambitious man. Otherwise he could never have joined the select few who are considered for vice-regal positions. But it is a supreme irony that a man who more than 20 years ago chose not to take the path into politics should now find himself in a position which, although it is neutral, is now of great political importance to Australia.

The constitutional crisis may be a threat to Australia. But if Sir John Kerr does play a significant role in ending it, the role would inevitably be for him a fulfilment. He's not the sort of man to be unaware of his position in history.

## Japanese Humour

Japanese humour is subtle and poetical, and both these characteristics are expressed in senryu, seventeen-syllable poems which have been popular in Japan for centuries. The following senryu is an example:

Kosaten jibun ni jama na hito bakari.

At the street crossing:  
All the other people  
Get in my way.

This is Japanese humour at its most gentle.



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Australia's political crisis evokes echoes from an older parliament. T. S. MONKS, Herald diplomatic correspondent in London, recalls a crisis that embroiled King George V — and another which destroyed the popularity of William IV.

LATE ON a sweltering night in the August of 1911, King George V restlessly paced his study in Buckingham Palace. His thoughts were half a mile away, across St James's Park, in the packed and stifling House of Lords where the momentous clash with the Commons had come to a climax.

And the King feared a humiliation which would spoil the reign he has just begun — the call to him to fulfil a pledge he had uneasily given to create new peers on a mass scale, men who would ride with the will of the Commons.

It would have been, as Winston Churchill wrote, "manufacture of hereditary nobles on a scale certainly fatal to the whole institution of the peerage." The Prime Minister of the time, Mr Herbert Henry Asquith, had already prepared a list of 250 new peers who could be expected to be obedient to his Liberal Government and its decisions in the Commons. But even if 500 were needed Mr Asquith, with his quiet but ruthless determination, was prepared to insist that the King fulfil his opened pledge.

The long-smouldering constitutional crisis had broken out two years before, in 1909, when the House of Lords rejected the Budget. It was what had been called "the people's Budget," and had been presented by Mr Lloyd George as Chancellor of the Exchequer. It sought to save on the naval estimates in order to spend on social services. It also sought to increase tax on higher incomes, to put up death duty by a third, and to bring in the valuation of land as a prelude to further taxation of the rich.

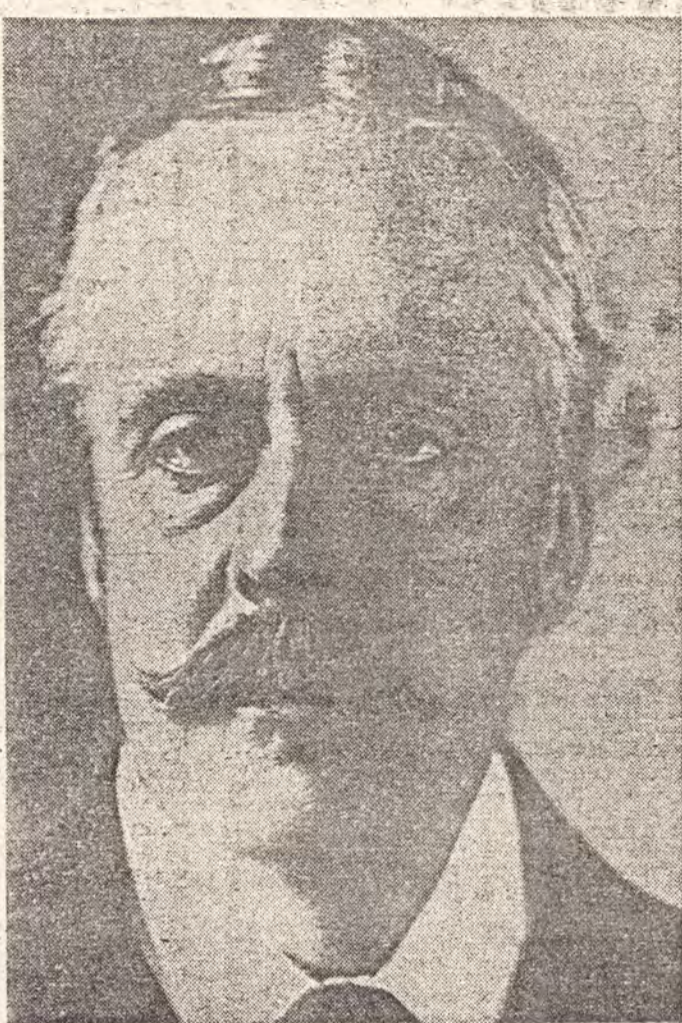
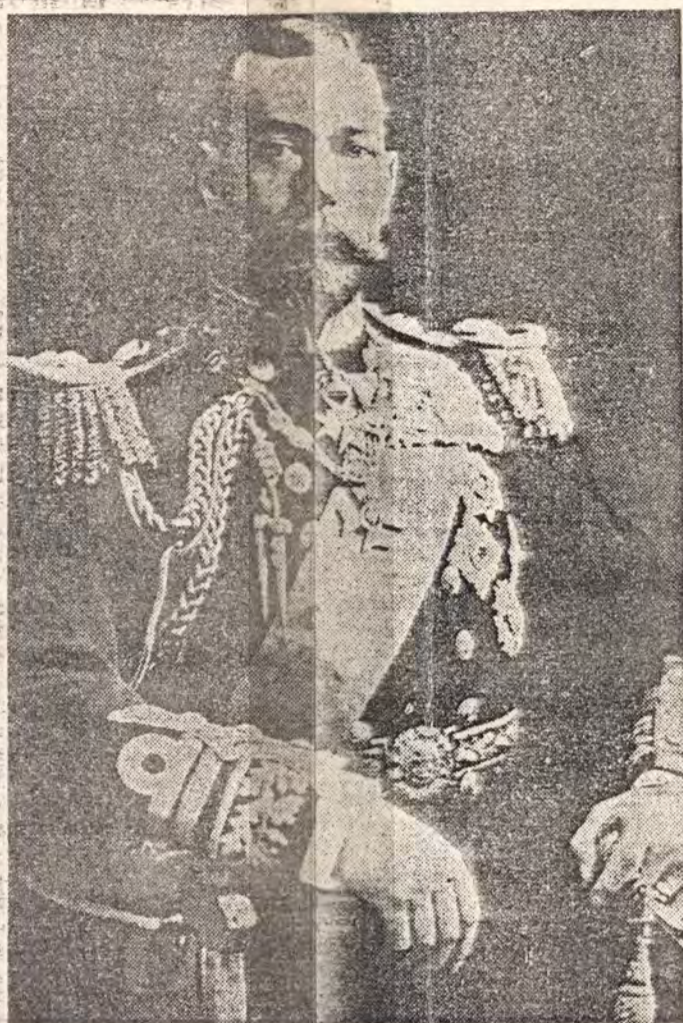
Lloyd George had been expecting trouble from the House of Lords, with its huge built-in Conservative majority. He regarded it as a creature of the Conservative Opposition in the Commons under Mr Arthur Balfour, and said it was not the watchdog of the constitution, but "Mr Balfour's poodle."

"It fetches and carries for him," he said. "It barks for him. It bites anybody that he sets it on to."

The House of Lords certainly bit the Budget, and flung it back to the Commons, by a vote of 350 to 75. The Liberal Government of Mr Asquith and his allies in the Commons then passed by 349 votes to 134 a motion: "That the action of the House of Lords by refusing to pass into law the financial provision made by this House for the service of the year is a breach of the Constitution and an usurpation of the rights of the Commons."

The scene was being set for one of the mightiest of confrontations between the two Houses of Parliament. Not for 250 years had the Lords attempted to veto a finance bill from the Commons. Since the fifteenth century, the Commons had established the right to initiate all financial legislation. From the obscure process of separation of Parliament into "Lords and Commons" arising in the thirteenth century — when the representatives of the common people withdrew from the nobles to talk among themselves and conveyed their views by a nominated "speaker" — the Commons had finally come to regard themselves as superior in the legislative process.

But here, in 1909, the Lords were determined to over-ride the Commons.



Central figures in the 1911 clash between Commons and Lords (from left): Mr Asquith, King George V, Mr Balfour.

# The Budget crisis that trapped a king

King Edward VII was then still on the throne and was gravely concerned. He saw with alarm that he could become involved in the crisis. He called in Mr Balfour and the Conservative leader in the Lords, Lord Lansdowne, and urged them to restrain the Lords and allow the Budget to go through. His plea was rejected. His fear then was that the Liberals would call on him to create enough new peers, 300 or more, to ensure the Budget's passage.

This prospect increasingly worried and depressed King Edward. He felt that, whatever he did, he would be accused of being partisan by either the Liberals or the Conservatives. Away at his favourite resting place of Biarritz, he fretted over possible compromises.

And then, suddenly, he died. Many felt that the sharpening, increasingly bitter constitutional crisis had hastened his end.

King George V had now to deal with the crisis. An inter-party conference gave him breathing space for a few months, but that broke down. The Government decided on a general election, the second that year of 1910, and Mr Asquith asked the King to promise that if his Liberal Government was returned, he would create sufficient new peers to swamp the House of Lords and push through a bill drastically curtailing the powers of the Lords. This was to be the definitive Parliament Bill.

The King did not want to give these promises to Mr Asquith. They were to be secret and the King, a blunt, exceptionally straight-forward man, disliked any secret dealings. But he was receiving conflicting advice from each of his two secretaries, Sir Arthur Bigge and Lord Knollys.

Bigge thought it would be quite wrong for the King to commit himself to a secret pledge to create peers in advance of a general election. "Is this straight?" Bigge asked the King. "Is it English?"

Knollys, however, thought that the King should do as

his Government asked, having a duty to support the Government of the day. And it was Knollys's advice that the King took.

On November 16, King George wrote in his diary: "After a long talk (with Asquith) I agreed most reluctantly to give the Government a secret understanding that in the event of the Government being returned with a majority at the general election, I should use my prerogative to make peers if asked for. . . . I disliked having to do this very much."

But why had King George given this pledge which so distressed him?

He had been given to understand by Lord Knollys that, if he did not give it, then Mr Asquith and his Liberal Cabinet would resign and that the Opposition Conservative Leader, Mr Balfour, would not be willing to form an alternative Government.

In fact, Mr Balfour would have been so willing. He was never consulted. Later, when he learned that the King had felt obliged to give the secret pledge, he wrote in forceful terms to the palace saying that, if he had been asked to form a Government to protect the King from giving the pledge, he would have done so and could have carried the country with him.

Mr Balfour felt that Lord Knollys had so misled his Royal master that as long as he lived he would never meet Knollys socially.

But the King had been committed. Mr Asquith went on to win his general election, and in May, 1911, sent up the Parliament Bill to the House of Lords. This allowed the House of Lords to delay money bills for only one month and other bills for two years.

The "last-ditchers," as they were called, in the House of Lords, under Lord Halsbury, carved the bill to pieces. Mr Asquith then told the King that he must use his prerogative to secure the passage of the bill in the Lords by a mass creation of peers.

The King was still appalled

at the prospect, and sought a last way out. If the Lords were to be told that the whole institution of the peerage as it had been known was to be wrecked, would they give way and allow the bill through?

So on that critical night of August 10, 1911, The Liberal Leader in the Lords, Lord Morley, drew from his pocket a statement agreed to by the palace. "Every vote given against my motion (for the Parliament Bill) will be a vote for a large and prompt creation of peers," it said. There was a hush of shock.

Then, after excited scenes in the ornate chamber, the Lords decided to let the Parliament Bill go through. Sir Arthur Bigge, watching for the King, rushed back to the palace.

"At 11 pm," the King wrote in his diary, "Bigge returned from the House of Lords with the good news that the Parliament Bill had passed with a majority of 17. So the Halsburyites were thank God beaten. It is indeed a great relief to me and I am spared any further humiliation by a creation of peers."

Later he wrote a note to Sir Arthur, saying how he had been saved from a humiliation "which I should never have survived."

Eighty years earlier, King William IV had faced, even more fretfully, something like the same situation in another massive clash between the Commons and the Lords. It was one which embittered him and cost him most of his popularity, and which brought Britain near to a state of revolution.

Lord Grey, at the head of a Whig ministry in 1831 after brooding for about 30 years on the subject of electoral reform, decided that the time had come to introduce a measure. The Duke of Wellington, "stiff, unbending and opposed to all such reforms, had fallen from power, and the way now seemed clear, at least in the House of Commons."

So in March, 1831, Lord John Russell (grandfather of Bertrand Russell and able to

sit in the Commons because his was a courtesy title, not a peerage) rose to unfold his great Reform Bill. It was based on abolition of the "rotten boroughs," so many of which were virtually owned by nobles. The Duke of Newcastle, for example, owned no fewer than nine, and these were dubbed his "ninepins." Yet many of the largest cities were unrepresented in the Commons. Birmingham did not have a single MP.

As Lord John read out a long list of doomed boroughs, the House of

Commons was in a fever. The bill was far more drastic than anyone had hoped for, or feared. At first it was passed by the Commons with a majority of only one. King William readily agreed to a dissolution and a general election, but Whig reformers were returned in greater strength, and there was a majority of 136.

Up went the Reform Bill to the House of Lords, which promptly threw it out. The big Conservative majority there regarded the proposals as revolutionary.

King William had, tem-

peramentally, been with Lord Grey and the Whigs. This bizarre monarch, known as "Sailor Bill," loved to stroll among the people, nodding and smiling. He liked so much to be liked.

But "Sailor Bill" ran into such a gale as he had never reckoned with. Demands for "the bill and nothing but the bill" were ringing through the land. Disturbances were rising up and down the country. There were monster mass meetings.

Lord Grey went to see the King. He demanded the creation of at least 50 peers so

that the bill would get through the Lords. But the King refused. The idea revolted him. He turned to the Duke of Wellington to see if he and the Conservatives would take office and put through reform in their own way.

But this only occasioned another crisis. Speculation flashed round the country that the King was trying to install the Duke of Wellington to rule the country "by the sword." It was not "Sailor Bill" now, but "Wicked William."

Tension reached such a pitch that Lord Grey went again to the King, told him he must either promise to create more peers or face the possibility of an insurrection. The King finally crept out of the problem by persuading the Duke of Wellington to refrain from further opposition to the Reform Bill and persuading his friends and allies to do likewise — and, with tears in his eyes, accepting the resignation of his friend Lord Grey.

The chronicler of the time, Creevey, wrote: "Our beloved Billy cuts a damnable figure." As the King drove from Windsor to London, he was pelted with clods of earth. The episode embittered him until the end of his days.

There were to be other struggles between the Commons and Lords through the last century, but none of that intensity.

And since the other titanic struggle between the two houses, in 1911, there has been relative peace. The delaying power of the Lords was shorn still further by Mr Clement Attlee's Labour Government in 1949. This reduced from two years to one the period of the Lords' veto, and there it stands. Periodically "reform of the Lords" is in the air, with the aim of devising some new system for an upper house, but the injection of about 200 life peers has been the only real change.

Now, however, the issue of "Lords versus Commons" arises again over the question of the freedom of the press, as it relates to new "closed shop" legislation of the present Labour Government. But how profound a clash this could be has yet to be seen. Whatever happens, it seems unlikely that the Queen will face the spiritual agony of decision-making that confronted her grandfather, her great-grandfather and "Sailor Bill."

PUBLIC OPINION

# ALP labors in Libs' wake

IN A reversal of the previous trend which was markedly against the ALP government, voters appear to be drifting back in the period immediately before Rex Connor's resignation and the opposition's decision to block the budget.

The latest Morgan Gallup Poll, available exclusively to The Bulletin shows that electors' support for the government rose by five percent to 39 percent in the month to October 11 — and is now at its highest point since June.

The Liberal-Country Party opposition has dropped three percent and the same trend is evident in electors' view of the two leaders, Gough Whitlam and Malcolm Fraser.

The opposition, however, still leads by a massive margin and this result, if repeated at a general election, would mean a devastating defeat for the government.

It is usual for the gap to narrow during any election campaign but it is so wide that it will require an almost impossible recovery in government popularity to succeed at the polls.

Taking the poll figures below with Malcolm Mackerras' electoral pendulum on page 19 it can be seen that at its present level of popularity the opposition would win a general election with a thumping majority of about 45 seats in the House of Representatives.

This latest Australia-wide Morgan Gallup survey polled 2137 people, of whom 1847 said they were electors. Of those electors, 94 percent gave their first preferences at "an election soon" as: L-NCP 54 percent, ALP 39 percent, Australia Party 2 percent, DLP 2 percent and others 3 percent.

The following table shows support

Senator Bunton pictured last week. He will lose his seat if Whitlam calls a half Senate election



for L-NCP and DLP (whose second preferences usually go to L-NCP) at 56 percent. That is within 1 percent of the record high of 57 percent at Holt's election in 1966:

ELECTIONS	L-NCP	DLP	ALP	AP	IND
	%	%	%	%	%
1966 Holt	50	7	40	—	3
1969 Gorton	43	6	47	1	3
1972 Whitlam	41	5	50	2	2
1974 Whitlam	46	2	49	2	1
MORGAN GALLUP POLLS:					
June 21, 28	52	3	39	3	3
July 5, 6	60	1	33	3	3
July 26-Aug 2	57	3	36	2	2
Aug 23, 30	54	3	37	4	2
Sept 6, 13	57	2	34	3	4
Sept 20, 27	57	2	35	3	3
Oct 4, 11	54	2	39	2	3

In no State is support for ALP above 41 percent.

Prime Minister Whitlam's handling of his job is approved by only an unchanged 33 percent, but those who disapprove are 5 percent fewer at 53 percent — 16 percent of ALP voters and 81 percent of L-NCP voters.

WHITLAM AS PRIME MINISTER

	Approve	Disapprove	Undecided	
	%	%	%	%
June 21, 28	39	50	11	
July 12, 19	29	59	12	
July 25, Aug 2	31	56	13	
Aug 23, 30	34	56	10	
Sept 6, 13	32	58	10	
Sept 20, 27	33	58	9	
Oct 4, 11	33	53	14	

Between September 20, 27 and October 4, 11, Opposition Leader Fraser's approval rating dropped sharply from 52 percent to 43 percent. The lowest since June.

FRASER AS OPPOSITION LEADER

	Approve	Disapprove	Undecided	
	%	%	%	%
June 21, 28	42	22	36	
July 12, 19	47	24	29	
July 26, Aug 2	49	22	29	
Aug 23, 30	51	24	25	
Sept 6, 13	52	27	21	
Sept 20, 27	52	27	21	
Oct 4, 11	43	31	26	

The 43 percent who approved Opposition Leader Fraser's handling of his job comprised 60 percent of L-NCP voters and 25 percent of ALP voters, compared with 67 percent and 35 percent on September 20, 27.

Survey teams are already in the field and The Bulletin hopes to have a result from an even larger sample of people next week. Polls will then continue to be published at regular fortnightly intervals.

The Morgan Gallup Poll, the only Australian member of Gallup International Research Institutes Inc, is copyright. It may not be reproduced in whole or part without the express permission of The Bulletin.

SIR, When all the rhetoric androdomontade are brushed aside, the essential matters are clear enough.

(1) The cardinal rule is that the Governor-General acts in accordance with the advice he receives from the man who commands a majority in the House of Representatives — the Prime Minister.

(2) If in extraordinary circumstances he rejects that advice, his only course will be to dismiss the Prime Minister, send for the Leader of the Opposition, commission him to form a ministry, and grant him a dissolution, at least of the House of Representatives.

(3) The present Prime Minister's claim that the removal of a government from office before the end of the term for which it has been elected would be a blow to parliamentary government and democratic institutions is manifestly untenable. Indeed, the power of removal (the reserve power of the Crown) may be the only safeguard against the destruction of democracy. A government which finds its management of a country disastrous and a rising tide of public opinion against it may in its determination to remain in office resort to illegal actions, which are the negation of democracy; and only the exercise of the Governor-General's power, to dismiss it will save the country from an unconstitutional dictatorship.

(4) If the Prime Minister were dismissed, but his party won the ensuing election, the Governor-General's office would be in jeopardy and, no

## Essentials of the political crisis

doubt, the Queen would be asked to recall him and replace him by someone nominated by the (former) Prime Minister. Furthermore, salutary warnings would have been given to future Oppositions and Governors-General as to the unwisdom of forcing an election against the wishes of the elected government.

(5) If, however, the result of the election were victory for the former opposition party, the actions of the Governor-General would have been vindicated, and the present spate of talk about alleged conventions would be seen to be of little force or value.

(6) In view of (4) and (5), a Governor-General could not be expected to reject the Prime Minister's advice and dismiss him unless he were satisfied:

(a) that the business of government had broken down and the continuance in office of the Prime Minister would result in administrative chaos, flagrant breaches of the Constitution and other illegalities, and

(b) that it was highly probable that the votes of the people at the ensuing election would uphold his action.

It was because these conditions existed in New South Wales in 1932 that Sir Philip Game was able to dismiss Mr

Lang and restore orderly government to the State.

(7) The Executive Council minute purporting to authorise the borrowing of a huge sum for 20 years for grandiose schemes of long-term mineral development as being a borrowing "for temporary purposes" was a flagrant breach of the Financial Agreement which is part of the Constitution. In my view, however, this does not by itself satisfy condition (a) above.

(8) The rejection or deferral of Supply is undoubtedly within the power of the Senate under Section 53 of the Constitution, but it is a power to be exercised only in very exceptional circumstances.

(9) The circumstances alleged as exceptional are: incompetence in the management of the economy, the breach of the Financial Agreement, dismissal of ministers for misleading Parliament and, generally, inept and dishonest government. Whether these circumstances exist to such an extent as to justify the confusion, hardship and breakdown of orderly government which the refusal or deferral of Supply will entail is a question which I would answer no, but which the Opposition has answered yes.

(10) If it persists in holding up Supply it may force the dismissal of the Government but

will run the grave risk that its actions will antagonise public opinion and lead to the loss of the ensuing election. There is, perhaps, some indication that this swing against the Opposition has begun.

(11) On the other hand the continued refusal of Supply may put the Government in such difficulties that it cannot carry on without committing gross illegalities and flouting the Constitution, in which case, if the Governor-General were reasonably assured that the people would support him, he might well decide to dismiss the Prime Minister and force an election.

(12) Other possibilities are:

(i) That the Prime Minister, believing that the refusal of Supply has caused a revulsion of opinion in favour of the Government, will himself advise a dissolution;

(ii) that the Opposition, deciding that revulsion of opinion has prejudiced its chances at an election, or that the consequences of refusal of Supply are too damaging to the economy or inflict too great hardship on the whole community, decides to pass the Supply bills; or

(iii) that a compromise will be reached.

For a constitutional lawyer, it is the most interesting confrontation since Federation.

NORMAN COWPER,  
Wabroonga.

[Sir Norman Cowper was formerly Director of the Australian Institute of Political Science and formerly senior partner of Allen, Allen and Hemsley, solicitors.]

THE AGE, THURSDAY, OCTOBER 30, 1975.

# THE AGE

Thursday, October 30, 1975

## The crisis: retreat and honor

**P**OLITICS, as distinct from statesmanship, has always been grubby. In recent weeks, however, Australian politics has degenerated to new depths of sordidness. Scarcely a day passes without the business of government and the attention of the public being diverted and confused by some newly dredged up allegation or scandal, real or purported. Each one, we are invited to believe, amounts to the extraordinary and reprehensible circumstance that, so the Opposition asserts, would justify the refusal of Supply and the enforced resignation of the Whitlam Government. Each one is accompanied and countered, not only by the rhetoric of indignation but by a stream of vituperation. The style of all this is degrading the integrity of our democratic system and respect for parliamentarians.

The most pathetic figure in this squalid game is Mr. Tirath Khemlani. True, his uncannily timed disclosures have brought about the downfall of one of the Government's most powerful Ministers. But the careful sifting of seven suitcases of files this week by one of the Oppositions' foremost legal experts has apparently failed to discover documentary evidence to incriminate the Prime Minister to the extent of the Opposition's wilder assertions. Mr. Khemlani could no doubt tell an interesting story if called before the Bar of the Senate, but

not one, it would seem, that would justify the Government's dismissal.

No sooner had the Opposition found Mr. Khemlani wanting, than it switched its attack on the Treasurer (Mr. Hayden), who had breached traditional Budget secrecy by briefing the president of the ACTU (Mr. Hawke) on its contents several hours before it was brought down. In spite of Mr. Hayden's protestations that trade union support was essential to the Budget's success and that Mr. Hawke, who is also a member of the Reserve Bank board, could be trusted not to breach such a grave confidence, this exceptional gesture was an inexcusable lapse. It must not recur. But while the Opposition may use the incident as a stick with which to belabor the otherwise exemplary Treasurer, it is but a straw in the search for weapons with which to demolish the Government as a whole.

Then there was Senator Ivor Greenwood pointing accusing fingers at Mr. Hawke, the former Minerals and Energy Minister (Mr. Connor) and the Government over the ACTU-Solo oil deal. As we have said before, we suspect that the full story of this dubious deal has yet to emerge and that a further inquiry is required. But, again, the Opposition has not produced evidence to construct an

extraordinary and reprehensible circumstance. Earlier, there was the irrepressible Dr. Jim Cairns, accusing Mr. Whitlam of untruthfulness and of knowing more about the loans affair than he pretended. But his statement was too qualified in later explanations to give the Opposition much joy. Not to be outdone, a Labor Minister countered with allegations that the wife of a former Country Party Minister for Transport (Mr. Sinclair) had accepted gifts of unusual value for launching two ships.

### Accusations, but...

Let us not be misunderstood. The accusations the Opposition have made or used against the Government are not to be dismissed. They are serious; they are manifold. But neither singly nor collectively do they yet amount to sufficient justification for the unprecedented and dangerous step the Opposition has taken in the senate in withholding Supply. In "The Age" yesterday, Mr. Fraser listed in addition to the Government's record of gross economic mismanagement, an impressive series of "scandals". They were the Murphy ASIO raids, the Gair affair, the dismissal of Mr. Cope, the Philip Cairns affair, the Morosi affair, the Hayden Budget leak and the loans affair. Most of

these occurred or were revealed before August 21, when the Opposition Leader admitted that he did not have a strong enough case to refuse Supply. What has happened or emerged since then is hardly sufficient to tip the balance.

Yet so much of what Mr. Fraser says is true. This is indeed a Government whose monumental incompetence, whose devious improprieties, whose reckless abandon, whose discredited Ministers and whose defective leadership have lost it the confidence and trust a Government needs to govern. It is a Government whose hallmark has been incompetence. It should have had the decency to resign and face the people. But the sins of the Government do not make a virtue out of the Opposition's manipulation of the Constitution to try — so far unsuccessfully — to force the Government into an election. Far from delivering the nation from an inept and discredited Government, Mr. Fraser has diverted attention from the Government's faults — and what faults they are! — united the Labor movement and divided Liberal opinion, given the Prime Minister the opportunity to deploy his brilliant debating skills and drawn damaging fire upon the propriety of the Opposition's actions. If Mr. Fraser cannot budge the Government from its defiant stance, if he

cannot produce evidence so formidable and irrefutable as to destroy the Prime Minister's constitutional armor, then he should consider a retreat.

He might yet retreat with grace. Mr. Fraser might openly propose that the Opposition pass the Budget in exchange for the Prime Minister agreeing to a half Senate election. Then, at least, we might find out what the people think of this Government, whether it is really discredited. Mr. Fraser might lose this week's skirmish; but he might live on to win the war.

A retreat by Mr. Fraser would, of course, leave us with a second-rate Government, amateurs whose loan raising antics would horrify a teenage merchant banker. And we would have to endure that Government for some months at least. But more important, a retreat by Mr. Fraser would we think, protect the spirit of our form of democracy. And that — always — should come first. Our politicians have perhaps failed to perceive the irony of this crisis. A great many people are sick of the Labor Government and think it should go; but a great many of the same people believe that it should not go because of a fluke of numbers in the Senate.

THE AUSTRALIAN

# FINANCIAL REVIEW

THURSDAY, OCTOBER 30, 1975

## POLLS SUGGEST MR FRASER SHOULD RETREAT

Politicians, especially those who are being confronted with figures which do not reflect favourably on themselves or their policies, are quick to dismiss opinion polls as unimportant, inhuman, or some sort of quackery.

Some even go so far as to say they should be banned because they have about them a self-fulfilling capacity.

However, opinion polls represent the best available tool short of a full-scale election for testing the mood of the electorate.

With all the qualifications that might be applied to the opinion polls published in today's Sydney Morning Herald and Melbourne Age and in yesterday's Bulletin the indisputable fact emerges that Malcolm Fraser's tactic of trying to precipitate an early election by blocking supply in the Senate has failed to ignite the electorate.

The Age-Herald poll, which does not canvass voting intentions but concentrates on community responses to the current situation, reveals that a substantial majority of the electorate — 70.4 per cent — believe that supply should be allowed to pass.

On the strength of that alone, Mr Fraser and his colleagues should at least sit down and reconsider their decision to block supply.

The poll published in the Bulletin and conducted by Morgan Gallup reinforces this impression but takes it a stage further because that poll is part of a constant series which allows other political inferences to be drawn from its results.

The most important is the likely result of an election. If Mr Fraser could get the electorate to the polls tomorrow then he would win on the Morgan Gallup figures.

However, if the trend revealed in the series is continuing, even at a much slower rate, then his chances of winning an election are far from promising.

The poll shows that Mr Fraser is losing personal support — and losing it fast. The Liberal-Country Party is also witnessing its support being eroded.

The path which Mr Fraser's personal popularity has followed confirms the general public reaction against his tactics over the Budget.

Shortly after Mr Fraser indicated that he would let the Budget pass, the Morgan Gallup indicated that some 52 per cent of people polled approved his behaviour as Leader of the Opposition.

In a poll taken three days after Mr Fraser had declared he would use the Opposition's numbers in the Senate to force the Government to the polls, this figure slumped to 35 per cent.

It is not surprising to see it fall because there would have been high approval figures from Labor supporters to Mr Fraser's "pass the Budget" attitude. These would have fallen away in droves in the past few weeks.

Of much greater significance is the decline in support for the Liberal-Country Party coalition.

This has fallen from a high point of 57 per cent in September to 50 per cent on October 18.

Mr Fraser can extract some consolation from the fact that this figure represents a comfortable election win if only he can get the Government to the polls.

However, taken in tandem with the Herald-Age poll it is far from reassuring. Add to this the progress of the Opposition campaign since October 18, and Mr Fraser is confronted with a difficult problem.

He can continue to block Supply in the belief that the backlash against the move is only of a transitory nature.

However, the size of the backlash should give pause to the most adventurous of politicians.

Alternatively, he can concede the facts as outlined in the polls and doubtless supported by the personal soundings of his Liberal colleagues and retreat from his present position.

While such a move would leave Mr Fraser a somewhat diminished man in Canberra, the party he leads would not be subjected to the dangerous strains it will undergo if the battle is a protracted one.

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The Australian Financial Review, Thursday, October 30, 1975

THE AGE, THURSDAY, OCTOBER 30, 1975.

## Opposition may call on Kerr to resolve deadlock

From JOHN JOST, our Chief Political Correspondent.

CANBERRA. — Senior members of the Opposition are considering an approach to the Governor-General (Sir John Kerr) in a bid to resolve the constitutional crisis.

The approach was discussed yesterday at a meeting of the shadow Cabinet.

It is understood shadow Cabinet members discussed whether the Opposition Leader (Mr. Fraser) could approach Sir John in a bid to have him intervene and seek a general election.

The shadow Cabinet is also believed to have discussed the possibility that the Prime Minister (Mr. Whitlam) might call a half-Senate election either today or early next week; and the constitutional crisis and the effect it is having on public opinion.

I understand that Opposition fears of a half-Senate election were provoked by timing questions rather than any information they might have received from Government sources.

If a half-Senate election is to be held before the middle of December, Mr. Whitlam would have to move for it within the next few days.

Government sources were maintaining yesterday that the Prime Minister had no such intention.

A half-Senate election could be embarrassing for the Opposition parties because the central issue would be the blocking of the Budget itself.

No details are known about the proposal that Mr. Fraser should go to Sir John Kerr.

But the fact that this possibility was discussed indicates the grave concern of the Opposition front bench at the turn of events flowing from the Senate's deferral of the Budget and the failure of Mr. Tirath Khemlani to implicate the Prime Minister in loan-raising activities.

Meanwhile the Opposition was still undecided last night on whether it would invite loans intermediary Mr. Tirath Khemlani to give evidence before the Senate.

The indecision underlined the loss of political ground suffered by the Opposition this week.

The Senate Opposition Leader (Senator Withers) yesterday gave notice that he would move today to form a Senate select committee to inquire into the \$4000 million loans bid.

But he emphasised that the notice should be regarded as provisional only.

If the Senate carries the motion today, the committee will be required to meet within four hours.

Editorial 9; other Canberra news 12-13.



"THE OFFICE OF GOVERNOR-GENERAL"

THE WILLIAM QUEALE MEMORIAL LECTURE  
TO BE DELIVERED IN THE BONYTHON HALL,  
UNIVERSITY OF ADELAIDE, ON TUESDAY, OCTOBER 24, 1972  
BY HIS EXCELLENCY THE GOVERNOR-GENERAL  
THE RIGHT HONOURABLE SIR PAUL HASLUCK  
G.C.M.G., G.C.V.O., K.St.J.

The William Queale lecture was established to be delivered each year on a topic related to management. Most of the lectures have been on some phase of management in commerce or industry. I have no knowledge or experience in that field. So that I can enter more familiar ground, I hope that you may stretch a point and allow me to interpret "management" as extending over all human endeavour and thus bring public administration and government within bounds, even if "management" is not a term favoured for the work of those who are engaged in government either as politicians or as public servants. Then perhaps you will bear with me if I speak about the work of a Governor-General so far as it is involved in Australian government.

There is certainly no person in the whole structure of government and public administration who has less of the appearance of a "manager" than the Governor-General. His powers and his functions are of a kind wholly unlike those of anyone who "runs" a business enterprise. Yet he has some part to play in the handling of the nation's affairs and in shaping both what is done and the way in which it is done.

One question is often asked: "What does the Governor-General do?" It is sometimes asked in a way that implies other questions: "Is the Governor-General necessary? Is he of any use? Why do we have one at all?"

One cannot answer these questions without first glancing at some aspects of constitutional theory.

The Governor-General is the direct representative in Australia of Her Majesty The Queen. Hence, to answer the question: "What does he do?" we should try to understand first the place of the Crown in Australian life and government. I emphasise at the outset that he is not the representative of the Queen of England. He is the representative of the Queen of Australia.

Our form of government in Australia is a government "according to law". No servant of the government, whether it be the Prime Minister or a traffic inspector, can do anything except what the law allows him to do and the question of what the law allows is not

one that he can decide for himself. Under this rule of law the Crown has the supreme place - in Parliament, in the Courts and in the Executive.

### THE HEAD OF STATE

Before we look more closely into these matters, however, we need to appreciate the fact that all nations in modern times have what is called a head of state. The position of head of state in a modern nation is, in part, a recognition of a practical necessity in the handling of a nation's affairs. There are numerous occasions when a head of state is needed to act in the name of the whole nation - and to act in such a form that the action will be recognised by all concerned, including foreign governments, as having been done legally and properly on behalf of the nation.

There is also a need to have a head of state so that on those occasions when a citizen comes into relationship as an individual with the nation as a whole that relationship can be expressed clearly. To take a simple example: on those occasions when a citizen accepts high office and has to take an oath to serve faithfully in that office, the idea in his mind is that he is making his promise to the whole nation, not just to an officer in charge of a department or to a Minister, who may lose office at any time. The oath is taken to the head of state.

Similarly, to choose another simple illustration, when the nation requires one of its citizens to carry out a solemn duty, the head of state gives the order, or the request, in the name of the whole nation, thus expressing the fact that the citizen is being called on by the nation as a whole to fulfil an obligation or to carry out a duty to the nation and is not simply being told by someone in temporary authority to do what an official wants him to do.

Thirdly, in those circumstances when the nation has to act as a nation someone has to perform the action. Perhaps a familiar example of this is a proclamation calling Parliament together. Another is a declaration of war.

A head of state is an essential and integral part of modern national government.

Various methods are followed for filling the position of head of state. We ourselves fill the position of head of state from a hereditary Royal family. The Throne is always occupied and there is always an Heir to the Throne, so that there is no contest, no uncertainty and no inconstancy about whom the head of state will be and the head of state is clearly above political strife. Side by side with this we have a Prime Minister, to be the head of the government, and occupying office only so long as a majority of the members of the House of Representatives support him.

We in Australia have an hereditary monarch as head of state because of the way in which our own form of democratic government has been developed historically, because of our form of the parliamentary system with all Ministers sitting in Parliament and because the principles on which the rule of law is established in Australia make the Crown an essential and desirable part of that system. The hereditary monarchy gives to us a head of state who has the qualities and is able to perform the functions of that high office in the way that our own system requires. Furthermore, in addition to these practical arguments, a wealth of tradition and patriotism helps the Crown to attract to itself the loyalty and affection of the people in a way in which an elected leader, backed by little more than half the voters, and opposed by the others, may not be able to do.

To sum up: The Australian nation has to have a head of state. Because of our history and tradition we have a constitutional monarch as head of state. The Queen of Australia as head of state fits in with both the principles and practices of our form of government and any change in our method of having a Queen as head of state would also require us to make basic changes in our form of government, as well as major amendments of the Commonwealth Constitution.

Australia is, at one and the same time, a constitutional monarchy, a parliamentary democracy, and a federation. Let us look at each heading in turn.

#### A CONSTITUTIONAL MONARCHY

In a constitutional monarchy, the acts done by the monarch or in the name of the monarch are done in accordance with the Constitution, and on the advice of Ministers, not by the self-will of the monarch.

One great difference between a constitutional monarchy and the presidential system as understood in such a nation as the United States of America is that while a President, being elected from time to time, is also the head of a political party, the Queen is above party and outside politics. Both a Queen and a President have to act according to the Constitution but the Queen has no obligations to any other source of power or influence, nor does she owe her position to the support of any group or party. Another difference is that, while a presidential head of state is directly and personally involved in political controversy, the Crown, being outside politics, attracts the same loyalty from all of her subjects all the time and stands for those matters on which the nation is undivided. Perhaps this is best expressed by the convention that the party or parties out of office are referred to as Her Majesty's Opposition, just as those in office are Her Majesty's Government. It is also expressed by the fact that persons who take oaths of office, whether as Ministers, Judges, members of parliament, public servants, sailors, soldiers and airmen or citizens undertaking public duties, pledge their loyalty to The Queen, that is to someone who stands for the whole

nation. They do not pledge themselves just to serve the government of the day; they pledge themselves to serve The Queen, who stands for the whole nation. Political parties may rise or fall but the duty to the nation remains and there is no need to change all office-holders every time a ministry changes.

These facts are seen as advantages over the presidential system.

### A PARLIAMENTARY DEMOCRACY

In a parliamentary democracy, parliaments are formed as the result of elections in which all the adult citizens take part. The Government is formed by the party which has the support of a majority of members in the popular House of Parliament, and the Ministers are responsible to Parliament - that is they have to gain and keep the support of Parliament for what they do.

Combining the ideas of a constitutional monarchy and of a parliamentary democracy, we have as head of state a Queen, who is herself above party and outside politics. The actions of government done in her name are done by Ministers or on the advice of Ministers who have the support of a majority in Parliament. We have a people who express their will at elections and, as a result of those elections, they decide who shall be the Ministers who advise The Queen or who act in the name of The Queen.

### A FEDERATION

I will not enter into close discussion about the Federation. There is an area for argument by constitutional lawyers about the executive power of the Crown and the exercise of the prerogatives of the Crown in the States severally and in the Federation. These arguments need not concern us. It may be noted, however, that when The Queen succeeded to the Throne, her accession was proclaimed for the whole of Australia by proclamation of the Governor-General in the Federal Executive Council; that the Royal style and titles in Australia are declared by an act of the Commonwealth Parliament and that such international acts as a declaration of war, appointment of Australian Ambassadors and signing of treaties, done in The Queen's name, are done by the Commonwealth and not by States.

The Queen in Australia is not Queen of six separate States but of the Commonwealth of Australia. In national matters Her representative acts on the advice of Commonwealth Ministers. In matters within the powers of a State Parliament Her representative in each State acts with the advice of State Ministers.

## THE AUSTRALIAN CONSTITUTION

So the first short answer to the question: "What does the Governor-General do?" is that he represents the Queen, our own head of state, and exercises on behalf of the Queen the powers and functions of the Queen in a constitutional monarchy, a parliamentary democracy and the Australian Federation.

The Constitution of the Commonwealth of Australia in Clause 2 recognises the fact that, as The Queen cannot be in Australia all the time and as the governing of Australia is a continuous business, she needs to appoint a Governor-General to represent Her and to act for Her. Later chapters of the Constitution set out with care the part that the Governor-General plays in government.

Following the Proclamation of the Commonwealth of Australia, Queen Victoria, by Letters Patent dated 29th October, 1900, constituted the office of Governor-General, entrusted the Great Seal of the Commonwealth to him and gave him the powers necessary to his office. Each Governor-General, on his appointment, receives a commission from The Queen to "authorise, empower and command" him to exercise the duties and powers in these Letters Patent.

The Governor-General is appointed by The Queen on the recommendation of the Australian Prime Minister. Over the years the convention has been recognised that the Prime Minister, before making his recommendation, discusses a name, or names, with Her Majesty. This convention flows from a resolution of the Imperial Conference of 1930 that Dominion Ministers should only make their formal submissions "after informal consultation with His Majesty".

The duties of the Governor-General are of various kinds. Some are laid on him by the Constitution. Some by the Letters Patent and his Commission. Others are placed on him by Acts of the Commonwealth Parliament. Others come to him by conventions established in past centuries in Great Britain or by practices and customs that have developed in Australia.

Let us look first at those duties, mostly connected with the government of the nation, which he is required to do by law.

Some of his duties relate to the functioning of Parliament. The Governor-General may:- appoint times for holding sessions of Parliament; prorogue Parliament; dissolve the House of Representatives. Proposed laws (that is Bills passed by both Houses of Parliament) are presented to the Governor-General for assent. In the case of a disagreement between Senate and the House of Representatives, he may convene a joint sitting to resolve the deadlock.

Some of his duties relate to the functioning of the Executive. Clause 61 of the Constitution reads as follows:- "The Executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as The Queen's representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth." In performing this duty the Governor-General is advised by the Federal Executive Council.

Some of his duties relate to the functioning of the Courts. The Justices of the Courts are appointed by the Governor-General-in-Council and cannot be removed from office except by the Governor-General-in-Council. This is part of the way in which the independence of the Courts from popular pressure or from political direction is safeguarded. The prerogative of mercy is exercised by the Governor-General and, under certain statutes the Governor-General may reduce the penalties imposed for offences. It should be made clear that the Crown cannot change the law, or interpret it or decide whether or not a law is valid, or cancel a conviction but, after the law has taken its course, the Crown can take into account special circumstances or special hardship and extend clemency.

Some of his duties relate to the day-by-day functioning of administration. Only a few examples can be given. A wide range of appointments are made by the Governor-General-in-Council. Acquisition of property by the government can only be done by the Governor-General-in-Council. Changes in the structure and the size of establishment of the Commonwealth Public Service are made by the Governor-General-in-Council. Most of these duties are explicitly laid on the Governor-General-in-Council by Acts of the Australian Parliament.

Some of his duties relate to the armed services, for under Clause 68 of the Constitution the command-in-chief of the naval and military forces of the Commonwealth is vested in the Governor-General as The Queen's representative.

All of these duties have a common characteristic. The Governor-General is not placed in a position where he can run the Parliament, run the Courts or run any of the instrumentalities of government; but he occupies a position where he can help ensure that those who conduct the affairs of the nation do so strictly in accordance with the Constitution and the laws of the Commonwealth and with due regard to the public interest. So long as the Crown has the powers which our Constitution now gives to it, and so long as the Governor-General exercises them, Parliament will work in the way the Constitution requires, the Executive will remain responsible to Parliament, the Courts will be independent, the public service will serve the nation within the limits of the law and the armed services will be subject to civil authority.

## PARLIAMENT

Let us now look in a little more detail at some of those duties he performs in relation to the functioning of Parliament. Section 1 of the Constitution says that Federal Parliament "shall consist of The Queen, a Senate and House of Representatives". The Queen is part of Parliament and actions by The Queen (in practice by the Governor-General acting in Her name) are an integral part of the functioning of Parliament and of the procedures and practices of Parliament.

For example, when a Bill proposes that expenditures be made, a message has to be sent to Parliament by the Governor-General asking for the grant of money. This procedure is in part traditional and a reminder that Parliament keeps the power of the purse. It also helps to focus attention on the Bill as a "money bill" that requires the attention of members and the observance of procedures by both Chambers of Parliament in a different way from other Bills. The Governor-General sends the message on the advice of his Ministers and it is difficult to imagine the situations in which he might refuse to take that advice. Theoretically, he could do so. If, inadvertently or by ill intention, the message contained a false statement or asked for a grant of money that was unrelated to the purpose of the Bill, he could draw the attention of his advisers to the fact. Presumably they would have second thoughts.

Another example concerns the assent to Bills. After a Bill has been passed by both Chambers of Parliament it is presented for the Governor-General's assent and the legislative process is not complete until the Governor-General has signed two copies of the Bill and returned them to both Chambers with a message informing them of his assent. When the Bills are presented to him they are accompanied by a certificate from the appropriate officer of the Parliament that the text presented is the text passed by each House. Normally, on this certificate, the Governor-General gives his assent without delay.

What would happen if, on reading the Bill, he found some fault in it? There was in fact a recent case of this kind in one of the States. The Governor of the State detected an error in the text and drew the attention of the officers of the House to the fact that the Bill, as drawn, contained a sentence that did not make sense, although it was undoubtedly what the two Chambers had passed. On further examination, his opinion was confirmed. The solution was for the Governor to return the Bills to Parliament, with a message in which he himself requested an amendment to rectify the error - an interesting illustration that The Queen is part of Parliament and of the whole legislative process.

Although it may be highly unlikely to arise in practice, it is theoretically possible that if the Governor-General were presented with a Bill, agreed to by a majority

in both Houses, that was clearly contrary to some provision of the Constitution, he could return it to Parliament pointing out the conflict. To give a wholly imaginary and very extreme illustration, let us suppose that at a general election one party received a huge majority in both Houses and immediately, (in spite of all objections that might have been raised by their draftsmen or their political opponents and in contempt of a possible appeal to the High Court) put through Parliament a Bill saying that no more elections should be held until the Minister for the Interior decided to hold them. A Governor-General could properly withhold assent to such a Bill on the ground that this was an action that could only be done by Parliament in accordance with the provision of the Constitution for the amendment of the Constitution. Undoubtedly a crisis would be precipitated.

Such an extreme illustration underlines an important point. In normal times when customary practices and procedures are being followed and the Constitution and laws of the Commonwealth are being scrupulously observed, the role of the Governor-General in Parliament would seem to be a matter of unbroken routine. In abnormal times or in case of any attempt to disregard the Constitution or the laws of the Commonwealth, or even the customary usages of Australian government, it would be the Governor-General who could present the crisis to Parliament and, if necessary, to the nation for determination. It is not that the Governor-General (or the Crown) can over-rule the elected representatives of the people but in the ultimate he can check the elected representatives in any extreme attempt by them to disregard the rule of law or the customary usages of Australian government and he could do so by forcing a crisis.

#### DISSOLUTION OF PARLIAMENT

The Constitution gives to the Governor-General certain powers and duties in respect of the meeting of Parliament and its dissolution. Let us return now to discuss, not as any extreme or imaginary cases, but as the more normal pattern of political life in Australia, the provisions in respect of the dissolution of Parliament.

Under the Constitution, the term of the House of Representatives is fixed at three years. As the end of that term approaches, the Governor-General knows that there is a date beyond which the House cannot continue to function, for the Constitution says (Clause 28): "Every House of Representatives shall continue for three years from the first meeting of the House, and no longer, but may be sooner dissolved by the Governor-General." When the end of the three years approaches the question in his mind is not whether Parliament shall be dissolved but what the date of dissolution will be. In due course the Prime Minister will call on him to discuss the date. Before reaching an opinion about a suitable date the Prime Minister himself has had to consider such questions as when the business of Parliament



can be completed, whether the electoral rolls and the administrative plans for conducting an election can be ready in time, and what is a convenient period for an election campaign (for example, an election held either a few days before or a few days after Christmas and the New Year would be inconvenient for everyone). After this discussion, the dates may be announced tentatively for the convenience of all parties and, in due course, a formal proposal will be made by the Prime Minister, in writing, for the dissolution of Parliament. In that case the sort of matters on which the Governor-General needs to be assured before granting the dissolution are that Parliament has voted supply or taken any other necessary legislative measures to enable the services of government to be carried on until the new Parliament meets after the election and that the suggested timetable will not cause any difficulty in obeying the stipulations of the Constitution regarding the summoning of Parliament. Having obtained such assurances he will see the way clear to grant the dissolution and sign the necessary proclamation.

If a situation arises, however, in which it is proposed that the House be dissolved sooner than the end of its three-year term, the Governor-General has to reassure himself on other matters. This is an area for argument among constitutional lawyers and political historians and is a matter where the conventions and not the text of the Constitution are the chief guide. It is the function of the Prime Minister to advise that the House be dissolved. The most recent practices in Australia support the convention that he will make his proposal formally in writing supported by a written case in favour of the dissolution. It is open to the Governor-General to obtain advice on the constitutional question from other quarters - perhaps from the Chief Justice, the Attorney-General or eminent counsel - and then a solemn responsibility rests on him to make a judgment on whether a dissolution is needed to serve the purposes of good government by giving to the electorate the duty of resolving a situation which Parliament cannot resolve for itself. If a Prime Minister were to advise a mid-term dissolution simply because "he would like to have an election", a Governor-General would quite reasonably ask for additional reasons to support a general argument that Parliament had become unworkable or that some exceptional and unforeseen situation had arisen which could not be resolved by Parliament itself.

There is precedent, too, that in the event of a mid-term dissolution, Parliament may subsequently ask for the publication of the correspondence between the Governor-General and Prime Minister. Hence there is need for both of them to set out their views in writing, and to take care that what they say and do will stand the test of historical and political scrutiny. They should know that they should have good and sufficient reasons for taking an unusual course.

One cannot discuss with propriety what would be considered "good and sufficient reasons" for a mid-term dissolution of Parliament but, without doing so, I can give some illustrations of the sort of questions that might arise.

In crude terms, the case for dissolving Parliament in mid-term is that Parliament has become "unworkable". Among various reasons for this may be a conflict between the two Chambers (Senate and House of Representatives), the defeat of the Government on a major issue on the floor of the House, or difficulty of a Prime Minister with his own supporters. The key question is whether in fact Parliament has become "unworkable". Have all the proper steps been taken to resolve the conflict between the two Chambers; can an alternative Government be found without an election; can the Government party or parties find a new leader behind whom a majority will rally? There are good authorities to support a view that Parliament should not be dissolved and an election held simply to help a party leader or a party get out of their own difficulties but that the electorate should only be asked to overcome difficulties which Parliament itself cannot overcome.

The dissolution of Parliament is an example of one of the matters in which the Constitution requires the Governor-General to act on his own. In most matters, the power is exercised by the Governor-General-in-Council, that is with the advice of the Federal Executive Council (in everyday language, with the advice of the Ministers meeting in Council).

#### THE EXECUTIVE COUNCIL

Business comes before Executive Council in the form of a recommendation by a Minister, and is accompanied by an explanatory memorandum which is expected to anticipate any questions that might reasonably be asked by members of the Council and to establish the legal authority for the proposed action.

The Ministers have to take responsibility for the advice they give; the Governor-General-in-Council tries to ensure that the advice has been framed with a full regard for all relevant factors and that the action recommended is in conformity with the Constitution, the laws of the Commonwealth and the established and recognised practices of Australian government.

A decision in Executive Council is the final executive action. When statutes say that certain actions may be done by the Governor-General-in-Council they are saying in effect that the action is of a kind that cannot be left to a single Minister or to a functionary of government, but has to be done more solemnly and in the knowledge that this is a final action.

One of the main responsibilities of the Governor-General as President of the Executive Council is to make sure that all actions of the Government are constitutionally correct and lawful. This is not a matter of relying on his own opinion but, in case of any doubt (and, as most minutes have been drawn up by senior officers of the Government, doubt seldom arises) of referring the matter to the Attorney-General for considered advice. Another responsibility is to make sure that decisions are consistent with what is known of Government policy. In most cases policy is known to him beforehand because the Governor-General receives regularly the minutes of Cabinet decisions. In other cases any doubt can usually be cleared by asking the senior Ministers present at the Council meeting whether they are satisfied that the recommendation accords with Cabinet views. A third responsibility concerns the conventions that have grown up around Executive Council. For example, a convention has grown up that after the issuing of writs for an election for the House of Representatives - that is an election which may result in a change of government - no new decisions of matters of major policy should be taken and no appointments to high office should be made. The common-sense of this convention is to avoid a situation in which an expiring government may do something which, a month or so later, an incoming government may immediately try to cancel. The philosophy of it is that if a question on major policy is being put to the electorate at an election, a government should not make final decisions on that question before the electorate has given its answer. Of course the business of the country cannot be wholly suspended and there may be emergencies in which action should be taken at once, but, if a single Minister overlooks the convention, it is customary to defer his recommendation and draw the attention of the Prime Minister to the fact so that it becomes a matter for the Prime Minister or his Cabinet to decide whether the urgency is so great that action must be taken at once.

In presiding in Executive Council in this way a Governor-General is both a watchdog over the Constitution and laws for the nation as a whole and a watchdog for the Government considered as a whole (whatever Government may be in power). He does not reject advice outright but seeks to ensure that advice is well-founded, carefully considered, and consistent with stable government and the established standards of the nation.

Various steps are open to him. He can ask questions. He can seek full information. He can call for additional advice on any doubtful issue. In a matter of major importance he may suggest to the Prime Minister that an augmented meeting of Executive Council be held to consider all aspects of a question or, perhaps better still, suggest that perhaps the matter be discussed in Cabinet, if there has been no discussion already, so that the recommendation to Executive Council is certain to be the agreed view of his Executive Councillors.

A Governor-General, acting in Executive Council on advice, has to be sure that he has only one set of advice and he certainly cannot allow the Crown to be put in the position of acting and then finding its actions are unacceptable to its advisers or are the subject of further controversy among its advisers. This is the obverse side of the doctrine of Cabinet responsibility. A Governor-General, presiding over the Executive Council, would not, customarily, allow Ministers to have an argument in Council about any differences of opinion among themselves on policy but suggest that they go away and settle their differences in Cabinet and come back to him when Cabinet is able to express or convey a single view. Similarly, it has been argued that a Governor-General might hesitate to do what a Prime Minister urged him to do if there were reason to believe that the Prime Minister were at odds with his own Cabinet or his own party; and in such a case the Governor-General-in-Council might seek further assurances that he was acting on clear advice and not taking sides in an unresolved argument. In the case of a coalition government if there were any substantial doubt about the unity of the coalition partners he might find it advisable to seek assurances from the leader of the coalition party as well as from the Prime Minister.

The Executive Council provides regular and close association between the Governor-General and his Ministerial advisers. In addition, opportunities arise and can be made from time to time for direct and personal conversation in private. The Governor-General may ask a Minister to call to discuss matters of current interest. Such discussion may provide an opportunity for comment and question and undoubtedly a Governor-General may have some influence even if it is only to ensure that matters are broadly considered. Some discretion is needed, however, for the point made about Cabinet responsibility in the last previous paragraph also means that a Governor-General cannot separate one Minister from another Minister or enter into arguments that should properly be carried out between Ministers in Cabinet or inside a party room and not with the Governor-General. He may give some counsel to Ministers and even give them the solace of the confessional but, in my view, he would stray beyond his functions if he took sides in any argument between his advisers or preferred one Minister to another, or tried to intervene in the domestic arguments of any political party. The integrity of a Government is one of his over-riding concerns. Another is his own freedom from partisanship.

With the Prime Minister the Governor-General can be expected to talk with frankness and friendliness, to question, discuss, suggest and counsel. The role of the Crown in the Executive is to ensure that decisions are made with care and in accordance with the law. This is ensured, not by the exercise of a veto, but by the influence on Ministers and public servants of the fact that the final scrutiny of a proposal for executive action will be a thorough scrutiny maintaining both law and principle. So

long as the Crown is part of the Executive, it will be difficult for any elected Government to act in a wilful and high-handed way in disregard of the law or the public interest unless it is prepared to expose itself as deliberately choosing to disregard the law and the public interest; and it will be impossible for any bureaucracy to do unobtrusively anything other than what Parliament has empowered them to do.

#### ACTING ON ADVICE

The Governor-General acts on advice, whether he is acting in his own name or as Governor-General-in-Council. He has the responsibility to weigh and evaluate the advice and has the opportunity of discussion with his advisers. It would be precipitate and probably out of keeping with the nature of his office for him to reject advice outright but he is under no compulsion to accept it unquestioningly. He has a responsibility for seeing that the system works as required by the law and conventions of the constitution but he does not try to do the work of Ministers. For him to take part in political argument would both be overstepping the boundaries of his office and lessening his own influence. He can himself question a conclusion, seek to know the reasons for it, draw attention to relevant considerations to ensure they are taken into account, and satisfy himself that the proposal does express the single mind of his advisers, but he himself, while influencing the outcome of discussion in this way, needs to be careful not to be an advocate of any partisan cause. In doing this he has two dominant interests - one is the stability of government (no matter from which political party it is drawn) and regard for the total and non-partisan overall interests of the people and the nation.

Throughout this discussion I have used the term "advisers". I want to be precise on this. There is a journalistic misconception that the Governor-General has some sort of bureau of his own and depends on it for advice. This is not so. Neither in its membership nor in its functions is the staff at Government House designed to advise the Governor-General on the decisions he should take or to act as his own team of experts. The Governor-General's only advisers are his Ministers. His only experts are those whom he chooses to consult in the whole of the Commonwealth structure of Government. If he wishes for guidance on any legal or constitutional points that may arise he will seek it from the Attorney-General or from eminent authorities of his choosing, and not from any staff of his own. Nor will he make any personal pretension to be an expert himself. I say this explicitly to ensure that there is no misunderstanding. There is no such thing as a "Government House view" or "Government House policy", or "Government House advisers".

The Government House staff, co-operating with the appropriate officers of the Ministry and Parliament, may assist in seeing that the proper forms and procedures are used, that precedents are not overlooked, and business is presented in the prescribed manner, but they have no part in decision-making or in preparing "briefs" or "cases" for the Governor-General.

In my view, it would be a wholly undesirable state of affairs in Australian government if a Government House staff were ever to make the pretension of giving a Governor-General advice on what to do separately from the advice given to him by Ministers. Personally, I do not allow such a pretension. Government House staff have no influence in forming my opinions nor do I discuss political questions with any of them. I discuss these questions with my Ministers.

### THE GOVERNOR-GENERAL'S ROLE

It will be plain from what I have said that the part played by a Governor-General in Australian government may vary with the personality and the qualifications of the Governor-General and on the way each occupant of the office chooses to interpret his role. Conceivably, a Governor-General could be a cipher, do whatever he was told to do without question and have little influence on what happened. I have spoken on the assumption that Governors-General will be active and I fervently hope that Australia in the future will never have the misfortune to have an inactive one. It will also be plain that an active Governor-General would need to have some knowledge of both the theory and practice of government and the more he knows of Australian usage and of the Australian constitutional background and the Australian administrative structure the better he will be able to do his job. I fervently hope that Australia in the future will always have the good fortune to have Governors-General with some experience of the working of government. To be an eminent citizen is not a full enough qualification for this post. That does not mean that I suggest that every Governor-General has to be a specialist or an expert in public administration. His role requires qualities that would enable him to consider wisely advice given to him, rather than to try to tell others what to do. He could cause mischief and have little hope of doing good if he tried to be a ruler or if he tried to manipulate politicians. He has to be free of partisanship. He cannot start promoting particular causes, for his dominant role is as one who uses his influence to ensure that there is care and deliberation, a close regard both for the requirements of the law and the conventions of the constitution and for the continuing interests of the whole nation, and that the government which the Australian people choose should be a stable government acting consistently and responsibly.

In such a system the influence of the Governor-General in the government of Australia will vary a good deal according to the degree of respect in which a Governor-General is held. If he is thought to have some depth of experience, to have some degree of wisdom, some measure of tolerance and understanding of various points of view and to be worthy of confidence and trust and able to keep his own counsel and the confidences of others, his influence will be much greater than if he were held in a lesser degree of respect. His influence would disappear altogether if he were thought of as one who would do whatever he was told without asking the reasons why.

## HIS PUBLIC APPEARANCES

In this memorial lecture I have talked only of that part of the Governor-General's duties directly related to what, by stretching the meaning of the word, might be considered to be "management". He has many other duties to perform both in public and private. Some involve ceremonial occasions arising from his place in Australian government - the opening of Parliament, the administering of oaths of office, the receiving of credentials from Foreign Ambassadors, the holding of investitures, the taking of parades, the receiving of heads of states of other countries. Some involve public duties on behalf of national and international institutions and societies, such as the opening of conferences, attendance at major public gatherings, presentation of awards and so on. As patron of many organisations, as Prior of the Order of St. John, as Chief Scout and in similar capacities he has regular demands on his time.

All of these duties take him to all parts of Australia, for his jurisdiction extends over the whole Australian Commonwealth and his presence is both required and sought in all parts of the Continent. For example, the presentation of Queen's Colours to a regiment in Perth, or to a regiment in Townsville is no less a duty than to take the Queen's Birthday Parade at Duntroon. A Governor-General could not completely do his duty by staying all the time in Canberra. In Government House, the Governor-General and his wife are hosts at many functions large and small and receive numerous callers.

I mention these other activities simply to put what I have said about government into a broader framework. One easy answer to the questions about whether a Governor-General is necessary and whether he is of any use is that a great number of people in Australia clearly think so because they are always asking him to do something and they keep him fully employed. I have received encouraging indications, too, that Australians both expect and appreciate statements by a Governor-General on matters of current concern at a level different from that of party political controversy. I also receive repeated evidence that there are many national and international occasions when, in all parts of Australia, the organisers seek the presence of the Governor-General in order to mark the high-level character of the observance.

May I digress a moment to say that in the acceptance of invitations I try to observe closely certain established courtesies and conventions. In national events or in functions of an Australia-wide interest and in matters clearly under Federal administration it is customary for a Governor-General to accept an invitation on his own responsibility. If an event is clearly a State event or arises from a function of a State Government, before accepting the invitation, it is customary to refer the matter both to the Government House and to the Premier's Office of that State to ensure that the invitation is one that both the State Governor and the Premier think it appropriate for a Governor-General to accept.

A further question on which I will not enlarge concerns the changes that are taking place in the position of Governor-General. The office was created by the Australian Constitution in 1901, over seventy years ago. Since that time Australia has risen to nationhood. In 1901, even the status of Dominion was unknown. Today we have grown into a stage of independence and international recognition that was never envisaged in 1901. The Queen herself is now Queen of Australia and in matters concerning Australia acts solely on the advice of Her Australian Ministers. Australia in her own right and identity as a nation appoint and receives Ambassadors. Her treaty-making power is exercised freely. Australia goes to war by her own decision and makes other decisions in its relations with foreign countries independently of any decisions made or not made on the same subjects by other members of the Commonwealth of Nations. What an Australian Government might advise our head of state to do on many subjects is in some cases quite different from what some other government in the Commonwealth of Nations might advise the Queen to do. We have international interests today which were not known in 1901. In practice this means that an Australian Governor-General, representing and acting on behalf of the Australian head of state, The Queen, in 1972, is not the same as an Australian Governor-General performing his functions in the early days of Federation.

Beyond suggesting that the nature of the office of Governor-General of Australia may need re-examination and re-interpretation in the light of the great changes of the past seventy years I leave the further discussion of this topic to the lawyers and the students of our modern political institutions. Two recent precedents established both in Canada and Australia are that a Governor-General can travel outside his country and be recognised while overseas as Governor-General of his country and that at great international gatherings, as at the Iranian celebrations, in the absence of the Queen herself, he was accorded a status similar to that of a head of state.

My final word is a plea that my present address be seen in perspective. I have tried to be discreet and non-controversial and to confine myself very narrowly to a description of one phase of the Governor-General's work. Nothing I have said, should be taken as a direct reference to any transaction that has been handled in my own term of office, or to my own relationship with any of my advisers. I have tried to give a straight description of the theory and practice and certainly not to recount anything that has happened in the recent past or to declare any intentions about what would be done in the near future and only ignorance or malice would report what I have said as having any application to current political events.



Government House,  
Canberra. 2600.

22 October 1975.

*My dear Private Secretary,*

I shall get this letter into Friday's bag. It is the first to go.

May I say first of all that Her Royal Highness The Princess Margaret arrived this morning after a tiring journey. We have not yet had a real conversation but I hope she is comfortable. We shall be seeing more of her later in the day and especially at dinner and are looking forward to this.

I may have to add to the constitutional story in the couple of days between now and the dispatch of this letter, but it seems sensible to summarise the happenings since I last wrote.

The amount of Press coverage is now enormous and it is very difficult to add to the clippings in any useful way. However, I enclose some recent clippings.

Yesterday, (Tuesday, 21 October) I carefully considered the Ellicott memorandum and decided to ask the Prime Minister to obtain for me an opinion of the law officers of the Crown on the propositions set out in it. He agreed to do this and has asked for the opinion on his own behalf with the intention of passing it on to me. I realise of course that the law officers will profoundly disagree with what Mr Ellicott said and may go so far as to say that there is nothing left of any substance in the reserve powers of the Crown. But it does not follow that in an extreme constitutional crisis I would accept that. I have of course, on any view, little room to move contrary to the Prime Minister's advice.

I am under very great pressure, through the Press, to act. Sir Robert Menzies issued a statement about the crisis which was published in this morning's Press. I send the full text.

Yesterday I swore in a new Minister for Agriculture, Mr Keating, who took the portfolio for Northern Australia from which Mr Patterson had resigned in order to take over Senator Wreidt's previous appointment as Minister for Agriculture.

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Before the swearing-in ceremony I had a long talk to the Prime Minister.

I have been worried for the last twenty-four hours that the Governor-General might appear to the people of Australia to be uninterested in the profound crisis which is developing. I had of course, up till yesterday, said and done nothing publicly. It has been my intention and still is, to do nothing constitutionally at this time but the growing expression of the point of view that the Governor-General should mediate or intervene to help produce a solution forced me to consider whether I could do anything at all. As examples of the sort of articles being written I attach one by Professor Julius Stone of the University of New South Wales in yesterday's Sydney Morning Herald and one from Professor Sawyer in today's Canberra Times.

When talking to the Prime Minister yesterday I said to him that it seemed to me that the crisis at the moment is still a very serious political crisis, but that it has not crossed the threshold yet into a true constitutional crisis, because the Senate has only deferred the Budget, not finally rejected it, and money has not started to run out. Even if money were to run out, the Prime Minister believes he has an option with the Federal Banks backed by Commonwealth guarantee which will help him to carry on, but that is not public.

I suggested to the Prime Minister that he should agree to me seeing the Leader of the Opposition with a view to raising the question whether the Leader of the Opposition is determined to cross the threshold from a political crisis to a constitutional crisis. He would do this, if he is going to do it, by producing what in the course of time would be a rejection of supply either by active rejection or by continued deferral up to the point of time when money runs out. I thought it might be possible subtly to direct a conversation with the Leader of the Opposition to the point where he might see that he has to withdraw from the brink, having done all he could do to force Mr Whitlam to an election. He could take whatever political capital he could out of the Prime Minister's refusal to go to the people. This would allow the main issue in the country to return to the economic problems instead of being clouded, even dominated, by the constitutional issue.

The Prime Minister agreed to me seeing the Leader of the Opposition, not of course for the purpose of getting advice from him, but simply to do my best to ascertain the likely future course of events. Accordingly, I invited the Leader of the Opposition to call which he did last night. I spent more than an hour with him. He

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maintained that the intention of his Party was quite firm and irreversible and that if the Appropriation Bills were re-presented, as is happening, they would be deferred as often as they were presented.

He, of course, believes that there is already a serious constitutional crisis but in any event accepts, from what he says and from what the Prime Minister says, that such a crisis is inevitable.

My effort therefore to explore alternative possibilities did not get off the ground but nevertheless, from the point of view of the Vice-Regal office at least, I appear to be showing an interest, looking at things from the point of view of Australia generally. The newspapers are full of it all. There has been no statement by Mr Fraser or myself about what was said, confidentiality having been agreed to.

A rumour in the Press gallery immediately spread to the effect that I had summoned Mr Fraser out here to reprimand him in some way or other. It had been agreed between us, and the Prime Minister was privy to this, that the only statement that could be made was that I had invited the Leader of the Opposition to call and had discussed the current situation with him. When however he was confronted by the rumour, he felt understandably that merely to say "no comment" would leave the impression that the purpose of the meeting had been to criticise or reprimand him in some way or other, so I authorised him to say that that had not been the case and that this could be confirmed by enquiries at Government House. Enquiries were made and the Press this morning did not carry in any significant way any such suggestion.

As things stand at the moment, (22nd October) despite all the suggestions in the enclosed clippings and in other newspaper articles and editorials that I should in some way or other mediate or even adjudicate, there is really nothing that I can do to bring the two main contenders to some point of compromise. They are set upon their course and unless, on one side or the other, their parties weaken, the outcome will occur within a quite short period of time, say by early or mid November.

My own judgment is, though it is difficult to be certain about these matters, that the very considerable publicity given to the fact that I yesterday had talks with both the Prime Minister and the Leader of the Opposition has put the Vice-Regal office favourably before the people, while at the same time not leaving the impression that the Governor-General is acting in any unconstitutional way. I am entitled to advise and warn the Prime Minister and he has agreed to me talking to the

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Leader of the Opposition. Nothing constructive has come from it, but at least the people have the feeling, or so I judge it, that I am not sitting inactively at Yarralumla doing nothing.

The Press has asked today whether they could have an account of what happened yesterday. I have instructed my Official Secretary to say that in such circumstances conversations between the Governor-General and others, including the Prime Minister, are confidential and by tradition are never discussed. It had been pressed upon my Official Secretary that these matters are terribly important to Australian citizens in general and there should be some explanation as to why they cannot be told what happened. In the short statement which the Official Secretary made when asked, he said that, however important matters were, the principle of confidentiality was also important, particularly at the present time, and I had no intention of departing from it.

Yesterday, in the House of Representatives the Prime Minister moved a motion as follows:

"(1) That the House of Representatives having considered Message No. 276 of the Senate asserts that the action of the Senate in delaying the passage of the Appropriation Bill (No. 1) 1975-76 and the Appropriation Bill (No. 2) 1975-76 for the reasons given in the Senate resolution is not contemplated within the terms of the Constitution and is contrary to established constitutional convention, and therefore requests the Senate to re-consider and pass the Bills without delay.

(2) That a message be sent to the Senate acquainting it of this resolution."

The Leader of the Opposition moved an amendment as follows:

"That all words after 'Senate resolution' be omitted with a view to substituting the following words:

'is within the terms of the Constitution and that the House of Representatives should face the people'"

The motion was, of course, passed.

The Appropriation Bills have again passed through the House and have again been sent to the Senate. The Senate has refused to consider them, deferring all attention presumably until they get an election of the House.

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This is how the matter rests as at 22 October. I shall add daily some extra comments to bring this account up to date.

23 October 1975.

Last night we had a dinner here for Her Royal Highness The Princess Margaret. I hope she enjoyed it. She had long talks with both the Prime Minister and Mr Fraser. Her programme today has proceeded according to plans.

The newspapers this morning reported certain remarks made yesterday by Mr Fraser on television and radio programmes. He was apparently asked if the Governor-General had legal authority to request the Senate to pass the Supply Bills. He was quoted as replying that he would need legal advice on that but he doubted very much whether I could. He was then asked how the Opposition would react if I took this course and he apparently said, "We would obviously look very closely at any request from the Governor-General because I have very high regard for the office. Any decision made by the Governor-General would obviously be a decision we would follow."

Earlier he was it seems asked on radio if he would accept my advice. His reported reply was, "If he gives a decision we would respect and accept it absolutely. If he gives advice we would give the greatest possible weight to it because of the respect we have for the office and the man".

This was treated in most newspapers this morning as being a sign of retreat - that he would go along with anything I wanted done about the matter. This was a most surprising development because it should be obvious to everyone that the Prime Minister would always say that I must do what he advises and not give a ruling that ought to be binding on both parties.

Nevertheless this afternoon Mr Fraser is reported to have issued a challenge to the Prime Minister to abide by my advice and show the same respect for my office and for me as he has. He is supposed to have said, "I challenge him to indicate that he will accept any decision and give weight to any advice the Governor-General may give him". He denied that his remarks yesterday were a sign of back-down. The afternoon press has already pointed out that Governors-General are not permitted to give advice of a political character.

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The Government is very confident first that a big back-lash against Mr Fraser is under way and secondly that there may soon be some kind of retreat by the Opposition.

24 October 1975.

This morning's press seems to be taking the line that Mr Fraser has made a mistake and that a back-lash is developing. He conceded to me that the next Gallup poll will show some swing against him. Some believe it will be a big swing.

Please assure Her Majesty that we are enjoying Princess Margaret's stay and of my continued loyalty and humble duty.

Yours sincerely,

JOHN R. KERR

Lieutenant Colonel the Right Honourable Sir Martin  
Charteris, K.C.B., K.C.V.O., O.B.E.,  
Private Secretary to The Queen,  
Buckingham Palace,  
LONDON ENGLAND

# Sir Robert speaks on row in Senate

This is the text of yesterday's statement by Sir Robert Menzies on the constitutional crisis:

As is well known, I have, for a long time, abstained from entering into any current political controversy.

But the circumstances today are such as to compel me to break that silence.

For, quite simply, I think more nonsense is being talked about the constitutional position of the Senate than I can comfortably listen to, or read.

## Powers of the Senate:

If we desire to know what are the powers of the Senate over money bills, we find them expressly set out in the Constitution.

The draftsmen of the Constitution included these provisions because they knew (and this is a matter of historic fact) that the smaller States, smaller in population, would not vote for federation unless they had some protection given to them in the Senate.

And they got it. And they still have it. The relevant provisions of Section 53 are:

## Powers

"The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government.

"Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws."

Now those provisions, which are the material ones, establish quite plainly that, while the Senate may not itself amend what we call "money bills," it can pass them, or reject them, because these are the powers of the House of Representatives in respect of the same measures.

Let me repeat, the Senate may not amend these measures, but it may reject them, or, of course, in the ordinary process of debate, it may adjourn them.

It would be absurd to suppose that the draftsmen of the Constitution conferred these powers on the Senate with a mental reservation that they should never be exercised.

Now, nobody has any doubts about this legal position.

Mr Whitlam had no doubt about it when he was Leader of the Opposition, nor did Senator Murphy, as he then was, when he asked the DLP senators to join with Labor in throwing out a financial measure.

## Frustrated

All that has happened is that Mr Whitlam is now Prime Minister and, as I know from experience, prime ministers become a little frustrated if the Senate carries a vote against them.

But this does not settle the argument of constitutionality.



Dr Cairns

The Constitution's meaning does not change according to the direction from which Mr Whitlam and his ministers look at it.

I do not believe that the Senate ought as a matter of political judgment, to exercise its powers in every case.

I think that in the interests of stability of government, it would be wrong for the Senate, for example, to reject a Supply for the sole reason that it did not like the financial measures and had the power to reject them.

Everything depends on the circumstances. For a government, fresh from the people, with a victory, to be challenged in the Senate under Section 53, would be, in my opinion, wrong.

Rot illegal, no, but politically wrong.

## Record

But those are not the circumstances today. The Government has, in the past 12 months, itself put up a record of unconstitutionality and, if it is not too strong a word, misconduct on a variety of occasions.

On one occasion, it concerned Dr Cairns, who was put out for not accurately informing the Parliament.

On a recent occasion, it was Mr Connor (so senior a minister, as Cairns was, as to have acted in the highest ministerial capacities).

Connor has gone because, on the Prime Minister's own statement, he misled the House.

And then there is the not-to-be-forgotten incident of the executive council meeting, at which the Prime Minister was present, and at which the then Attorney-General gave a "kerbstone" opinion.

At that meeting, the executive council, the Governor-General not being present, authorised a borrowing of a sum of so huge a description that it would far exceed all the borrowings ever made by the Commonwealth in 75 years.

It was to be done through obscure and unorthodox channels. It was to be a borrowing for 20 years. It was to be a huge borrowing in which the amount of money received by the Commonwealth from the lenders was 95 in 100, but the total of 100 had to be

repaid at compound interest.

This Executive Council decision was scandalous.

It was clearly and unblushingly designed to escape the obligation in the Constitution to go to the loan council under the financial agreement for approval.

True, it thought it expedient to call the borrowing one for "temporary purposes"; but a first-year student would laugh at this as a description of the loan to which I have referred.

That was a disreputable incident. It was designed to evade the constitutional obligations of the Commonwealth.

Now, you cannot add these things together and say that the Senate ought to accept them with complacency.

This, if ever there was an occasion, was one when the Senate ought to have exercised its undisputed right to defer or reject financial measures involved in the Budget.

## Defying

All these things are so simple to anybody who (like myself) has been both legally and politically familiar with the Constitution and its workings that I have been astonished to discover that the Opposition is now being treated, not as a body authorised to check malpractice by the Government but, as itself, guilty of violating and defying the Constitution.

I cannot imagine that any competent lawyer would agree with this view. But a lot of people will, if it is sufficiently pushed into them by a variety of people in the Government, aided and abetted by some elements in the media.

## Impertinence

Finally, and I would say this with unfeigned respect for the Vice-regal office, I think that it would be a singular piece of impertinence on the part of the Prime Minister to go to the Governor-General, whose reputation is high, and who understands these things very well, to ask him for a premature "half-Senate" election, calculated and designed, hopefully, because of the recent legislation about senators from the Australian Capital Territory and the Northern Territory, to give the Government control of the Senate for a month or two.

In which time, of course, all their legislation which now has been attacked in the Senate, could be carried, with permanent (and I think damaging) effects on the Australian political structure.

To offer advice to the Governor-General on the lines that would have been hinted at would, I think, be both improper and insulting.

There is no legal principle that permits a wrong-doer to profit from his own actions.

# What he said 43 years ago

On November 3, 1932, Sir Robert (then Mr Menzies) wrote a letter to Sir Phillip Game, the Governor of NSW. It said:

"The newspaper demand that you should dismiss a premier on the ground that there was some reason for believing that he no longer enjoys the confidence of the electors always seems to me to be based upon an absolute misconception of the constitutional position of a modern governor.

"Under the Australian system of universal suffrage and triennial parliaments with a legally recognised and responsible cabinet, it must, in my opinion, follow that so long as the premier commands a majority in the Lower House, and so long as he is guilty of no illegal conduct which would evoke the exercise of the royal prerogative, he must be regarded as the competent and continuing adviser of the representative of the Crown.

## Elections

"The constitutional authority of a premier rests almost entirely upon his success at a general election, and upon his continued authority in the popularly elected House, and not upon irresponsible speculations as to whether he would have lost his majority if the Constitution had provided for annual and not triennial elections.

"Moreover, these are

days (and now I speak as a politician) in which any government may, in the stern discharge of its duty, be compelled to take steps which render it unpopular with the electorate.

## Irksome

"This, however, so far from being a good cause for its recall, may constitute its greatest claim to reputation and one of the factors which strengthens the hands of a government fresh from victory at the polls is that it may look forward to a period of office in which its policies may be dictated by convictions and not by the mere necessity for vote-catching.

"It would, in my respectful opinion, (and in this I am expressing the majority view among reputable lawyers in this State), have been nothing short of a calamity if during the very great constitutional crisis, NSW had possessed a governor who had subordinated the constitutional authority of a governor to the purely opportunist demands of those who found the constitutional restrictions irksome.

"This represents my considered view, in spite of the fact that politically I am a vigorous opponent of Mr Lang and his policy, and at all material times considered that policy to be actually disastrous to Australia."

## THE WHITLAM-FRASER BATTLE OF 'PRINCIPLES'...

# Why not a moratorium?

By JULIUS STONE\*

MR WHITLAM proclaims adamantly the principle that "the Government which has a majority in the House of Representatives is entitled to govern." Labor will in Senator J. McClelland's words defend that principle until "Mr Fraser goes to water." The Labour Minister did not indicate what might be happening to the rest of the community in the meantime.

Mr Fraser, of course, also stands on a principle, on which at the weekend he also dug in. This is that the special place of the more representative House in the rise and fall of governments still leaves the Opposition with the duty to oppose. And at any point when the Government's policies are so inept or wrongheaded as to threaten the nation with disaster, the duty to oppose includes the duty to use all available means to defeat the Government, by requiring it to show that it still commands the support of the electorate which originally gave it a majority in the House of Representatives. The withholding of Supply by the Senate so as to make it financially impossible for the Whitlam Government to carry on is (he says) a lawful means to this end.

Nothing that has happened has changed the view which I expressed before the crisis, in the joint statement of law professors of the University of NSW, that it is a grave disservice to the stability of our form of government for either party to break the 75-year-old record of self-restraint about blocking Supply in the Senate. And when (if we can still hope for such a thing) we next get a government which commands an effective majority in both Houses, it should be a first priority to set in course a constitutional change which will bring the law into conformity with that practice.

What the breach of practice has already done is to start a ghastly game of poker, in which the people of Australia is not only the stake but the sacrificial lamb. Tens of thousands of Australians might well already be muttering: "A plague on both your Houses."

This is not a time to be blinded by the technicalities of legal craft to the impending agony of the polity which only wise restraint can avoid. The Constitution is too important to be left merely to constitutional lawyers. Nor is this a time for cynical trivia, or naive whistling in the dark.

Tens of thousands believe that both sides are also, or even mainly, concerned with other things than the public good. They believe that the Government side is con-

**The Opposition should agree not to exercise its claimed legal right of blocking Supply for a period to be agreed...**



**... the Government should undertake to seek a new House of Representatives election at the end of that period.**

cerned to hold on to the plums, patronage and privileges of office, in the face of a deadly swing of electoral opinion in case they have to go to the hustings; and that the Opposition is similarly concerned with grabbing the plums, patronage and privileges of office.

Of course, we normally expect a degree of this kind of self-seeking from politicians and political parties. But what they are not entitled to do is to make the basic interests of the nation into a random casualty of avarice for office.

Even after we have put aside early hysteria about the crisis, there are solid grounds for anxiety. Not least is the rather sure prospect of paralysis of government itself for a period which may last months, and of which the aftermath in terms of wrong decisions or neglect may last for years.

For example, the economy will be left derelict, confused and haywire in both the private and public sectors, at a stage of apparent convalescence which might have made progress in the warming climate of recovery in North America.

On both sides, day-to-day manoeuvrings will be geared to ensuring that the pains of lack of Supply will be felt in ways and quarters which improve one side's own prospects rather than the other's; while economic management is nobody's business.

Caught up in these manoeuvres will be wide sections of the citizenry who depend, many from month to month, on pensions and other welfare entitlements and facilities. Contrary to early alarms, there would be money for pensions at the old rate, but the means of distribution will have to be improvised.

The power-houses of development of national skills and resources — research institutions, schools, univer-

sities and other tertiary institutions — already stunned by draconic finance cuts will be thrust further into penurious uncertainty.

The arms of the defence establishment will be reduced very quickly to immobility, whether in necessary patrols of our coasts, the use of aircraft, or logistic training exercises.

Moreover, the hardships and frustrations involved in such a state of affairs will certainly accelerate the divisiveness within the nation, already acute with the struggle of each sectional group to maintain its own share of the shrinking inflationary pie. We may believe Mr Hawke's assurances that he does not advocate a general strike for political struggle, and yet have reason to fear this staging post to civil strife.

The political life of the community is being increasingly poisoned as rational argument is replaced on both sides by an explosive mixture of personal recrimination and time-worn ideological slogans.

This is already beginning to embroil the ultimate symbols of stable overall consensus in our polity, which is, after all, the essence of what we mean by being a nation. The Governor-General and the State Governors are being dragged, one of them with some self-propulsion, into party calculations of how to seize or hold on to office, at whatever cost to the nation. The Governor-General, at least, should have a far more constructive role, which I will mention later.

The community, with whose future both sides in this party political strife are making so light, is entitled to deliver a stern admonition to both sides. Mr Whitlam has told us that we must accept "utter financial chaos" until the Opposition gives way and the Senate grants Supply.

He is ready to let that chaos vindicate his principle

about House of Representatives control of the Government.

Mr Fraser is ready, with the same weapon, to vindicate his principle that when governmental policies and administration fall to a level threatening the national future, and alienating the opinion of the electorate, the Government must resubmit itself to the people.

It is as inane to expect Mr Fraser to renounce his principle as it is to expect Mr Whitlam to go meekly to Sir John Kerr and ask for a double dissolution. Both must be left sufficient face so that each can unfurl his banner of principle another day.

Is there any way to permit this? Surely there is. Mr Fraser cannot be thinking that his task, if he came to government now, would be a bed of roses, even if his skin was immune to thorns. Nor can he have wholly forgotten his conviction that, short of the extraordinary, an elected Government should be allowed a sensible span of its term to effectuate its policies. His chance of governing successfully would probably be far greater a year hence, after the latest spate of Labor Party policy shifts have had a chance to work, and in the chaos, conflict and threat of national collapse which would result from winning his poker game now.

Mr Whitlam, for his part, cannot be thinking (though he may be praying) that his electoral position is now so bad that it cannot be still further diminished by the explosion of disaster invited by the present crisis.

Is not the only course now a moratorium in the battle of "principles", to allow a period of stability in government?

The Opposition should agree not to exercise its claimed legal right of blocking Supply for a period to be agreed — a period not as

long as the House still has to run, but sufficiently long to allow the latest governmental economic policies to gain momentum. In return, the Government should undertake to seek a new House of Representatives election at the end of that period, be it six, nine or 12 months.

Nothing in either the Constitution or party politics prevents the two sides themselves reaching some such accommodation directly — except, of course, the stand-off positions into which they are digging themselves.

Even in terms of the role and powers of the Governor-General, they need to ask themselves whether they should really stultify that high office by facing its bearer with impossible choices.

Mr Whitlam insists that the Governor-General will have to follow the advice of his ministers; the Opposition insists that the Governor-General will need to be satisfied that the ministers advising him are in a position to ensure continuity of Government (which means continuity of Supply) without illegal recourses.

Perhaps circumstances are conceivable in which the two sides should compel the Governor-General to a choice which, whatever the principle he tries to act on, the inescapable effect is to align himself with one party viewpoint or the other.

Surely circumstances do not yet compel that unhappy course. These are indeed that the good offices and mediation of the Governor-General be availed of to moratorium of which I have spoken. The question of the length of the moratorium, and the tough decision as to whether a half-Senate election should be a part of the package, will call for all the wisdom and balance of judgment that can be marshalled. But they are not insoluble matters, and success would fend off great national evils.

Neither side can justify visiting such evils on Australian society by claiming to do it for the society's own sake, any more than President Johnson could finally justify destroying Vietnamese society for the Vietnamese's sake. Let this minimal principle of the public good, at least, be one which the two sides both respect if they want us to take seriously their concern for the public good.

Each side will, no doubt, see this minimal principle of the public good as too little for its aspirations. But for this nation at this moment it would be plenty, and just in time. Time indeed!

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POLITICAL CONFRONTATION

A modest proposal for a way out of the mire

BETWEEN THE LINES By GEOFFREY SAWER

THE Westminster system of responsible parliamentary government was the result of a slow evolution which reached something like its present form in the early 19th century, and spread around the world with numerous variations.

Some of the variations were due to combining Westminster with federalism — a difficult and potentially dangerous combination, as Mr J. W. Hackett, a Founding Father of the Australian Federation and a leading newspaperman from Perth, pointed out in 1891.

The kings, queens and presidents who have worked within the limitations of this system have often found themselves trying to conciliate rows between the over-mighty leaders of their national factions and parties, and leaving aside all questions as to the legal and conventional restraints upon our equivalent of a King — Sir John Kerr, the Governor-General — I can see no reason why he shouldn't perform such a conciliatory function, or at least try to.

What sort of a solution might he suggest? My dear wife Nancy has recently, for some private purpose, been reading up on galaxies, nebulae, Big Bangs, the Steady State, black holes and such astronomical phenomena, and she suggests that in the first place the GG should lend Mr Whitlam and Mr Fraser some books on these topics so that they might put their problems into perspective.

However that may be, it's certainly desirable that these eminent leaders, who so obviously have the interests of the nation and no selfish interests at heart, should stop engaging in self-fulfilling prophecies and calm down a bit, before Sir John can usefully engage them in mutual parley.

Assuming, however, that parley is or has become possible, what settlement short of immediate demands on both sides is viable? After discussing this

with a number of people, I have a modest proposal.

First, a Royal commission on the Loans Affair in all its aspects, from inception to the departure of Mr Khemlani from these shores, with no Crown privilege and no other privilege save that nothing said shall be used in evidence in other proceedings.

Second, supply to be granted to carry things through until June 30 next but no longer.

Third, a half-election for the Senate at a date to be agreed upon but no later than January 30 next, and at the same time a referendum on a proposal to amend the Constitution along the lines of the provision as to money Bills already part of the Constitution of New South Wales — Senate not to have power to reject appropriation for "ordinary annual services" of government.

Fourth, no alteration of electoral boundaries until an election for Reps or a double-dissolution election has taken place.

Fifth, if after May 30 next the Senate is still of a mind to

refuse Supply and its power to do so is unchanged, either a general election for Reps or a double-dissolution election as the PM chooses.

This depends on a number of political bets which may be unsound — for example, I do not see Mr Whitlam getting a Senate majority out of a half-election, nor winning the referendum suggested above, but I do think that his electoral prospects even on present boundaries will improve materially by mid-1976.

However, the above exercise is only intended to suggest that in spite of the excitements and the marching and countermarching, it ought to be possible to arrive at some solution not dishonourable to either side, before any illegal acts occur.

I use the word "illegal" with care; it is thrown around, along with the word "corruption", by too many public figures who ought to know better, both about the presumption of innocence and about the difference between illegal activities and activities beyond power. Some recent observations of Mr Crean, however, involve, I'm

sure without his realising it, possibilities of illegality.

He has pointed out, quite correctly, that many sources of revenue continue to be available to the Government indefinitely or for some months to come, and that many kinds of expenditure are likewise covered by standing appropriations or appropriations lasting for some time.

However, he referred also to the possibilities of retrospective validation, and this involves legal perils. If people are prepared to go on supplying goods or lending money to the Government in the expectation of ultimate payment, they are quite entitled to do so and the Government would probably in most cases be entitled to accept the goods and the money.

Years ago, a Mr Bardolph established the legality of that tactic; he obtained judgment against New South Wales even though a High Court majority was prepared to assume that, at the time of judgment, there was no State Appropriation Act authorising payment of the amount claimed. Justice Evatt thought there was an applicable

appropriation, and Bardolph was in fact paid.

This arose out of an attempt by the Stevens Government to repudiate a contract made by the Lang Government preceding it. However, the majority in Bardolph's case emphasised that an Appropriation Act was necessary before payment could be legally made. Some State Acts covering actions against the Government provide for payment of judgments out of consolidated revenue — a standing appropriation — but this is not so in the case of the Commonwealth; in that case, an Appropriation Act authorising payment of the judgment debt is also necessary.

Hence getting judgments would in most cases provide no immediate help to government creditors, and in any event this would be an impracticable course with thousands of small creditors such as public servants wanting their salaries.

If, however, an attempt was made to pay creditors of the Government from consolidated revenue without any Appropriation Act, the machinery of the Audit Act would come into play. Bruce Juddery commented on that aspect of the matter yesterday. I add that without a warrant from G-G and Auditor, payment out of the public account would be an offence. Would the spending officers be prepared to count on retrospective validation?

Praise be, if the Canberra Commune does as a result of these events find itself facing a financial siege, things could be worse; the broad beans, lettuce, broccoli and silver beet are bearing profusely, and tomatoes may break all records for earliness.

Animal protein could be a problem, but the cats and dogs may do better than they did in the Paris Commune, since the hills are stiff with fat; smug cattle, not too readily salable despite recent improvements in the Japanese market, and a bit of bartering should be possible,

## Reflecting the people's will

THE PRIME Minister's television interview last night was significant for two reasons. First, Mr Whitlam admitted that the Senate *does* have power over money bills. Second, he revealed the long-term aim of his tactic of "toughing it out" through the political and constitutional crisis. He wants to crush that power once and for all.

Mr Whitlam has given up quarrelling with the contents of the Constitution. Rather, he believes the Constitution is wrong to allow the Senate power to reject money bills. "No one thought this (the blocking of the Budget) could ever happen," he says. "It could never happen in any other country. I am determined to end for all time the Senate's power over money bills."

How does Mr Whitlam plan to achieve this? The normal method, indeed the only formal and final way, of changing the Constitution is by referendum. Yet there has been no statement from Mr Whitlam that he intends to adopt such a course — and he could hold a referendum with an election. It seems, instead, that he wants to force Mr Fraser and the Opposition to back down. This would not create a legal precedent, but it would set a powerful political example. If Mr Whitlam can show that the Government can win in the present circumstances, future Oppositions will not take the risk of blocking or rejecting Supply. Mr Whitlam will have achieved his long-term aim, as well as winning his immediate fight to remain in power.

Mr Whitlam has now taken up the position adopted by the former leader of the A.L.P. in the Senate, Mr Justice Murphy, who argued in 1970 — when Labor was in conflict with the Gorton Government over a tax bill — that the Senate did have the power to block any bill. But Mr Whitlam has still not reverted to his own views expressed at that time: that a Government which has a money bill rejected by the Senate should resign.

It should also be noted that Mr Whitlam's behavior now is strangely different from his actions in May 1974. There was no talk then of "toughing it out." No thought of helping to plunge Australia into an unprecedented constitutional crisis, with an attendant economic and financial crisis. No talk then of having to end the Senate's monetary power once and for all. Nor, incidentally, has there been any talk since then of a referendum to abolish that power.

In May of last year, Mr Whitlam could not wait for the opportunity to confront the former Leader of the Opposition, Mr Snedden, at the polls. He was brimming over with confidence, regarding Mr Snedden as easy meat indeed. The Government did not even wait for the Senate Opposition to block Supply. The Opposition merely moved to gag debate on Supply and Senator Murphy hurriedly announced that this was not acceptable to the Government.

Mr Whitlam soon rushed off to the Governor-General armed with other bills that had been rejected twice in the Senate — bills which had thus already provided the grounds for a double dissolution — and a general election was called.

Now Mr Whitlam does not have the same confidence which he had last year. He knows that assuredly Labor would lose an election held soon. His own standing with the electorate is abysmally low: even after a 2 per cent increase in the past month, his approval rating is only 37 per cent. Mr Fraser's approval slipped 5 per cent over the past month but it still stands at the commanding figure of 54 per cent. Mr Whitlam's strategy is to stave off a general election as long as he possibly can and try to retrieve some of his lost ground in the meantime.

In so doing, Mr Whitlam has left no doubt in the minds of the voters that he certainly does regard politics as the art of the possible. Never mind that his present course of action involves a breach of a major parliamentary principle — the same principle that Mr Whitlam himself enunciated so firmly in 1970. For this time there is a new circumstance that gives Labor a slim chance of gaining a temporary majority in the Senate to pass its Budget. This is the fortuitous timing of the High Court's decision on representation in the Senate for the Northern Territory and the Australian Capital Territory.

For if there were an election for half the Senate, the senators from the Territories would take their places immediately. So, too, would the replacements for Senators Field and Bunton, assuming the governments of Queensland and New South Wales issue writs for a half-Senate election in those States. But any other changes in State representation in the Senate would not take effect until July, the time set down for senators elected under normal circumstances to enter that House. There is an outside chance that between the half-Senate election and July, Labor could control the Senate.

But the half-Senate election would not be a true and accurate reflection of the will of the people. The full effects of the judgment of the electorate would not be seen until next July. This would mean that the people would be deprived of the opportunity of having their views on the present circumstances reflected in their parliamentary institutions. The only remaining proper course for Mr Whitlam is to advise the Governor-General to order a full general election. This is the way his present Senate leader, Senator Wriedt, would prefer the crisis were resolved. Mr Whitlam and Mr Fraser would be serving the nation better if they gave more thought to solving the present crisis democratically instead of humping around the countryside acting as though the election has already been called.

# The Sydney Morning Herald

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WEDNESDAY, OCTOBER 22, 1975

## The real issues

IN HIS spare time, Mr Malcolm Fraser goes fishing. There have been disturbing signs of late that he is allowing his sport to intrude into his politics. In a number of public references and statements, in particular his references to vice-regal intervention in Australia's present political crisis, the Leader of the Opposition has come perilously close to joining the Prime Minister's constitutional fishing expedition. Of course, Mr Whitlam seeks to depict the political crisis which is rooted in his Government's blunders, failures and failings as a constitutional crisis. It is nothing of the sort. However much Mr Whitlam may twist and turn, however brilliant his rhetoric and however skilful his manoeuvres, the fact remains that the Senate's deferment of Supply is a political move to force a discredited administration before the people in a general election.

It is on those political grounds, and those alone, that Mr Fraser should base his campaign. Mr Whitlam's last desperate gamble to retain office depends wholly on his success in muddying the waters, in transforming the political debate into a constitutional debate. By speaking in terms of the latter, Mr Fraser merely lends legitimacy to the Prime Minister's tactics. In the eyes of the electorate, that process would more than likely erode the Opposition's standing, with the Government's specious arguments wrongly given credence. To assess the honesty of the Government's arguments, we need look no further than the Prime Minister himself. Although he now seeks to explain away his previous views, Mr Whitlam put them bluntly, quite without equivocation, when speaking against the 1970 Budget. "We intend to press our opposition by all available means on all related measures in both Houses," he said. "If the motion is defeated, we will vote against the bills here and in the

Senate. Our purpose is to destroy the Government which has sponsored it."

In the same year, the then Leader of the Opposition in the Senate (later to be Attorney-General, now a Judge of the High Court) made much the same point. Senator Murphy emphasised that there were "no limitations on the Senate in the use of its constitutional powers, except the limitations imposed by discretion and reason." Labor would oppose "in the Senate any tax or money bill or other financial measure wherever necessary to carry out our principles and policies." To ram home his point, Senator Murphy tabled a list of economic or financial measures, "including taxation and appropriation bills," which had been opposed by Labor by a vote in the Senate between 1950 and 1970. It filled five columns of Hansard.

A second Prime Ministerial claim can also be dispatched. In references to the political demise of Dr Cairns and Mr Connor, Mr Whitlam has sought to portray himself as a man of high principle, let down by senior ministers who proved themselves unworthy of his confidence. Having misled the Prime Minister and the Parliament, those unworthies had paid the penalty. What an extraordinary assertion! The fact is that the buck stops at Mr Whitlam's desk; it cannot be shunted down the line by a Prime Minister sitting high above his underlings' inadequacies. What is at issue today is not the inadequacies of individual ministers but the manifest inadequacy of an entire Government, its economic mismanagement prime among its deficiencies but its standard of political morality hardly less at issue. Sir Robert Menzies did well to focus attention on "the disreputable incident" of the Executive Council meeting whose decision he accurately described as "scandalous."

# The Sydney Morning Herald

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THURSDAY, OCTOBER 23, 1975

## A little early for the barricades

THE MOST curious and disturbing feature of the present political crisis is the atmosphere of near-hysteria which is being whipped up. It is an atmosphere which might be unremarkable in a South American State accustomed to government by coup; it is altogether out of place in Australia. To listen to some of the propagandists is to move into a world of fantasy in which Mr Whitlam and Mr Fraser appear as aspirant dictators and in which, amidst the ruins of the economy and indeed of democracy, rival factions fight in the streets, with the disbanded military and police forces lounging on the pavements.

Rubbish. We are in the middle of one of a long series of political crises stretching back over the years, and all of a kind which a healthy democracy should take — and so far has taken — in its stride. Bank nationalisation, coal strike, Communist Party Dissolution Bill, National Service and Vietnam, "horror Budgets", double dissolution — all very controversial and even nasty at the time, and all susceptible to rational processes. Why cry havoc now? The great sensible mass of the Australian people must be increasingly bewildered by suggestions

that Mr Whitlam and Mr Fraser have suddenly been transmogrified into Hitlers, that there will be riot and revolution if one thing or the other is done or not done, that only the Queen's representative stands between the country and anarchy.

Of course there is a political crisis. Of course there have been hard words — and irresponsible words — spoken. Of course there is a great parade of passions running high in Canberra. Well, doesn't it happen, in one degree or another, every time we have an election? Are parliamentary slanging matches and prophesies of doom so unusual? All it really means is that there is a little premature electioneering going on. The mirror of Canberra is at any time a distorted one and at a time of political crisis its distortions tend to reach fun-fair dimensions. Certainly Federal Ministers, who should know better, are stepping well over normal bounds in painting horrid pictures of an Australia denied the continuing benefits of socialism, but fortunately the average Australian has a well-developed and well-tested sense of proportion. We would all be well advised to cling to it. To be reasoned into one opinion or another is all very well; to be frightened into it would be all very ill.

# Decision rests with Kerr

THE Governor-General, Sir John Kerr, is now seized with the dire crisis facing the country over the deadlock between the Government and the Opposition and, in the more immediate sense, between the House of Representatives and the Senate. He has before him a most exacting task as well as a conflict presented by two most determined contenders, the Prime Minister and Mr Fraser. Fortunately, he has been quick to act and has already had both leaders in for consultations.

Mr Whitlam, it can be assumed, outlined at length his fundamental objection to being obliged to ask for a dissolution of Parliament and a general election because of any denial of funds by the Senate — which he sees as a States' house, not fully representative of the people. Mr Fraser, it can likewise be assumed, was not even required to persuade Sir John of the constitutional legitimacy of the Senate's role. What, then, did Sir John and Mr Fraser discuss for 90 minutes?

Mr Fraser has already denied in a press statement the seemingly inspired rumors of last Tuesday night that he was called in by Sir John to be reprimanded in some way, or that he was asked to withdraw the Opposition delay to the Budget. Indeed, a spokesman for Sir John has since reinforced Mr Fraser on this point by taking the unusual line of telling the press that the Opposition Leader was not called to Government House to be "carpeted." No, it is much more likely that Sir John was seeking to ascertain the feelings of the coalition and was given the firmest assurance by Mr Fraser that it is resolute in its decision.

Thus, the two Houses of Parliament — both, incidentally, elected by popular vote — are in deadlock and, as a result, Parliament would appear to have become "unworkable."

To whom, then, can Sir John turn for advice. There are his ministers. But they are not the end of the affair and, in a situation of such gravity as now confronts us, they could be only the begin-

ning. As Sir Paul Hasluck, the former distinguished Governor-General, pointed out three years ago in his major speech on this subject — excerpts of which *The Australian* published yesterday — the advisers available to a Governor-General are, in fact, anyone he chooses to consult "in the whole of the Commonwealth structure of government." These can range from the Attorney-General to eminent authorities "of his own choosing" — the Chief Justice, for instance, or eminent counsel.

Sir Paul offers some basic guidelines to Sir John, if he chooses to accept them. First, there are two dominant interests — the stability of government, regardless of political party, and a regard for the total and non-partisan overall interest of the people and the nation. Then there is the question of a dissolution sooner than the normal three-year term and here, Sir Paul advises, conventions rather than the text of the Constitution provide the guide. Next there is the "solemn responsibility" which lies upon the Governor-General alone to make a judgment on whether a dissolution would serve the purposes of good government "by giving to the electorate the duty of resolving a situation which Parliament cannot resolve for itself."

The crux of the matter, as Sir Paul stresses, is whether or not Parliament has become "unworkable." "In crude terms," he says, "the case for dissolving Parliament in mid-term is that Parliament has become 'unworkable.'"

Whether or not that condition exists is now the question which Sir John must resolve. Mr Whitlam proclaims that he will "never surrender." Mr Fraser, on the other hand, declares that the Liberal-Country Party coalition is resolute. Sir John is a man of the people with a distinguished background in the law and he will have available to him men of good will in all the highest places of the land. But, in the end, it is his decision alone.

Government House,  
Canberra. 2600.

20 October 1975.

*My dear Private Secretary,*

The situation here changes from day to day but it appears to be crystallising in an unexpected way. I shall mention first the leaders on the Opposition side. They are openly asserting that I have a duty to act very soon to force an election, that it is open to me to dismiss the Prime Minister and call upon someone else (Mr Fraser of course) willing to advise a dissolution of the House of Representatives, or both Houses. They see the Governor-General as having a duty to get them all to the people.

As to that, whilst not yet making up my mind about ultimate and final decisions necessary at a time of really final constitutional crisis, my present disposition is to say that the Senate has, as yet, only deferred supply, not rejected it outright, that it may change its mind and the crisis, though very serious indeed politically, is not at this stage at the constitutional brink. The politicians are still shaping up to one another but no one can, constitutionally, expect me to take the political responsibility from their shoulders at this stage.

I am somewhat self-conscious about sending material which is too detailed but much of it can be discarded or analysed and summarised, if need be, in the Palace for Her Majesty's benefit and it is perhaps better to put you and, to the extent that The Queen wishes it, Her Majesty in the position of being able to get the real feel of things here. Accordingly I send you some clippings from Saturday's, Sunday's and today's press. I send also a copy of a document prepared by Mr Ellicott, Q.C., who was Solicitor-General under the previous Government and also, for a time in Senator Murphy's day as Attorney-General. He went into Parliament in the Liberal interest in 1974 and is now a member of their Shadow Cabinet. He is an old friend of mine, as indeed is the new President of the Liberal Party, Mr M.J.N. Atwill who was elected last weekend and comes from New South Wales. Senator Greenwood, the former Attorney-General and present Shadow Attorney-General is also an old friend and colleague from Victoria. Mr Fraser knows this, and of course so does the Prime Minister.

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On the other hand, apart from the Prime Minister there are several members of his Cabinet whom I have known for many years and two of them are old friends - Senator James McClelland and Mr J. Riordan - both from New South Wales. This is of course known also to Mr Whitlam and Mr Fraser. Sometime I shall tell you something of my own past in and on the fringe of politics on both sides. I do not feel in the least embarrassed by my so called pragmatic political neutrality and criss-crossing past associations. I am and can remain above it all, and obvious neutrality is a strength.

At my dinner party for Tun Razak Mr Fraser told me of Mr Ellicott's document, which by then was public, and a copy was sent to me the next day by Mr Ellicott. The former Prime Minister Mr McMahan has also sent me some public observations of his own.

The Prime Minister's position has hardened and changed considerably in the last forty-eight hours. He has now decided that he will advise no election of any kind whatsoever. On Saturday he told me that he is determined to break the alleged power of the Senate to force an election, at its whim, of the House of Representatives by denying supply. He has come to the conclusion that this is a great moment of history like the position in the United Kingdom in 1909-1910. He has, so he says, finally and irrevocably decided never to take the House of Representatives to the people because the Senate denies it power to govern by cutting off money. He will not do this now, not next May, nor ever. He has said something along these lines publicly and has been accused by Mr Anthony, the Leader of the National-Country Party, of attempting to stand over the Governor-General.

The Prime Minister is in an exuberant, even euphoric, mood. He is campaigning vigorously for public support and believes he is "on a winner" on the issue of the Senate's power to force the Lower House to the people. Mr Fraser is also campaigning strongly and with considerable financial support, spending much on advertising. This "campaign" on both sides is being presented by the Press as the beginning of an inevitable election campaign.

The Liberal leaders may believe that I can be relied upon ultimately to get them out of the situation in which they find themselves. However, as you would expect, I intend to be guided by constitutional principle and by that alone.

The Prime Minister told me on Saturday that he has yet another tactic and will resort to it. He does not need an Executive Council decision to do so. Section 70B of the Audit Act is as follows -

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"70B. The Treasurer may, for and on behalf of the Commonwealth, guarantee the repayment to the Reserve Bank of Australia, the Commonwealth Trading Bank of Australia or the Commonwealth Development Bank of Australia of any loan (including interest thereon) made for the purposes of the Commonwealth (whether before or after the commencement of this section) by that bank to any person."

He intends to produce a situation under which everyone owed money by the Commonwealth - public servants, troops, police, contractors and so on can be "lent" by the Banks the amount owed, backed by Commonwealth guarantee. He claims to have the financial resources ultimately to meet the bill when Mr Fraser finally collapses. Whether he can do this legally will probably be tested in the High Court but he is confident as to his legal grounds though they are subject to further examination.

By this technique he believes he can defuse the issue - no one or almost no one will suffer and Mr Fraser will be out-manoeuvred. More important the crisis will, he argues, thus be kept at the political level. There will be no real constitutional crisis, because despite denial of supply he will still be able to govern and there will be no excuse for me to demand evidence from him that he can get supply and no excuse for removing him and sending for someone willing to recommend an election.

As background material I send a clipping from the National Times of Sunday, 12th October giving some interesting precedents from the 19th Century for this kind of tactic.

I said to the Prime Minister today - "You say you intend to break the power of the Senate to force the Lower House to the people. Ultimately you can do that only by getting a constitutional amendment or by breaking Mr Fraser". He said "I cannot get a constitutional amendment but I can and will break Mr Fraser, if my Party stands behind me and it will". I replied "What about his?". He said, "It will break".

One of the main articles in Sunday's paper says that the Opposition is coming under intense pressure to modify its stand (Sun Herald). Key Opposition Senators, it is said, are coming under particularly strong pressure to change their minds and allow the Supply Bills to pass. One who, it is claimed, long held serious doubts about the propriety of rejecting supply has been inundated with telegrams protesting against the Oppositions action and another is said by the writer to be ready to change his mind if public opinion swings against the Opposition. As

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to this the latest Gallup Poll, whilst still showing only 38% support for Labor (up 3%) and 55% for the Opposition parties, asked the question "Do you think there should be an early election, 55% said "No" and 42% said "Yes". The poll was taken before the latest events - the Khemlani crisis, the resignation of Mr Connor and the delay of supply. The big question is what the next poll will show.

In the conversation with the Prime Minister previously mentioned he said "You are in the position of George V". My riposte was "But you are not in the position of Asquith. You cannot pack the Senate". He asserted that the only solution was a political one and he could and would prevail.

The professors have all been having a wonderful time on television, radio and in the Press, with supporters on both political sides expressing views as to the powers and duties of the Governor-General. One of the latest points of view has been expressed by the leading constitutional lawyer at the Australian National University, Professor Sawyer and supported by Professor Howard, Professor of Law at Melbourne University.

I attach an extract from the Press article in Sunday's "Sun Herald".

The mediation point of view was also presented on Sunday in the National Times in an article by Andrew Clarke. He said that, among my options was one - the sacking of the Prime Minister, if I believed that the normal conduct of the country's affairs was being jeopardised. However the Prime Minister could then request "my instant dismissal by The Queen". The author then went on to say that I could request both the Prime Minister and the Leader of the Opposition to meet me and to work out a compromise. "As leader of a party which pledges undivided loyalty to The Queen, Malcolm Fraser could hardly refuse the request". He went on to say that one compromise would be for both sides to agree on a cooling off period, while the Opposition passed a special bill to allow partial supply. "The obstacle is the massive egos of both leaders."

I do not propose, at this stage, to try to mediate. It would be misunderstood. The Prime Minister would resent it, but more important, until the Opposition is told of the Prime Minister's latest tactic, and I cannot tell them, they do not know the full legal and political complexity of the position in which they may find themselves. Better to wait till the full political story unfolds by which time we shall still be short of a final constitutional crisis. We can then see what

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Mr Fraser and any wavering Senators may do.

So much for this chapter in the local drama. As with all such serials we must wait to see how the various political heroes manage next week. In the meantime I feel called upon, at this stage, to do nothing.

The Prime Minister also told me today that he will be writing to me to send to Her Majesty his advice to withdraw Sir Colin Hannah's Dormant Commission under me to act in my absence. Sir Roden normally acts but Sir Colin is next on the list.

My sentiments of loyalty and duty are as ever.

Yours sincerely,

Lieutenant Colonel the Right Honourable Sir Martin  
Charteris, K.C.B., K.C.V.O., O.B.E.,  
Private Secretary to The Queen,  
Buckingham Palace,  
LONDON ENGLAND

# The Sydney Morning Herald

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MONDAY, OCTOBER 20, 1975

## Alarums and excursions

IF, IN WAR, truth is the first casualty, then the second, frequently, is reason. In the political warfare declared in Canberra last week, those two casualties have already occurred. It is probably too much to hope that the first will be resurrected; Australians will be required to distinguish the truth of a complex situation from behind a smokescreen of untruths and half-truths from both parties to the discord. For the sake of the nation, however, reason must swiftly be revived.

The process should start with recognition of the fact that the deferral of two money bills last Thursday has not plunged Australia into a constitutional crisis. Constitutional procedures are being followed. Nor is the nation in the midst of an insoluble political crisis. The Senate, as is its right, has deferred Supply. The Prime Minister, as is his right, will test the Senate's resolve this week. Further, there is nothing to justify the dire economic predictions of what will follow the withholding of Supply. The proper resolution of all the difficulties which have arisen is an appeal to the electorate—not a futile half-Senate poll but a general election. Even if the Prime Minister insists on the delaying tactic of a half-Senate poll, that is all it is—a delaying tactic.

In such circumstances, the series of rash assertions made about the deferral of Supply is to be deplored. It is easy to understand why Mr Hawke and Senators Wheeldon and James McClelland have spoken as they have. They seek to paint the blackest picture in the hope that Opposition Senators will waver and allow the money bills to pass. What is beyond understanding—and must not be tolerated—is the manner in which they have done this. Mr Hawke speaks of laws having been broken (which is untrue) and of unionists in reprisal withholding supply—

ie, striking. Senator Wheeldon draws parallels between Australia and Germany and Spain in the 1930s and between Australia and Ulster. Senator McClelland talks of anarchy. Mr Gorton, even more irresponsibly, speaks of rioting in the streets. All such statements are not only nonsense but also dangerous folly. Calculated or not, their effects can only be mischievous. Mr Whitlam has properly disowned such disingenuous scenarios but the ugly scenes at Mr Fraser's Hobart meeting indicate that a mindless minority needs little encouragement to turn them into reality.

Ill-considered and improper statements are also being made—by Government and Opposition leaders alike—about the role to be played by the Queen's representatives in Australia. Obviously, the Governor-General and the six State Governors may very well have a part to play in the events of the coming weeks. Equally, it is inevitable that the manner in which they will discharge their duties will be canvassed. But that does not mean that either party to the current political dispute should seek, under the thinnest of veils, to whip up public opinion on what vice-regal representatives should or should not do. It is clear that Queensland's Governor erred gravely in his extraordinary outburst against the Commonwealth Government last week but his behaviour does not constitute grounds for others to act with impropriety. It is quite wrong for Mr Fraser to imply that Sir John Kerr will shortly intervene by calling for a House of Representatives poll. It is equally wrong for the Prime Minister to imply that Sir John Kerr will do what Mr Whitlam tells him to do. There are proper channels by which advice may be tendered to the Queen's representatives; they should be followed.



BIGGEST SALE OF ANY PAPER IN AUSTRALIA\*

# The Sun-Herald



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# PM CONFIDENT OF BUDGET VICTORY 'WILL BE PASSED IN A FEW WEEKS'

By WARREN OWENS and MARTIN SAXON

The Prime Minister said in Sydney yesterday that he believed the Senate would pass the Budget "within a matter of weeks."

The Opposition would "have to back down," Mr Whitlam declared.

He said he was banking his short-term strategy on a rift in the Opposition Senate ranks. (See full report on Page 34).

The Prime Minister has summoned an emergency "council of war" meeting in Sydney for today to deal with Australia's gravest political crisis.

Senior ministers, advisers and trade-union officials will meet Mr Whitlam at Kirribilli House to plan Labor's tactics to "tough out" the crisis.

Meanwhile, Opposition forces have arranged a rally in Melbourne for today to gain public support for their attempt to force the Whitlam Government to the polls.

The Opposition Leader, Mr Fraser, will address a public gathering at the Myer Music Bowl and seek public endorsement for the Opposition's un-

precedented Budget rejection.

The meetings come as both sides take stock of the constitutional crisis that threatens to bring Australia into a state of chaos.

Government sources believe Mr Whitlam will put a plan to Labor's leaders today for major developments in the next few weeks.

He is expected to deal with the likelihood of a half-Senate election before Christmas, and to call for progress reports from his ministers and the unions on likely developments.

The move also comes at a time when many believe

that a public backlash is gathering against the Opposition for plunging Australia into the impasse.

The latest Gallup Poll—out today—shows that a majority of Australians reject the idea of an early poll.

It shows that 55 per cent of Australians do not believe that there should be an early Federal election.

The poll also reveals that Labor would have received 38 per cent of the total vote compared with the Liberal-NCP coalition's 55 per cent if a poll had been taken early this month. (See Page 2.)

The poll was taken over the first two weekends of

this month and before the Connor crisis earlier this week.

However, it reinforces the thinking of some Liberal leaders who are anxious about public reaction to their moves in pushing for an early election.

Speculation has heightened in Canberra that the Governor-General, Sir John Kerr, will be forced to act if the situation is not resolved.

Two eminent Australian experts on Constitutional law yesterday strongly suggested that he should

Continued on Page 4

# BUDGET WILL PASS SAYS PM: VITAL TALKS TODAY

Continued from Page 1

← assume the role of a mediator.

The experts, Professor Colin Howard and Professor Geoffrey Sawer, said Sir John should act as a conciliator between Mr Whitlam and Mr Fraser to resolve the deadlock.

Both experts are professors of law — Professor Howard at Melbourne University and Professor Sawer at the Australian National University.

Professor Howard said: "Both political leaders have painted themselves into their respective corners."

"The Governor-General is the only person left with

sufficiently high office, and who is not identified with either party, to resolve the situation.

"He has certain constitutional power, and some people have suggested that he should utilise it."

"But I believe that would be unreal."

"He is in a very tricky situation ... he must appear to be impartial."

Professor Howard said he did not think the Constitution was yet in danger — in which case, the Governor-General would be virtually forced to intervene.

"But if the train of events that has been set in motion continues uninterrupted then it will be in grave danger," he added.

Professor Howard also suggested strongly that the

right of the Senate to block Supply should be removed from the Constitution.

"The English thought so, for they removed that right from their House of Lords in 1909," he said.

"Our Constitution was introduced in 1900."

"I believe if it had been introduced after the English decision, and not before it, then the framers of our Constitution would also have removed that right from the Senate."

Professor Sawer endorsed the call for Sir John Kerr to mediate.

He said King George V had taken a similar step in an English constitutional crisis.

## Strategy

New evidence emerged yesterday to indicate that the Government will maintain its "tough it out" approach and will soon call for an election of half the Senate.

Observers believe the Government will introduce the Supply bills — rejected by the Senate — again this week.

If the Opposition in the Senate again delays passage of the bills, Mr Whitlam is expected to declare that he considers the bills defeated.

In that case, at the end of the coming week he is expected to call a half-Senate election.

An indication of Mr Whitlam's determination and strategy was given in a letter he wrote to all his ministers this week.

He said, in part: "The events of the past week



The Prime Minister, Mr Whitlam, waves to supporters as he leaves the Gympie Lily Festival yesterday.

have made it imperative that we redouble our efforts to disburse all remaining funds with the utmost economy.

"Each of us must ensure that steps are taken to effect savings in departmental expenditure and to ensure that funds last as long as possible."

"Savings, large and small, must be sought out in every area of expenditure."

"They must be pursued vigorously, but with due care so that extreme reactions likely to cause serious and widespread disruption are avoided."

The Opposition is coming under intense pressure to modify its stand.

It is already under-

stood to have approached the Government privately to split up the Supply bills to allow the Opposition to pass "essential expenditures."

However, Mr Whitlam is understood to have flatly rejected the proposal.

Key Opposition senators are coming under particularly strong pressure to change their minds and allow the Supply bills to pass through the Senate.

One senator who long held serious doubts about the propriety of rejecting Supply has been inundated with telegrams protesting against the Opposition's action.

## 'Hostile' reaction

Another senator is understood to be ready to change his mind—and allow the Supply bills to pass—if public opinion swings against the Opposition.

Several Opposition MP's are also known to be concerned at public reaction, which they believe to be more hostile than previous Liberal Party surveys had suggested.

Meanwhile, the national capital is the first to be hit in the crisis.

Under rules gazetted yesterday, such things as the closure of Canberra's public merry-go-round, the closure of the Tidbinbilla nature reserve, the shutting of local swimming pools and the closing of weekend concerts were noted.

# The Sydney Morning Herald

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SATURDAY

18 OCTOBER 1975

## Leaders clash: Will Sir John Kerr act?

From IAN FRYKBERG in Canberra

Claim and counter-claim by Opposition and Government thrust the Governor-General, Sir John Kerr, under the spotlight on Day Three of the constitutional crisis yesterday.

### Scuffles break out at Fraser meeting

HOBART, Friday. — The Opposition Leader, Mr Fraser, was placed under heavy police guard after an often violent and hostile public meeting in central Hobart today.

The trouble began just before Mr Fraser arrived for the meeting in Franklin Square.

During the morning, ALP supporters had been handing out pamphlets in the streets, declaring that Mr Fraser was "wanted—for the murder of Australian democracy."

By the time the rally started, Franklin Square was packed.

There were dozens of placards proclaiming both pro-Fraser and pro-Whitlam lines—"Fraser: Democracy's last hope"—"Reprehensible Fraser go home," "Federalism, not Gough," "Fraser—political assassin."

A group of what appeared mainly to be students—dressed in black as undertakers—marched to the front of the rostrum in a mock-funeral procession, carrying a cardboard coffin marked: "Constitution, democracy. J. M. Fraser and Co, funeral directors."

Scuffles broke out as a number of Liberal supporters—including the 62-year-old Tasmanian Senator John Marriot—tried to tear down anti-Fraser placards and break up the group of hecklers.

Blows were struck between the two factions and police made one arrest.

### 'Wretched rabble'

The Liberal Leader, drowned out by chanting and jeering as he spoke—condemned the "wretched rabble who will not allow people to speak."

He accused the ALP of trying to incite anarchy and claimed that the demonstrators included those who were "paid taxpayers" money to bludge on the country.

He said the Whitlam style of government was typified by the "thuggery at the meeting."

Mr Fraser was jeered, booed and greeted with chanting of "We want Gough" from much of the crowd which—in overall numbers—appeared to be only marginally pro-Fraser.

Some of the police sent to control the rally said it was the worst crowd they had seen since the Vietnam war demonstrations.

Mr Fraser did not seem flustered by the hostile heckling—but at a press conference later he continually hedged questions and at times appeared to be losing his cool.

He claimed the ALP had organised the disruption of the meeting by a rowdy minority of 50 to 100.

He described it as "nonsense, hooliganism, and thuggery."

After the meeting, Mr Fraser, surrounded by a cordon of uniformed and plainclothes police—took a slow walk through Hobart's shopping centre, along Elizabeth Street.

In Hobart, the Leader of the Opposition, Mr Fraser, said he expected Sir John to act "quite soon" to break the impasse caused by the blocking of the Government's money supply.

"It quite clearly is not just a question of what Mr Whitlam does or what the Opposition does.

"There comes a time that if it has been demonstrated the Government can't govern the Governor-General himself has a role to play."

Mr Fraser implied that the Governor-General would call for an election for the House of Representatives.

But the Prime Minister discounted this possibility last night.

"Unquestionably, the Governor-General takes the advice from his Prime Minister and from no-one else," he said.

Although Mr Whitlam is reluctant to spell out his plans, the strong odds are that he will seek an election for half the Senate before Christmas.

Speaking on ABC television, he said he would wait until the Opposition rejected the Budget before calling the half-Senate election.

The Senate has so far avoided rejection by voting to delay the two appropriation bills.

However, Government sources said last night that Mr Whitlam would say that if the Opposition again delayed the passage of the Budget, it would constitute "failure to pass."

### Key Labor meeting

Other developments yesterday in the crisis, which threatens disruption of both Commonwealth and State Government business, included:

Plans were laid for a conference on tactics by the most powerful men in the Labor Party, to be held at Kirribilli House, Sydney, tomorrow.

The president of the ALP and the ACTU, Mr Hawke, discouraged unions from pressing for a national strike to support the Government.

Fighting broke out at a noisy public meeting of more than 3,500 people addressed by Mr Fraser in Franklin Square, Hobart. (Report at left.)

Three Federal Ministers addressed a mostly friendly crowd of 5,000 at a packed rally in Brisbane's King George V Square.

Mr Whitlam called tomorrow's Kirribilli House meeting, of the Commonwealth Labor Advisory Committee.

It will bring together all of the State Labor Leaders, Mr Hawke, and the executive of the public service unions—the Council of Australian Government Employees' Organisations and the Australian Council of Salaried and Professional Associations.

Senior Cabinet ministers, including the Minister for Labour and Immigration, Senator James McClelland, will also be at the meeting.

It is believed that Mr Whitlam will seek a guarantee from the unions that they will give their total support to the Government's resolve not to buckle under the Opposition's pressure.

The role of unions will be highlighted in the next week following statements by some unions that they would take strike action to protest against the Opposition's decision to deny the Government money to govern.

Opposition members are worried about the electoral affects of the decision to block the Budget. Some are privately saying that they fear a massive backlash against the decision.

The Government should know by early next week how long its money supply can hold out, following severe spending cuts ordered on Thursday by the Prime Minister.

All departmental heads have been ordered to make a fast assessment of their financial positions. They were also told only essential expenditures are to be made.

Mr Whitlam called a meeting on Thursday of a few senior ministers, including the Deputy Prime Minister and Minister for Overseas Trade, Mr Crean, and the Treasurer, Mr Hayden, to discuss the austerity measures.

It is unlikely that the Government will make public how long it expects its finances to last.

Mr Hayden told the meeting that on current spending rates, the Government would run out of money by the end of next month.

A major casualty of the cuts will be Government advertising, most of which is handled by the Department of the Media. It is believed only advertising promoting the Government's loans program will continue.

### Severe cuts

There will also be severe cuts in Public Service overtime, and in "non-essential" administrative expenditure involving such items as "paper clips," Government officials said.

At his press conference in Hobart yesterday Mr Fraser said it was Mr Whitlam's duty to go to the polls.

"That is the basic right of all Australians when the Government has its money supply cut off," he said. "Mr Whitlam, by saying he is going to tough it out, is denying that basic right of democracy."

He did not believe the present situation could be allowed to continue.

Mr Fraser claimed that the Government's unemployment estimate for Christmas—400,000—was lower than departmental estimates.

"I understand the departmental estimates were from a range of 400,000 to 500,000. The figure actually given was at the lower end of the range."

"If that is correct, it indicates a gloomy position for school leavers."



## Governor-General will act soon, says Fraser

### Violent street scuffles mar Liberal rally

By OUR POLITICAL STAFF

THE election crisis moved into the streets yesterday with violent demonstrations against the Opposition in Hobart and an emotional rally in Brisbane, where hundreds of people gave cash to the Labor Party.

Both sides were defiant. The Leader of the Opposition, Mr Fraser, told the rally in Hobart, "The Liberal Party and the National Country Party will not yield." The Prime Minister, Mr Whitlam, said on ABC television: "One has to remain firm on this and mitigate the hardships that have to be. But there is a principle at stake here that I will not surrender." And in Brisbane the Minister for Labor, Senator McClelland, said: "I believe Mr Fraser will go to water. We intend to test his nerve."

But in Hobart Mr Fraser predicted that the Governor-General, Sir John Kerr, would intervene soon.

If the Government could not govern because it had been denied money it was open to Sir John to call on someone else in Parliament to form a Government, he said.

Mr Fraser said his party would establish a situation in which people could be paid pensions and other benefits. "We would take whatever action is necessary and available to us to see that no individual under the present circumstances is hurt."

He said it was Mr Whitlam's duty to go to the polls. "That is the basic right of all Australians when the Government has its money supply cut off."

Mr Whitlam said on television he would never surrender to Mr Fraser.

"The essential thing in my mind is that the Government which has a majority in the House of Representatives is entitled to govern," he said. "Those are the words of Mr Fraser himself."

"But it is quite clear that I will not advise the Governor-General to issue writs for a House of Representatives election, as long as I have a majority in the House of Representatives, just at the behest of the Senate."

Mr Whitlam said the Governor-General had no alternative than to act on the advice of the Prime Minister. This applied whether it was the Queen, or her viceroy.

Police stepped up security plans for a big Liberal Party rally at the Myer Music Bowl, Melbourne, tomorrow after death threats against Mr Fraser.

A review of how long government funds will last, with the Opposition blocking the supply of money through the Senate shows that Medibank and pension payments will be among the first areas hit.

Although pension cheques are not themselves affected by rejection of the Budget, there will be no money to pay public servants to process them.

### SCUFFLES

At the lunchtime Liberal rally of 4000 people in Franklin Square, Hobart, addressed by Mr Fraser and senior local Liberals, the Tasmanian Senator John Mariott, 62, was involved in a scuffle with Labor supporters after he tried to tear down a big anti-Fraser placard.

There were blows struck in the many tussles between pro and anti-Fraser factions and police made one arrest.

Mr Fraser was jeered, booed and greeted with chanting of "We want Gough" from the crowd, which appeared to be only marginally pro-Fraser.

Hundreds of workers on lunch breaks queued to give money to Labor's election campaign after the huge rally in Brisbane.

As the rally finished a man pushed his way forward and handed the State Opposition Leader, Mr Tom Burns, a \$50 note and said: "Here is \$50, it represents my pension for a week."

Mr Burns held it in the air and said: "This is our first donation. If we want to fight them, we'll need more, lots more."

The A.L.P. was given \$2823. The Storemen and Packers Union has given \$50,000 to the Labor Party to fight an election. The contribution is the largest donation ever made to the A.L.P. by a union.

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EDITORIAL - PAGE 18

### The G-G will be first to feel the pinch

By PHILIP CORNFORD

SOON, the Governor-General will have great difficulty in living in the manner to which he is accustomed.

By an unhappy quirk of fate, Sir John and Lady Kerr will be among the first victims of the Opposition's refusal to pass or reject Supply. By the end of November, the Queen's chief representative in Australia will be fat, motherless broke.

Sir John — unless he dips into his own pocket — will be pushed to provide vituals for his personal staff — accepting that they stay on without wages — let alone for a normal six-course Government House banquet.

His Canberra home, Yarralumla has more than 60 rooms. It is set in several hectares of gardens which roll gently down to Lake Burley Griffin. As can be imagined, it takes quite a bit of maintaining — \$1,253,200 worth a year, in fact.

The mansion itself is under the control of a butler. The staff includes a valet, head housekeeper, five footmen, five housemaids, a chef, five kitchen staff and a laundress.

The situation is not only embarrassing, but politically difficult. Sir John, after all, is the man who ultimately has the power to end the deadlock which has mauled parliamentary democracy in Australia.

It is to Sir John that Prime Minister Whitlam must eventually go to seek permission for a half-Senate election. It is Sir John who will decide whether, and for how long, the Government can continue with Supply denied.

And it will be Sir John — not the Prime Minister, nor any Federal politician, whose salaries fortuitously are not endangered by lack of Supply — who will be feeling the pinch.

Normally, the Australian Government pays \$30,000 a week to run the Governor-General's establishment. But since the Opposition failed to pass this year's expenditure of \$1.5 million, that money will begin to dry up within two weeks.

Sir John won't get the next instalment of his \$30,000 annual salary. Nor will his personal staff — official secretary, private secretaries to Sir John and Lady Kerr, comptroller, three military ADCs and nine clerks and typists. Their annual salaries total \$221,700.

Ten gardeners tend the grounds. There is also a caretaker and handyman. And, of course, three chauffeurs to drive the Governor-General's Rolls-Royce and Ford LTD.

A three-month appropriation looks after their salaries until the end of November. But then there will be no more money.

And that goes for everyday menial expenditures — food, electricity, petrol — as well.

The G-G's secretary, Mr David Smith, says: "I'm afraid we'll be in the same boat as everyone else in the public service — when the money dries up, so do our salaries."

The spectre would be laughable were it not so downright humiliating — and possible: Sir John and Lady Kerr, alone in a huge and darkened mansion, forced to fend for themselves.

So far, Sir John has shown no concern at the coming pinch. On Thursday night he entertained 80 guests to a six-course meal, washed down with brandy, red and white wines and champagne, followed by coffee and liqueurs, to honor the Malaysian Prime Minister, Tun Abdul Razak.

Mr Smith said: "We have not made any plans to restrict the Governor-General's normal schedule in any way. We will continue with our normal principles of good housekeeping in mind."

Good housekeeping or not, if Supply continues to be denied, Australia's head of State may soon be driving himself — or even walking.



Conservatives felt that the Governor, Sir George Bowen, was attracted more to revolutionary forces than to the sober charms of constitutional government.  
— Melbourne Punch, January 10, 1878.

Australia's major constitutional crises usually occur when a Lower House dominated by radicals charges headlong into the rock of an Upper House dominated by conservatives.

Radical Governments are anxious to get things done: their more cautious opponents are anxious to delay them. Sometimes this anxiety reaches the point where the Upper House — supposedly a "house of review" — refuses altogether to pass the Government's annual appropriation measures.

When that occurs, either an election must be held to approve or subdue the Upper House, or the Treasury begins to run out of money. Taken to its extremity, the result could be suspension of Government activities, wholesale dismissal of public servants, and national chaos.

In nineteenth-century Victoria, the Upper House rejected the annual Budget on two notorious occasions.

In both cases the Government of the day held firm, and in both cases they were supported by British Governors relying on constitutional precedents developed between the House of Commons and the House of Lords.

Unable to use Budget funds because they had not been duly approved by the two Houses of Parliament, the Victorian Government on both occasions ceased paying many civil servants and brought most public works to a halt.

Widespread distress and suffering followed. But in the end, faced with elected governments determined enough to insist on their traditional superior rights on Appropriation Bills, the Upper House was forced to cave in.

#### ALL CIVIL SERVANTS SUSPENDED — THE CRISIS OF 1865

The first crisis began in 1864-5. The Premier, Sir James McCulloch, a 45-year-old Scottish-born merchant, announced changes in tariff policy which reduced duties on gold, tea and

\*Michael Cannon is a noted expert on life in Australia in the Victorian era and is the author of a trilogy, *Australia in the Victorian Age, of which Life in The Cities*, the final volume, will be released on October 27. It is published by Thomas Nelson (Australia) Limited; recommended price \$14.95. Extracts from the book will be published in *The National Times* next week in a special Australian Book Week feature.

sugar, but imposed penalties of 5 per cent to 10 per cent on imports competing with the colony's infant manufacturing industries.

Today there is adequate machinery to investigate and legalise such matters without causing a national crisis. But 110 years ago the very notion of "protectionism" struck horror into the hearts of most of the merchants and squatters who controlled the Legislative Councils (Upper Houses) of most colonies. Under no circumstances would they agree to tariffs on imported manufacturers.

To get his Customs Bill through both Houses, McCulloch adopted the expedient of "tacking" it to the annual Appropriation Bill. The Council had no constitutional power to alter a money bill, but could and did refuse to pass it.

Without enough cash to carry on governing, they argued, McCulloch must back down or hold an election — after which the Council could still reject any tariff measures. How could it lose?

McCulloch and his ministers accepted the challenge in a different manner. They simply sat tight and waited for the effects of the Council's action to be felt.

Lacking parliamentary authority, the Audit Commissioners refused to allow further salaries to be paid to civil servants. Their services were accepted, but their money was kept locked up.

For more than six months stonewalling between the two Houses continued, many civil servants went into debt, and their tradesmen suffered as well.

A number of innocent people fell into the clutches of money lenders at 50 to 100 per cent interest rates, and never recovered. There were numerous insolvencies and some suicides.

Business deteriorated to a state of uncertainty and near-paralysis. Some employers began to dismiss their staff — at the very time when charitable institutions were being forced to restrict their already meagre services.

A few urgent Government debts were paid from customs duties which had not been authorised by the full Parliament. Other debts were met through an ingenious legal stratagem. One clause in the Audit Act directed the Governor to sign warrants to satisfy any verdict of the Supreme Court against the Government. Further parlia-

Big businessmen and poor workers were ruined. Some people were forced to suicide. Demonstrations occurred and public administration slowly collapsed when two Victorian Premiers in the nineteenth century sought to govern without any money, after their money bills were blocked by an Upper House bent on forcing an election.

MICHAEL CANNON\* recalls the turbulent events of Black Wednesday when the State's cash was stopped. It is a disturbing precedent to ponder as a similar constitutional crisis looms this week in Canberra.

Over the page, EVAN WHITTON examines the depression-time clash between Jack Lang and Sir Philip Game, which also offers some thoughts for Sir John Kerr, the current Governor-General, if the constitutional crisis does occur.

# WHAT HAPPENS WHEN A GOVERNMENT'S MONEY IS STOPPED

mentary authority for the payment was not necessary.

Sir James McCulloch, who also happened to be the sole local director of the London Chartered Bank, arranged that the bank should lend the Government \$80,000, which was used to pay another backlog of urgent debts. By arrangement, the bank sued the Government for recovery of the debt, the Supreme Court awarded judgment, the Governor signed the necessary warrant, and the money was legally paid out of the Treasury's accumulated funds.

This process was repeated every few weeks, enabling a bare minimum of public facilities such as rail services to be continued. But most civil servants were still not being paid, and were kept in this pathetic condition for more than six months until a thoroughly chastened Legislative Council agreed to pass a separate Tariff Bill as well as the Appropriation Bill.

A snap election in February, 1866, showed colossal public support for McCulloch's stand against the Upper House: out of 78 seats in the Assembly his supporters won 58.

Curiously enough, one man who opposed McCulloch's policy was a 44-year-old Collingwood grocery and local newspaper owner named Graham Berry. Berry was defeated in this election — but 13 years later, as Premier, was to follow an almost identical policy to McCulloch's.

The Governor of Victoria throughout the 1864-65 crisis was Sir Charles Darling, a nephew of Sir Ralph Darling, who had been a notably autocratic Governor of NSW during the convict era. As a young man, Charles had worked with his uncle in Sydney and learned some of the penalties of unpopularity.

Although Governors are theoretically bound by constitutions and precedents, their own background and beliefs assume considerable sig-

nificance when they are forced to make quick decisions in the midst of constitutional turmoil.

Appointed Governor of Victoria in 1863, Sir Charles Darling had a clear guide through most conflicts in the provisions of the New Constitution Act, which had brought responsible government to the colony eight years earlier. Beyond that, he was bound to rely on precedents from the British Parliament — but in reality, in those days before quick telegraphic advice was available from the Colonial Office in London, he was very much on his own.

Above all, therefore, Darling felt forced to follow the advice of his elected ministers, just as Queen Victoria had learned to do. In this new era of democracy, how could he go wrong by following the popular voice?

He soon found out. After he signed the financial warrants which enabled the Government to carry on, and following his approval of the illegal collection of Customs duties, 22 Executive Councillors presented him with a petition of protest to Queen Victoria.

Darling angrily sent it to London with a covering note accusing the signatories of "a treacherous conspiracy," threatening to suspend them all from office, and refusing to work with them at any time in the future. Lord Cardwell, Colonial Secretary, promptly dismissed Darling.

Viewing Darling's actions as a sacrifice on its behalf, the Victorian Assembly voted a gift of \$40,000 to Lady Darling (not direct to "the people's Governor," because he was not allowed to accept such a gift). Even this was disallowed: Darling died a broken man soon afterwards. His widow and children were allowed a pension of \$40 a week.

But vital precedents had been set: if the popular voice, clearly expressed, demanded protective

tariffs then it should have them; regardless of the views of free traders in Australia or Britain.

#### "BLACK WEDNESDAY" — THE CRISIS OF 1878

Thirteen years passed, during which the Legislative Council continued to obstruct every effort of the Assembly to democratise the colony.

The Council became ever more a parody of itself. The squatters and merchants who originally controlled it could be admired in one sense, because they had broken open the land, laid the foundations of its great wool industry, and set up the first large mercantile and financial institutions.

By 1878 a new generation of wealthy men had begun to take over. They were almost pure oligarchs: inheritors rather than originators of wealth, despising democracy.

Elected on a highly restrictive property qualification, they represented less than 25,000 land-owning voters who formed the real ruling class of Victoria, and who were utterly determined to hold on to their wealth and privileges.

These oligarchs had suffered some nasty moments, particularly during the bitter struggles of the 1860s to "unlock the lands." Hordes of penniless goldminers and other immigrants were demanding blocks of land on which to support themselves and their miserable families. Radical politicians were still trying to break up huge tracts of the best land seized, often illegally, by big squatting families.

Now in 1877-8, a new popular government, dominated by radicals beginning to call themselves "the Liberal Party" were imposing the first and taxes on successful squatters.

The party's leader was Graham Berry, the Collingwood grocer, now a fiery 56-year-old reformer. His next policy measure: to introduce

payment for MPs on a permanent basis. Twelve dollars a week was all he asked, so that working men and small tradesmen could, if elected, support themselves by attending solely to their parliamentary duties.

This move, afterwards universally accepted, seemed like red revolution at the time. When Berry followed McCulloch's precedent of "tacking" his Payment of Members Bill to the annual Appropriation Bill late in 1877, the Council immediately rejected the whole thing in what The Age described as "an act of imbecile rage."

Legislative Councillors began congratulating themselves for being able to retaliate against the radicals who had dared to affect their squatting profits by means of land taxation.

Alfred Denkin, a close observer of the scene, wrote that "the Council comfortably prepared to starve them out . . . chortling at the deprivation of salary to which they were subjecting their opponents."

Apparently they had forgotten the dramatic events of 1865. Not only radical politicians were to be deprived of salary.

On January 9, 1878, a day which became known as "Black Wednesday," the Berry Government dismissed practically every leading civil servant, judge and magistrate in the colony.

This time Government employees were not even invited to carry on without salary until the Budget was passed. They were simply dismissed on the spot, and invited to submit claims for compensation — to be paid who knows when?

The Government announced that "in consequence of the stoppage of supplies by the Council" it was impossible to maintain a Public Service which was overmanned and, in its higher ranks, overpaid.

In later life Sir Graham Berry became a director of the Mercantile Bank. MELBOURNE PUNCH saw him in February, 1892, as walking away from the Labor Party whose policies he had once supported.

were freely forecast, but did not eventuate. Top public servants remained sacked, but somehow their ill-paid subordinates managed to keep things going. Meanwhile the Treasury was saving money in large quantities.

A few private employers also began to lay off staff. However, the minor economic slump which followed, usually attributed to Black Wednesday, was probably more due to the severe drought of that eventful summer, and a fall in wool prices on the world market.

Berry was obviously acting on a carefully pre-conceived and secret plan. An Interim Supply Bill had been passed the previous year, giving him \$1,600,000. Normally this would have been exhausted by the end of February, 1878, but by dismissing nearly 300 top civil servants he was able to spin it out much longer. Something like \$500,000 a year was being saved even in the first rounds of dismissals: a satisfactory result for a careful grocer.

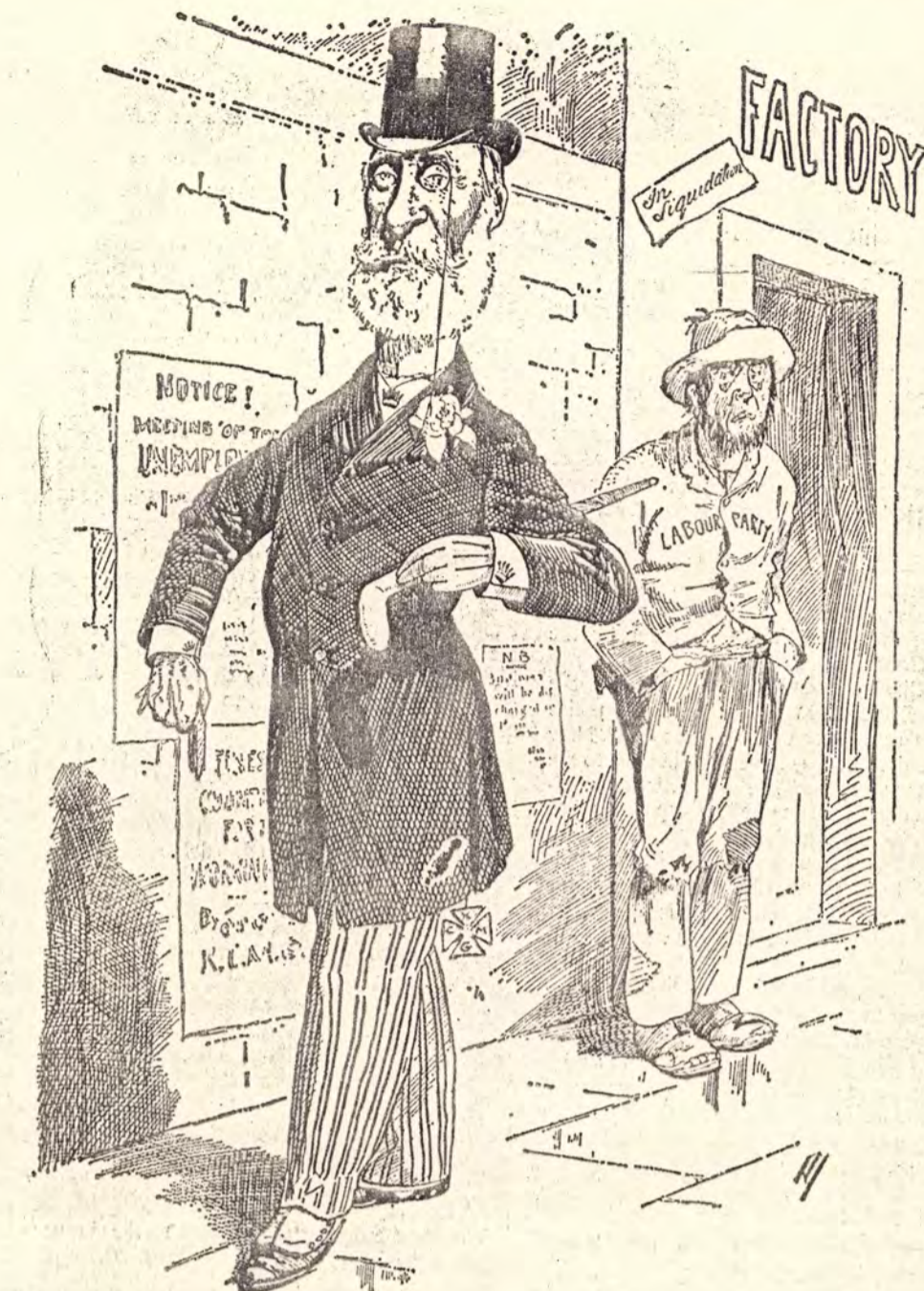
The Age, Australia's biggest-selling newspaper of the time, supported Berry to the hilt. His action was necessary "to defend the constitutional rights of the Assembly." It was, said the paper, "the duty of the Government to make the money go as far as possible" and the solution was "only to be obtained by the use of heroic measures."

Heroic? To others it seemed shameful that innocent civil servants had to suffer because of the deep split in society. But were they so innocent? As Denkin pointed out in his uncompleted memoirs, "some were picked because they were in receipt of high salaries and suspected of being in sympathy with the Conservatives."

The choice of persons to be discharged "was left to individual Ministers," and only hastily revised by Cabinet. In a few cases highly capable officers were dismissed "from private motives and not for public ends . . . (because) they were in the way of new Ministers."

The entire Civil Service, hitherto supercilious towards a radical Government, "was at once brought to its knees in abject submission."

In the Marine (Ports and Harbours) Department, Royal Navy officers who supervised its



activities suffered the ignominy of being cashiered. In Tade and Customs, the Collector, H. M. Guthrie, relative of a famous squatting family, was dismissed.

One of Berry's ministers, Peter Lalor, a veteran of the Eureka rebellion, even threatened to close down the Custom House and Hobson's Bay railway to prevent imports by merchants supporting the Legislative Council.

A clean sweep was made of the Railways Department, where political patronage in providing jobs had been rife. P. P. Labertouche, secretary, and Thomas Higinbotham, its distinguished chief engineer, were both dismissed. (Labertouche was hastily reinstated when it was discovered he was the only officer authorised to pay ordinary railmen, and Higinbotham was reinstated later on.)

All railway and telegraph line construction was stopped because the Treasury had insufficient funds to pay the contractors.

In the Education Department, secretary Henry Venables, the Inspector-General, and dozens of other officials and inspectors were dismissed. One committed suicide, leaving a widow and five children. All singing and drawing teachers were sacked, their duties to be carried out instead by headmasters.

In Crown Lands, the cleanout included W. H. Archer, pioneer statistician whose work for Catholic education was never forgiven by the Berrys. Also sacked was B. H. Moore, who went on to a brilliantly erratic career as business innovator, land boomer and racing-club manager.

In Public Works, William Wardell, Inspector-General and architect of Catholic cathedrals in Melbourne and Sydney, was dismissed. So many other heads rolled in this department that nobody was left to write out the dismissal notices. The minister had to attend on Black Wednesday to do the deed himself.

Road construction was seriously affected. In retaliation for the working-class votes which had put Berry into power, Wannon Shire Council,

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*Continued from page 31*

dominated by wealthy squatters, ceased building roads entirely and sacked all its labourers.

In similar vindictive spirit, the Upper House rejected the Road Tolls Continuation Bill. All shires still dependent on the old system of toll roads were forced to dismiss contractors and labourers.

The effects of Black Wednesday on the legal system were potentially the most explosive. At one stage Peter Lalor threatened to have all State warders dismissed and the jails and asylums thrown open.

He was restrained with some difficulty, and soon forced out of the ministry, but even so, law and order remained in a precarious state.

In the Crown Law Department, the historic figure of Henry Gurner, Crown Solicitor and first solicitor ever admitted to practice in Melbourne, was dismissed along with most of his senior colleagues.

All seven County Court judges, all 29 police magistrates, and all 53 coroners were dismissed. Minor cases were now to be heard by honorary justices of the peace; important cases by the Supreme Court.

At the City Court on Wednesday morning, the imposing figure of Mr E. P. S. Sturt, police magistrate, appeared on the bench as usual. Now 62 years old, Sturt may have thought back to the extraordinary days of Eureka, when as a vigorous young magistrate he had exposed police corruption on the goldfields.

Promoted to Melbourne as a result of that inquiry — and now dismissed. As the first prisoner appeared in the dock, Sturt announced bitterly from the bench that JPs would have to hear the case instead.

Since all coroners had been dismissed, the Government instructed JPs to conduct inquests on dead persons. The Mayor of Footscray held an inquest on a body fished out of the Maribyrnong River and concluded that the man had drowned. Cornelius Ham, an auctioneer, attended the city morgue each day and issued interment orders.

As the colony's legal system neared breakdown point, JPs had to be compulsorily rostered for duty each day to dispose of the great mass of petty sessions business.

Warrants for the arrest of felons could legally be authorised only by magistrates or executive councillors. So many suspects were being held illegally in custody that the Government was forced to nominate all clerks of courts as stipendiary magistrates.

Finally, by a new Order-in-Council of January 25, 1878, the Government reappointed three County Court judges, three police magistrates, and three coroners. These nine men replaced the earlier total of 89 legal officials, and after initial confusion was sorted out, they seemed able to cope.

The Government's twists and turns aroused virulent opposition, described by Deakin as a compound of "terror, stupefaction and rage."

Meetings were held up and down the country. One was called at Castlemaine on January 14 to oppose the Government, but thousands turned up to support Berry and not one speaker dared to mount the platform to oppose him.

A week later, special trains headed from all parts of Victoria towards Geelong, each crammed with hundreds of Berry supporters. Two bands led a triumphant march from the station to the local Mechanics' Institute. The streets and hall were so packed that only Berry himself could get through to the platform to address the huge crowd.

Most provincial daily newspapers continued to attack the Upper House as "obstructionist" and "grossly unconstitutional."

On January 31 there were tremendous scenes in Collins Street after the Lord Mayor refused use of the Town Hall for another pro-Berry meeting. About 15,000 people — a large proportion of Melbourne's adult population of the time — assembled on a vacant block where Glen's Music Shop was later built.

Deakin recalled the enormous enthusiasm which greeted speakers standing on improvised platforms, and the tumultuous scene "lit by flaring grease lamps and torches."

The only dissident was J. L. Purves, a leading barrister and MLA for Mornington, who drunkenly offered to fight anyone in the crowd, and had to be hustled by his friends into the safety of the Athanaeum Club.

The huge crowd later marched to the Argus office to give it three loud groans, and to The Age

office, then a narrow dirty building in Elizabeth Street, where journalists scribbled copy in the midst of the heat and smells of the machine room, to give the paper loud and prolonged cheering.

Berry revelled in this feast of adulation. Largely self-educated, set to work at the age of 11, he had saved pennies from his wage as a grocer's apprentice to buy his own copy of Gibbon's *Decline and Fall of the Roman Empire*. While a young man he learned by heart Pope's entire *Essay on Man* and 40 years later still loved to recite long passages.

According to his friend Alfred Deakin, Berry was "egotistic, self-assertive, original and ambitious," but also "genuine in the fervour of his devotion to the cause of the people."

Berry had great natural powers of oratory, and as he grew older, achieved "dignity, self-confidence and self-control." He became "polished and polite, of a settled gravity which did not exclude a sense of humour, with a deep sense of the importance of his position and a resolute determination to make his tenure of it memorable and if possible permanent."

It is impossible to read Deakin's description of Berry without comparing him to some of the principals in the current constitutional debate in Canberra.

Meanwhile, back in 1878, the attitude of the Governor, Sir George Bowen, paralleled that of Sir Charles Darling 13 years before.

At 57, Bowen had behind him a splendid career as naval officer, university rector, author, first Governor of Queensland in 1859, survivor of a serious constitutional crisis in that colony in 1866-67, and Governor of New Zealand from 1868 to 1873, when he was appointed Governor of Victoria.

Even before Black Wednesday, Bowen warned the British Government that "a sort of political madness has seized both sides . . . some members of the Council talking of hiring and arming Irish mobs, while some members of the Assembly advocate violent and revolutionary measures."

He sought guidance from the Colonial Office, and was told to follow his ministers' advice in practically all circumstances, particularly regarding financial measures passed only by the Assembly.

In another of his voluminous reports to the Colonial Office, Bowen stated that "The Council virtually claim to be practically supreme in the colony, to have the constitutional as well as the legal power of throwing the country into confusion by rejecting the annual Appropriation Bill whenever it is opposed to any of the items."

But Bowen also seemed ready to support almost revolutionary actions, even agreeing with Lalor at one stage that the jails and asylums might have to be opened if the Council persisted in its obduracy over Supply.

Inflated by apparently overwhelming support on all fronts, Berry now began making a series of extravagant errors.

On February 5, 1878 he introduced a bill to make Treasury funds available to the Government immediately resolutions were agreed to by the Assembly sitting alone. This was tantamount to abolition of any possible review functions of the Upper House.

On March 11 the Governor was persuaded to sign a further series of special warrants approved only by the Assembly, authorising the Government to draw up to \$700,000 — sufficient to carry on until the end of July.

Was this action legal under the Constitution? Unfortunately for Bowen, a new Colonial Secretary in London did not think so, and the Governor was recalled, virtually dismissed, in August, 1878.

By this time, however, the Upper House had capitulated. Under a face-saving compromise, the Payment of Members Bill was presented separately and approved, thus clearing the way for the Appropriation Bill to be legally passed at last.

Three years later a Reform Bill was accepted which greatly expanded the franchise for electing the Upper House.

But men often outlive their greatest triumphs to suffer final humiliation. Berry's huge majority withered away, and after 1881 he was never Premier again. In later life he even became mixed up with land boomers in the Mercantile Bank scandals, and was defeated when he stood at the 1897 elections.

To prevent the aged radical from dying in abject poverty, a Parliament dominated by his old conservative enemies voted him a special pension of \$1,000 a year.

THE GOVERNOR-GENERAL'S POWERS

In a statement issued in Canberra today Opposition Front-Bencher, Mr R. J. Ellicott, Q.C., said:

"The Governor-General's basic role is the execution and maintenance of the Constitution and of the laws of the Commonwealth. He performs this role with the advice of Ministers whom he chooses and who hold office during his pleasure.

The Prime Minister is treating the Governor-General as a mere automaton with no public will of his own, sitting at Yarralumla waiting to do his bidding.

Nothing could be further from the truth. It is contrary to principle, precedent and common sense. The Governor-General has at least two clear constitutional prerogatives which he can exercise - the right to dismiss his Ministers and appoint others, and the right to refuse a dissolution of the Parliament or of either House.

These prerogatives, of their very nature, will only be exercised on the rarest occasions. They have been exercised in the past and the proper working of the Constitution demands that they continue. One only has to think of extreme cases to realise the sense behind them, e.g. the case of an obviously corrupt Government.

The maintenance of the Constitution and of the laws of the Commonwealth require that the Government have authority from Parliament to spend money in order to perform those functions. A Government without supply cannot govern.

The refusal by Parliament of supply, whether through the House or the Senate, is a clear signal to the Governor-General that his chosen Ministers may not be able to carry on. In the proper performance of his role, he would inevitably want to have from the Prime Minister an explanation of how he proposed to overcome the situation. If the Prime Minister proposed and insisted on means which were unlawful or which did not solve the problems of the disagreement between the Houses and left the Government without funds to carry on, it would be within the Governor-General's power and his duty to dismiss his Ministers and appoint others.

In the current situation now facing us, the Governor-General, in the performance of his role, would need to know immediately what steps the Government proposes to take in order to avert the problem of it being without supply in the near future, so endangering the maintenance of the Constitution and of the laws of the Commonwealth. He is not powerless and the proper exercise of his powers demands that he be informed immediately on this matter. The Prime Minister should inform him on his own initiative. If he does not, the Governor-General would be justified in sending for him and seeking the information.

The Governor-General is entitled to know:

- (1) when it is that the Government will or is likely to run out of funds under the current Supply Acts; and
- (2) how the Government proposes to carry on after those funds run out; and
- (3) how the Government proposes that the disagreement between the two Houses should be resolved.

These questions cannot properly be left to be considered at a later date because of the consequences which lack of authorised appropriations will have on the Government's capacity to govern, the public service of the Commonwealth and public order.

If he is informed by the Prime Minister that the Government proposes that a half Senate election be held and that by this means (as a result of the election of Territory Senators) the Government hopes to have a majority in the Senate the Governor-General will need to be satisfied:-

- (i) that having regard to the proposed date of the election, the Government will have sufficient supply to carry on until the result of that election has been ascertained.
- (ii) that the election is likely to resolve the difference between the two Houses by giving the Government a majority in the Senate.

In being satisfied of the first matter a number of factors would be relevant and he would be entitled to be informed about them e.g.

- (i) The date when the Government would or would be likely to run out of supply. Because of the seriousness of the Government not having supply the Governor-General

should not be expected to rely nor should he rely on mere estimates. He is entitled to and should be satisfied what supply the Government still has and when it will in the ordinary course run out.

- (ii) the date when the result of the poll is likely to be known having regard to possible events such as a large number of candidates or postal voting. Because of the seriousness of the Government being without supply before that date the assessment should err on the conservative side.

In being satisfied of the second (the likelihood of the Government obtaining a majority in the Senate as a result of the election) he will need to have information which justifies that conclusion. He would also be entitled to consider, how those who will be in the Senate<sup>immediately</sup> after the election are likely to vote if the Appropriation Bills were re-submitted. If it was thought that some of the States were not prepared to hold the elections he would be entitled to consider, for instance, the likely votes of those casual Senators who would remain, e.g. Senator Field. The fact that Senator Field's seat is under challenge would only add uncertainty as to whether the Government can hope to get a majority as his replacement would be a matter for the Queensland Government.

In view of the Government's complaint that the Senate has consistently blocked its legislation the Governor-General would be entitled to consider whether the dispute would really be solved by a half term election or whether the only practicable course was for the Government to seek a double dissolution so that the matter could be

resolved by the people.

If the Governor General was not satisfied that the Government would have supply until the election result in the Territories was known he would only have one option open to him in the interests of good government. He is entitled to and should ask the Prime Minister if the government is prepared to advise him to dissolve the House of Representatives and the Senate or the House of Representatives alone as a means of ensuring that the disagreement between the two Houses is resolved.

If the Prime Minister refuses to do either it is then open to the Governor General to dismiss his present Ministers and seek others who are prepared to give him the only proper advice open. This he should proceed to do. The proper advice in the circumstances is to dissolve both Houses of the Parliament or the House of Representatives alone with or without a half Senate election."

Government House,  
Canberra. 2600.

17 October 1975

*My dear Private Secretary,*

As you by now know the crisis has finally broken.

Things have happened very fast during the past few days. The Federal Council of the Liberal Party met over the weekend in Canberra and presumably gave to Mr Fraser a clear indication that what the party wanted was for him to deny supply. It was at the end of the weekend still not absolutely sure that he would do this, but he was poised to move if so minded.

On Monday, the loans issue broke again in a most dramatic way. Mr Khemlani, who was at the centre of the previous controversy, turned up in Australia and on Monday released to the Melbourne "Herald" the text of some telexes which had passed between him and Mr Connor, the Minister for Minerals and Energy.

On Tuesday of this week the Melbourne "Herald" published this material. The Leader of the Opposition appears to have had prior notice of what was to be published because, on Thursday of last week, questions without notice were addressed to the Prime Minister, to which he gave the following replies:

"Mr Whitlam - The Deputy Leader of the Opposition (Mr Lynch) asked me this morning whether I would assure the House that all communications between the Minister for Minerals and Energy and loan raising intermediaries were tabled by the Minister and myself on 9 July or, if not, whether I would table the other documents.

I am assured by the Minister for Minerals and Energy that all communications of substance between him and Mr Khemlani were tabled by him on 9 July 1975."

.../2

"Mr Whitlam - The Leader of the Opposition (Mr Malcolm Fraser) asked me this morning whether, to use his words, 'the Government's chosen intermediary' is a man of the highest integrity and repute and therefore suitable to act on behalf of the Australian Government, as the Leader of the Opposition suggested he had done over the last twelve months.

As indicated by the Minister for Minerals and Energy on 9 July (Hansard, p.3613), Mr Khemlani was not authorised to act on behalf of the Australian Government."

"Mr Whitlam - This morning the Leader of the Opposition (Mr Malcolm Fraser) asked me whether it is correct that the Minister for Minerals and Energy has at all times consulted closely with me and sought my approval before initiating action in respect of overseas loans. He also asked me whether the Minister had informed me of communications to him on 11 June and 12 August.

Further to my response this morning, the answer is that the Minister consulted with me as appropriate. He did not consult with me on the specific communications mentioned - it was unnecessary."

The telexes demonstrated that Mr Connor had remained in contact with Mr Khemlani in connection with the raising of a loan after his authority to do so had been withdrawn by Executive Council decision on May 20th. It became obvious that he had misled the House and the Prime Minister about the fact that he had done so and had not during the earlier crisis tabled all communications of substance as he said he did. On Wednesday he resigned and I swore in Senator Wriedt as his successor.

All of this has been seized upon by the Opposition Parties as providing the extraordinary and reprehensible circumstances for which Mr Fraser has been looking, although he is now basing his decision to defer - not reject - the Appropriation Bills in the Senate, not only on the fact that extraordinary and reprehensible conduct has been discovered, but on the total record of the Government which he believes should submit itself, or be forced to go, to the people.

.../3



You will remember that the original decision of the Executive Council on December 13th was supported by four Ministers, all of whom were present at that time. Of those Ministers all have now gone except the Prime Minister. Senator Murphy was appointed to the High Court, Dr Cairns was dismissed and Mr Connor has now resigned. It is now claimed that the Prime Minister should accept full responsibility for the whole loans business and that he has hidden behind the other Ministers.

You will also remember that the legal opinion upon which the loan negotiations was based was an opinion given by the then Senator Murphy as Attorney-General. As I understand it, the opinion was to the effect that it was not necessary to take the matter to the Loan Council because of an escape clause in the Constitution and in the Financial Agreement. This permits the Commonwealth to raise money for temporary purposes without going to the Loan Council. The Attorney-General advised that although the loan was for \$4,000 million and although it was to be spent on enormous capital works over a long period of time, it was possible to argue that the loan was for temporary purposes because the Commonwealth was confronted by a temporary crisis in the energy field. The temporary crisis could be solved by huge capital expenditure over a long period of time but the loan would be for temporary purposes because it was dealing with a crisis which had arisen as a result of sudden and "temporary" energy troubles. As far as I know this advice was not in writing. The Prime Minister himself is, of course, a lawyer though he has not practised extensively.

You will also remember that I was not present at the meeting of December 13th and my previous correspondence will indicate why this happened and what my approach to that meeting was. I have kept detailed notes of what happened.

The position now is that the Prime Minister, in response to Mr Fraser's decision, has decided to "tough it out". He may, in the end, recommend a Half Senate election, although this possibility is complicated by the view that such an election is said by some to be likely to invalidate the use, for the purposes of calling a double dissolution, of the 21 Bills which have been rejected by the Senate. For the moment, he has said that the Senate must reject supply outright before he will call an election of any kind. He told me last night that he would not be out to Yarralumla on the crisis for some time.

.../4

Mr Fraser on the other hand, though realising, according to his public statement, that I cannot be expected to act immediately, takes the view that I have ample power, before chaos develops too far, to dismiss the Government and produce an election. He was at my dinner party last night. I did not directly discuss the crisis with him, but we did have some conversation. He is obviously a very worried man but he has crossed the Rubicon. I judge my relations with him and his people to be quite satisfactory.

The situation is very serious indeed. As money runs out many problems will arise and the reaction of the trade unions has to be considered. There are threats of protest, strikes and industrial "war". Mr Hawke, the President of the Australian Council of Trade Unions and of the Australian Labor Party has threatened industrial action, although the Prime Minister tonight appealed to the trade union movement not to stage a general strike. Senator Wriedt who is the new Minister for Minerals and Energy said after he was sworn in, in the presence of the Prime Minister, that he did not agree with the policy of "toughing it out". He thought it would be better for the Prime Minister to accept the inevitable, go down to defeat in an election and start laying the foundation for a return to power in due course. He said that he was very worried about what would happen if step by step we move into chaos. He said he was concerned that there could be violence in the streets.

Two other Ministers have said rather similar things to me in a quite voluntary way in an Executive Council meeting, but nevertheless Caucus met on Wednesday and gave approval to the Prime Minister's tactics of strongly resisting the denial of supply and refusing to recommend a dissolution of the House of Representatives whilst asking in due course for a Half Senate election.

My own role continues to be debated and I attach some clippings which indicate the way in which attention is being directed to the duties, powers and responsibilities of the Governor-General.

Yesterday, the Prime Minister moved a resolution in the House of Representatives, a copy of which I attach. The Leader of the Opposition moved an amendment, the terms of which I also attach. Copies of the two speeches made in the House by the two principal figures are included to give some flavour of the crisis. The Prime Minister has officially sent me a copy of the resolution as passed by the House.

.../5

The Premiers in the four States which are controlled by the Opposition Parties would probably refuse, through their Governors, to fix a date for a Half Senate election in December, but the two Labor States would probably do so, in which event it would be possible to hold, at the same time, a Senate Election at which two new senators would be elected for each of the mainland Territories - the Australian Capital Territory and the Northern Territory.

Legislation permitting these Territories to have two senators each was passed by Parliament at the Joint Sittings which I ordered after the last double dissolution. The legislation was challenged in the High Court which delivered judgment the other day and upheld the legislation by four votes to three.

Mr Justice Murphy sat as a member of the Court though he had, whilst Attorney-General, fathered the legislation which was under consideration. Had he not sat, the result would have been a three-three decision with the view of the Chief Justice prevailing and the legislation would have been invalid. However, with Mr Justice Murphy sitting the other point of view prevailed by a majority of one.

The Prime Minister hopes, by having an election for what may turn out to be not half but a part of the Senate, in December, to produce a change in the balance of power in the Senate and thus to get his Appropriation Bills passed during December.

However, many people think that he will not succeed in changing the balance of power in the Senate by these tactics and that by the middle of December it should be apparent that he will be unable, if the Opposition holds its ground, to get supply. Before all of this happens money will have run out and there could be a developing crisis of great magnitude.

As to the four State Governors refusing to agree to a Half Senate election, there has been speculation here that the Prime Minister might ask The Queen to direct the Governors to comply with any request made to them by me. The Prime Minister has not said any such thing to me but I mention the speculation so that you may take it into consideration. I also attach a relevant Press cutting.

.../6

On Wednesday, Sir Colin Hannah, the Governor of Queensland, made a most peculiar speech attacking the Australian Government. I attach a relevant Press cutting. I have had many telegrams of protest, urging me to advise The Queen to dismiss the Governor. This shows how Gilbertian things are out here. Perhaps I should rather say that there is a heavy element of Greek tragedy about it all.

The conversations in Port Moresby to which you referred in your letter of 2 October did include a mention of the possibility of The Queen being asked to "recall" me. This possibly may be remote but there was some basis for what I said, having regard to something I had heard.

In yesterday's Melbourne "Herald" there was an open reference to this which may have resulted from something said from the Prime Minister's office. I enclose a copy of the article.

Before our dinner last night, which was in honour of the Prime Minister of Malaysia, in the presence of the guest of honour and his wife and Mrs Whitlam and my wife, the Prime Minister, in what he would claim to have been a jocular fashion, said a propos of the crisis - "It could be a question of whether I get to The Queen first for your recall or you get in first with my dismissal". We all laughed.

The Prime Minister and I remain friendly and our relations are very good. He wants me to be certain to do exactly what he advises come what may. This is, of course, understandable.

My wife and I are very disappointed indeed that we have to stay here and will not be able to enjoy Her Majesty's hospitality in November.

I have appreciated very much the letters which you have written to me. I do not know what will happen or what I shall end up by doing but the country is set on a collision course now of historic proportions. I shall keep Her Majesty fully informed.

Please assure Her Majesty of my continued loyalty and humble duty.

Yours sincerely,

JOHN R. KERR

Lieutenant Colonel the Right Honourable  
Sir Martin Charteris, K.C.B., K.C.V.O., O.B.E.,

## WHITLAM GOVERNMENT

Mr WHITLAM (Werriwa—Prime Minister) (10.24)—Mr Speaker, I move the resolution:

*Considering* that this House is the House of the Australian Parliament from which the Government of Australia is chosen;

*Considering* moreover that on 2 December 1972 the Australian Labor Party was elected by judgment of the people to be the Government of Australia; that on 18 May 1974 the Australian Labor Party was re-elected by judgment of the people to be the Government of Australia; and that the Australian Labor Party continues to have a governing majority in this House;

*Recognising* that the Constitution and the conventions of the Constitution vest in this House the control of the supply of money to the elected Government;

*Noting* that this House on 27 August 1975 passed the Loan Bill 1975 and on 8 October 1975 passed the Appropriation Bill (No. 1) 1975-76 and the Appropriation Bill (No. 2) 1975-76 which, amongst other things, appropriate moneys for the ordinary annual services of the Government;

*Noting* also that on 15 October 1975, in total disregard of the practices and conventions observed in the Australian Parliament since Federation, the Leader of the Opposition announced the intention of the Opposition to delay those Bills, with the object of forcing an election of this House; that on 15 October 1975 the Leader of the Opposition in the Senate announced that the Opposition parties in the Senate would delay the Bills; and that on 15 October 1975 the Senate, against the wishes of the Government, decided not to proceed further with consideration of the Loan Bill 1975;

*Considering* that the actions of the Senate and of the Leader of the Opposition will, if pursued, have the most serious consequences for Parliamentary democracy in Australia, will seriously damage the Government's efforts to counter the effect of world-wide inflation and unemployment, and will thereby cause great hardship for the Australian people;

1. This House *declares* that it has full confidence in the Australian Labor Party Government.
2. This House *affirms* that the Constitution and the conventions of the Constitution vest in this House the control of the supply of moneys to the elected Government and that the threatened action of the Senate constitutes a gross violation of the roles of the respective Houses of the Parliament in relation to the appropriation of moneys.
3. This House *asserts* the basic principle that a Government that continues to have a majority in the House of Representatives has a right to expect that it will be able to govern.
4. This House *condemns* the threatened action of the Leader of the Opposition and of the non-government parties in the Senate as being reprehensible and as constituting a grave threat to the principles of responsible government and of Parliamentary democracy in Australia.
5. This House *calls upon* the Senate to pass without delay the Loan Bill 1975, the Appropriation Bill (No. 1) 1975-76 and the Appropriation Bill (No. 2) 1975-76.

This motion brings to the formal notice of the House a situation of grave constitutional crisis without precedent in the Australian Parliament and the Australian nation—without modern precedent in the parliamentary democracies of

the world. That situation arises from statements made outside this chamber by the Leader of the Opposition (Mr Malcolm Fraser) yesterday that the Opposition parties will use their numbers in the Senate to delay the Government's annual Appropriation Bills, which have been passed by this House.

Subsequently the Leader of the Opposition in the Senate (Senator Withers) moved, and the Senate passed, an amendment to the Loan Bill 1975 that the Bill be not further proceeded with. It is transparently clear from what he said that the Opposition proposes to take the unprecedented step of blocking the Budget of the democratically elected Government of Australia.

In the face of the Leader of the Opposition's attempt to sabotage the foundation of our parliamentary system, this House must, in unmistakable terms, make clear its rights. For the rights of this House are nothing less than the rights of the Australian people. This House must expose the political opportunism of the Opposition in the Senate for what it is. And what it means is constitutional revolution—the proposition that governments can be unmade by the Senate and not by the House of Representatives—the people's House.

Let me recall the words of the Leader of the Opposition:

The basic principle which I adhere to strongly is that a government that continues to have a majority in the House of Representatives has a right to expect that it will be able to govern.

He has professed that principle again and again. He knows the course of honour, of decency, of democracy. Yesterday he espoused a course of action which can only mean that he is willing to overturn his principles and overturn the basis of our system. There is the really 'reprehensible circumstance' today—a man who knows what is honourable, yet who does the thoroughly dishonourable—the exact definition of a man without honour, a man without principle. As another self-indulgent wool grower said in putting personal interests ahead of the nation's interest, *video meliora proboque; deteriora sequor*.

The House of Representatives—the people's House—alone determines who shall govern Australia. Only 17 months ago, the people for the second time in less than 18 months, elected the Australian Labor Party to govern for a further 3 years. I state again the basic rule of our parliamentary system: Governments are made and unmade in the House of Representatives—in the people's House. The Senate cannot, does not,

and must never determine who the government shall be.

The Leader of the Opposition himself has asserted that basic principle again and again. In a very real sense he owes his present position to the assertion of that principle. He was only able to destroy his predecessor because the right honourable member for Bruce (Mr Snedden) had fatally weakened himself by his attempt to subvert the principle in April 1974 and his failure to pledge that he would never again be party to another attempt.

By appearing as the champion of this basic parliamentary principle the present Leader of the Opposition drummed up support among Liberal senators who wanted security of tenure, and among the business community who wanted stability in politics more than they wanted a change of government. That was how he was able to destroy his leader—the second time he had destroyed a Liberal leader by posing as a man of principle. He enjoyed his honeymoon with the Australian people precisely because he professed the principle—the principle that the elected government had the right and responsibility to govern for its full term of 3 years. This is the man of principle, the man of honour, who stood up in this place on 9 March 1971 when he for the first, but not for the last time, destroyed his leader and said of the former Liberal Prime Minister of Australia, the present Independent member for Higgins (Mr Gorton) and the next senator for the Australian Capital Territory:

This man is unfit to be Prime Minister of Australia.

His own reproach will be his own epitaph. And it will be my exquisite duty soon to ram this message home to the people of Australia, in terms that neither they nor the Leader of the Opposition will ever forget.

The Leader of the Opposition announces with some pride that departments are running or will run short of funds. Of course they will run short of funds. The Leader of the Opposition is refusing to pass the Appropriation Bills in the Senate which provide for the ordinary annual services of the Government. He will be responsible for bills not being paid, for salaries not being paid, for utter financial chaos, and this will continue as long as the Leader of the Opposition refuses to allow the Senate to pass the Supply already authorised by this House, the people's House. And now, like a pyromaniac he dances around the fire. He will get burnt.

Let us cut through the humbug. The Leader of the Opposition has been planning this action ever since he was elected. And all the nonsense

about 'reprehensible circumstances . . . or extraordinary circumstances' was so much eye-wash, so much a smokescreen for his real intentions. Look at the terms of the Senate resolution yesterday—the reasons it gives for delaying Supply, for not proceeding further with the Budget. It mentions the Government's overseas loan raising efforts. There is nothing in that resolution which raises matters which were not fully known on 9 July when the House met to thrash this whole matter out. Yet neither then nor subsequently has the Opposition in this House ever moved a motion of censure or no confidence upon the Government on this matter, any more than it has ever been able to bring any specific charge of illegality or misconduct by the Government or the Ministers in our negotiations. It is absolutely plain that the Leader of the Opposition determined upon his course from the outset, just as the Leader of the Opposition in the Senate, Senator Withers, let the cat out of the bag, last time, when he said:

We embarked on a course some 12 months ago to bring about a House of Representatives election.

That is, from the time that the people of Australia had the impertinence to reject the men born to rule and to elect a Labor Government. Over the period of 75 years since Federation there have been 20 occasions on which the annual Appropriation Bills have come before a Senate in which the Government did not have a majority of its own. There has been a similar number of occasions in respect of the Supplementary Appropriation Bills and also of the Supply Bills. Not one of these Bills has ever been rejected. They number in all 139. I seek leave to table a list of the Bills concerned.

Mr SPEAKER—Is leave granted?

Mr Sinclair—Yes, leave is granted.

Mr WHITLAM—On the other hand, numerous examples can be given of government measures other than annual Appropriation and Supply Bills that have been rejected by the Senate. In this 29th Parliament alone, in a bare 15 months, 22 Bills have twice been rejected by the Senate and a further ten have been rejected once, deferred or unacceptably amended by the Senate. The contrast between the record of the Senate over 75 years in respect of Appropriation and Supply Bills with its treatment of other Bills points to only one conclusion. The conclusion must be drawn that the treatment by the Senate of Appropriation and Supply Bills has reflected a firm conviction that the Bills for financing the annual services of government should not be rejected.

The specious protestation by the Leader of the Opposition that it is not rejecting the Budget will fool no one. But it does at least serve to reveal that even he is conscious of the gross violation of constitutional principles involved. He shrinks from calling his action by its true name.

There are compelling reasons why the Opposition cannot be allowed, in an unscrupulous grab for political power, to shatter the principles that have stood for 75 years. Appropriation and Supply Bills can originate only in this House and the Senate may not amend them for the ordinary annual services of the government. Responsible government on the Westminster model, upon which our system of government is founded, requires absolutely that the people's House—this House—through which the Government is chosen, should hold financial paramountcy over an upper House. The convention has been clearly established that the Senate, which has no power to originate or amend money Bills, shall not block or reject them either.

The principle I assert is the principle for which, I am certain, everybody who has stood in my place in this House would also have stood firm in the three-quarters of a century that we have had a National Parliament. Prime Minister Menzies did. Prime Minister Holt did. Prime Minister Gorton did and does. I repeat the principle: The Government is formed in this House and is answerable to this House and this House must control financial matters. This has been the situation in every English speaking democracy. No other democracy would permit a situation where an upper House could reject a Budget.

In no other parliamentary democracy has the elected government been subject to the artificial pressures and intolerable stress to which this Government has been subject by the unconstitutional threat of an election every 6 months. And that threat has been sustainable only through the fortuitous, the accidental situation in the Senate—by the actions of a Senate described by the honourable member for Moreton (Mr Killen) as a 'tainted Senate'.

Last night on television the Leader of the Opposition made 2 remarkable assertions, breathtaking in their audacious distortion of the truth. He said that the people of Australia had given his coalition a majority of senators at the last Senate election. The truth is of course that at the last Senate election the people not only recorded 200 000 more votes for the Australian Labor Party candidates—the Government—than for all

other Parties represented in the Senate combined, but elected 29 Labor senators and 29 Opposition senators and 2 Independents. Because 2 State Premiers flouted another great constitutional convention, the Government now has only 27 senators. Yesterday's Senate vote was a complete distortion of what the people decided about the Senate in May last year. The second assertion last night by the Leader of the Opposition was that the scandalous appointment of a replacement for the late Senator Milliner by the Queensland Government was not relevant to yesterday's decision. Senator Steele Hall nailed this once and for all when he said:

Let it be remembered that the Opposition succeeded only because a Labor senator died. They did it over a dead man's corpse.

If the Premier of Queensland had acted honourably and constitutionally by appointing a Labor supporter to hold Senator Milliner's place then the Opposition's amendment would have had as many senators voting against it as voting for it. Yesterday's spurious resolution in the Senate would have been negated.

The political immorality of the Opposition is demonstrated further by the grossly improper incitement of non-Labor State governments to restrain the Governors of the States from exercising their duties under the Australian Constitution in relation to periodic Senate elections. On 24 occasions the Governor-General has suggested to the Governors of the States the date which they should set for elections of senators for their States. On four of those occasions—May 1953, December 1964, November 1967 and 1970—an election for the House of Representatives was not held. On all 24 occasions the State Governors met the Governor-General's request. The years 1975 or 1976 could see the first time in the 75 years during which Australia has had a national Parliament, the first of the 25 occasions on which a Governor-General has put such requests to the State Governors, that a Premier advises a Governor to disregard constitutional practice, to fail in the duty which the Constitution imposes on a Governor. This outrage would be at the behest of the Federal Council of the Liberal Party last Sunday—the faceless men of the Liberal Party.

At this time particularly when constitutional issues are at stake it ill behoves any representative of the Crown to cast aside the traditions of his office and throw in his lot with one or the other of the political parties in dispute on national issues. It is a matter of grave concern that a man in this position can be so careless of his responsibility, so unconscious of the precedent, so unthinking as to the danger as the

Governor of Queensland showed himself yesterday.

I have recently had occasion to quote many authorities on the perils of the course upon which the Leader of the Opposition has embarked—not least Sir Robert Menzies who founded his Party. Let me now quote Quick and Garran, writing at the time of the founding of the Australian Parliament:

The House of Representatives is not only the national chamber; it is the democratic chamber; it is the grand depository and embodiment of the liberal principles of government which pervade the entire constitutional fabric. It is the chamber in which the progressive instincts and popular aspirations of the people will be most likely to make themselves first felt . . . by the Constitution, it is expressly intended to be such a House, and by its organisation and functions it is best fitted to be the area in which national progress will find room for development.

And this, with a prescience, prophetic insight, that Quick and Garran would not have claimed for themselves, gets to the heart and the root of this present grave crisis. It is because this Government has attempted to make this Parliament the instrument for reform, for long overdue change, for progress, for the redistribution of wealth, for the uplifting of the underprivileged, for the reduction of the privileges of great wealth and deeply entrenched vested interests, an instrument towards equality of opportunity for all Australians, that our opponents and those vested interests have from the very beginning, as Senator Withers revealed, embarked on a course to destroy this Government at the earliest opportunity. But what they are really doing is destroying the very basis of parliamentary democracy in our country.

The Senate resolution talks about 'submitting to the judgment of the people'. Precisely! This matter should be submitted to the judgment of the people. It will be submitted to the judgment of the people. The issue is the unconstitutional and undemocratic conduct of a chance majority in the Senate. The issue is the rejection by the Senate of a Budget designed to bring great benefits to this nation. It is the Senate which is on trial. It is the Senate which will have to submit to the judgment of the people. It is the Senate which has rejected the Budget. It is the Senate which must face the people. Again, in the indelible words of Senator Steele Hall, it is the Senate, the Liberal Party and the Liberal leader which, by the course they are now attempting, have sown the seeds of their own destruction.

Mr MALCOLM FRASER (Wannon—Leader of the Opposition) (10.48)—It is an odd government that has to pass a motion indicating confidence in itself. When there is a universal

judgment around Australia that this Government stands condemned for its actions, especially over the last 12 months; when there is a universal call around Australia for this Government to go to the people for an election, this Government has to use its synthetic temporary majority in this House to try to claim that it has the confidence of the Australian people. That will not deceive anyone any more than other actions of this Prime Minister (Mr Whitlam) over the last several months when he has tried to seek scapegoat after scapegoat, to blame other Ministers for actions for which, if he were a man, he would take the responsibility as Prime Minister of this country. But he is not a man of that kind; he is the sort of man who condones the deception of this Parliament until it is forced out by other people. Then he blames a Minister, whether it is the Deputy Prime Minister or not, sacks him and says: 'My hands are clean', when he had the information, he had the knowledge, he knew of it and tried to keep it silent.

The Prime Minister brought this matter on because he fears questions. He fears to face the people of Australia. He fears to face the truth about himself and he knows quite well that it is other people who will suffer as a result of this. He said it is going to be a long hard road. How long and hard for a family on \$70,000 a year? How long and hard for the average person who is betrayed?

*(Government supporters interjecting)*

Mr SPEAKER—Order! I call the Leader of the Opposition.

Mr MALCOLM FRASER—How long and hard for the Prime Minister?

Mr SPEAKER—Order! The Leader of the Opposition will resume his seat. Honourable gentleman on my right will come to order. The Prime Minister was heard in comparative silence and I suggest that the Leader of the Opposition—

Mr Cohen—He was not.

Mr SPEAKER—I will name the honourable member for Robertson if he interjects when I am standing. If he wants to vote in this I suggest he obey the rulings of the Chair. I suggest other honourable members do the same.

Mr MALCOLM FRASER—How long and hard for the Prime Minister and his family on \$70,000 a year? For that is the position of the Prime Minister. What concern does he have for the average people who have been betrayed by this Government from the inception of this Government? There is a general move toward an



election which this Prime Minister denies. The Prime Minister quoted a number of eminent legal authorities. I wish to quote no more eminent a legal authority than the Prime Minister himself when he was in another place using other clothes and adopting other principles. This eminent legal authority, the Prime Minister, said in this Parliament in 1970:

If the motion is defeated, we will vote it against the Bills here and in the Senate. Our purpose is to destroy this Budget and to destroy the Government which has sponsored it.

He was making it quite plain that he would use the powers of the Senate to defeat the Government. Again he said on another occasion on another Bill:

Any government which is defeated by the Parliament on a major taxation Bill should resign. This Bill will be defeated in another place. The Government should then resign.

He said:

This Bill be defeated in another place.

By another place he meant the Senate. This eminent legal authority was asserting the power and the right of the Senate. What humbug have we had from this eminent legal authority today? He has spent 20 minutes and read a long resolution doing nothing but condemn himself and his own opinions when he was in another place with other clothes. He changes his clothes. He changes his principles as he changes his jobs. He has no respect amongst the people of Australia.

The charges against this Government for which it stands condemned are two—the gross mismanagement of this economy and the impropriety of the Prime Minister and his Ministers' actions. We know there is record unemployment, which will reach 400 000 on the Government's own admission, and record inflation. Home ownership is a dream that none can now reach or few reach as they once could, and the retired are being destroyed by the policies of this Government. There has been a failure to take responsibility by the Prime Minister. He sought scapegoats. The present Deputy Prime Minister (Mr Crean) was one of those scapegoats. He sought overseas causes as the result of ills caused by his Government. He blamed the Treasury, the Treasurer. The former Deputy Prime Minister was going to be the saviour of Australia. Then he was denigrated and sacked by the present Prime Minister. He blamed excessive wage claims.

In all of this, overseas reports, the Organisation for Economic Co-operation and Development, the International Monetary Fund, and his own Treasury in Treasury Statement No. 2 attached to his own present Treasurer's Budget Speech blamed his own policies and the policies of his Government. But now once again he turns

to overseas causes seeking a scapegoat, seeking an alibi for his own failures, his own misconduct. The people of Australia will not be deceived by that for one moment. It is rooted in a lack of concern, a lack of understanding, a remoteness from the average Australian. His world has shrunk to this Parliament. He does not realise that performance here does not meet Australia's needs. He is an ineffectual Falstaff. He is a dishonourable Richard III.

The impropriety of this Government's actions date in particular from December 13 of last year, a date which will live in infamy in the records of this Government, this Caesar's Ides of March. He then signed a document which said loans for 20 years were to be for temporary purposes. How can loans for 20 years be for temporary purposes when the purposes of the loans would have endured for up to 50 years or more? The Prime Minister said in answers to questions on notice that he would not have to go to the Loan Council because the funds were for temporary purposes, but in the same answer he said that, once consummated, the loans would go to the Loan Council—a complete contradiction in the one answer and the one question. Another answer which was given yesterday concerning the nature of temporary purposes is again a falsehood and a contradiction. The semantics of this Prime Minister have ceased to deceive any person in Australia. He said that no allegations or charges have been made against him or his Government. He must be blind, he must be deaf, if he does not know the charges which have been made of massive illegality and of possible conspiracy to defraud and to deceive the Constitution. These matters are all on record in this Parliament. They are unanswered to this day.

The Prime Minister said that the former Deputy Prime Minister was Labor's gift to Australia, and he deliberately withheld a letter which would have indicated that the Minister had deceived this Parliament. By withholding that letter this Prime Minister condoned the deception but he was prepared to make use of it when it was published by the media. Then he was suddenly righteous and he had to sack the Deputy Prime Minister for a sin, if it were a sin, which he, this Prime Minister, had condoned. In that he stands as guilty as the perpetrator of the original deception.

When we look at the position of the former Minister for Minerals and Energy we see the same pattern. In May this Prime Minister gave instructions that documents concerning loans should go over his desk. How can anyone believe

in his innocence? Does he not read the documents that go over his desk? Does not his Department follow instructions? In any case, he condoned the pursuit without authority and this week he said that the only deception was the fact that the Minister had not told him. The Minister should not have had to tell him because the departmental arrangements that the Prime Minister had made would have made automatic the knowing of it by the Prime Minister. The Prime Minister seeks to deny such knowledge. How can anyone believe in his innocence? It is said that the only charge against the Minister was that the Prime Minister was not told. Who can believe that he did not know? He must have known, but the only way he can argue his innocence is to argue his own incompetence; and he can take either charge. There is a common thread in the sacking of colleagues to absolve himself. It ought to be noted that a president in another country did the same. Information was dragged out and dragged out over long periods. There was the sacking of colleagues to prove his innocence, but he was proved guilty himself in the end.

The Prime Minister now says that the people he trusted misled this Parliament or himself. Who else in his Ministry has misled him? Who else in his Ministry does he not trust? Does he trust the Attorney-General (Mr Enderby) to whom he is now speaking? Why did he take telephone-tapping authority from the Attorney-General? Does he not trust the Attorney-General? Or does he want that telephone-tapping authority in his own Prime Ministerial hands for political purposes? Does he not trust the Attorney-General with whom that authority ought properly to lie? Does he trust the Minister for Science and Consumer Affairs (Mr Clyde Cameron) who may no doubt wish to speak in this debate the better to do in the longer term what he no doubt will achieve as his one last political ambition? Does he trust the present Treasurer (Mr Hayden), the present Deputy Prime Minister?

The Prime Minister has been trying to find out who has made available a certain Treasury document to the Opposition. Would it be reprehensible if that document came to us from a Treasury official or from somebody sitting beside him on the front bench? If it were somebody sitting beside him on the front bench would he believe that that person ought to resign? Would he want to know whether it was somebody from the Treasury or somebody from his front bench? Let me tell him that it is somebody who is sitting on the front bench at this moment. The person who made the document available did so because he

believes that in the national interest the Opposition ought to have that information. He did it because he is a worthy person. But the Prime Minister needs to know whether he can feel confidence in the activities of all his Ministers. Would he believe that that matter would enable trust between himself and his colleagues? He has brought down his colleagues. He has brought down his Party to the lowest depths at which it has ever been. He can no longer—

Mr Whan—They are right behind him.

Mr MALCOLM FRASER—They will be right behind him as he walks over the cliff and takes them all to doom and destruction like lemmings falling into the sea. The Prime Minister cannot long delay the serious judgment of the Australian people. He cannot long avoid the masters of all people in this Parliament, in the House of Representatives or in the Senate. He can no longer run away from his own learned opinions as a lawyer when he was in another position wearing other clothes. He can no longer pretend that the principles he enunciated today were principles that he espoused when he was in Opposition. His principles suit his cause. Honourable members opposite know that he stands condemned before the people of Australia.

It might be worth asking those who sit beside him and those who sit behind him: Do they want an election now when 300 000 are unemployed or an election in February when 500 000 will be unemployed? If the Labor Party is to go to complete and absolute destruction honourable members opposite will allow this Prime Minister to delay the normal and proper course that ought to follow if a money Bill is defeated in either House, as this Prime Minister, this learned legal counsel, once so ably and briefly expressed in this Parliament. If honourable members opposite want a Labor destruction, let them follow this man to complete and absolute destruction. If they want another judgment, let them go to the people in the streets, the people in the factories, the people in their own electorates and see what they say of this Prime Minister. By way of amendment to the motion moved by the Prime Minister I move:

That all words after 'that' be omitted with a view to substituting the following words:

This House regrets the failure of the Prime Minister to apply the same standards to himself as he has demanded from his Ministers and that having misled the Parliament and the people he has refused to resign and subject his Government to the will of the Australian people.

Mr SPEAKER—Is the motion seconded?

Mr Anthony—I second the motion and reserve my right to speak.

By IAN HICKS

# The man in the eye of the storm

*THE APPOINTMENT (to the office of Governor-General) is a responsibility I am looking forward to. It provides the opportunity to play a non-controversial but important role in national affairs.*

That was Sir John Kerr, that was. He was speaking to reporters on February 27, last year, the night Mr Whitlam telephoned, interrupting the Kerr evening meal, to confirm a move from Turramurra to Yarralumla.

Then there was the comment made to Sir John by Lord Hailsham, Britain's Lord Chancellor in May last year when the two men were discussing the law and society.

"Everything," said Lord Hailsham, "is constantly under challenge from politicians."

Sir John Kerr, relishing his looked-forward-to responsibility, not to mention his non-controversial role, might well agree with Lord Hailsham today.

The fact is, of course, that Australia's Governor-General, the boilermaker's boy from Balmain, is very much in the eye of the political and constitutional storm. While Messrs Whitlam and Fraser lay about them with verbal club and sword, Sir John Kerr sits waiting at Yarralumla, making ready, no doubt, to receive his Prime Minister.

What will he say and, more to the point, do when Mr Whitlam calls to suggest a pre-Christmas poll for half the Senate? Or when the State Governors, having been invited to issue writs for such a poll, reply that a mid-1976 contest might be a better idea?

## Evatt's advice to study law

Whatever he says, whatever he does, in the next several weeks Sir John Kerr's role will be anything but non-controversial; that would be so even in the unlikely event of his saying and doing nothing.

What sort of man is he who must face up to the awesome problems which seem likely to flow from a national political tussle of unprecedented scope and ferocity?

His background is a collection of contrasts. How many boilermakers, for example, saw a son chosen for Fort Street High School? For that matter, how many boilermakers took a son to a High Court judge for a little career advice?

Three years ago, Gavin Souter, reviewing Sir John Kerr's career (he was then Mr Justice Kerr of the ACT Supreme Court), noted that the judicial and judicious advice—to study law—had come from Dr Evatt.

The young John Kerr took the advice, won an exhibition to Sydney University, and went through Law School picking up prizes and scholar-

ships all along the way. He was called to the Bar in 1938 at the age of 24.

John Kerr, however, has never been a man to rest on his laurels.

It was once said of him that he was fatally addicted to sociology and insatiably interested in every aspect of Australian civilisation; certainly, at Fort Street he had had drummed into him that the top jobs were not reserved for lazy "silvertails" but for people with intellectual vigour and curiosity. To that can be added a large dollop of ambition and physical stamina.

In his twenties, as Australia emerged painfully from the Depression and approached

World War II, John Kerr had vigour and curiosity, ambition and stamina in good measure. He was a very articulate, thrusting young lawyer—and a political radical.

Radicalism was hardly uncommon among young men and women who had lived through the Depression; it cannot, however, have been as common as all that among his brother wigs of the Sydney Bar.

During the war he exchanged wig and gown for cloak and dagger, serving in the famed Directorate of Army Research, a unit which shrouded its work in mystery during the war and which is just as much a mystery today.

It was work which led him to a direct involvement in Papua New Guinea, an involvement which has continued throughout his career.

At a time when most Australians saw the territory (as it was then) as a bastion of Australia's defence, John Kerr looked at it as an independent nation of the future; he guessed in 1944 that it would become independent by 1970 and saw it become independent last month.

In the interim, he had served as principal of the Australian School of Pacific Affairs and organising secretary of the South Pacific Commission, and had been a driving force behind the establishment of the Council of New Guinea Affairs.

All the while, after the war, he was continuing his legal career which led in 1966 to a seat on the ACT Supreme Court. In 1972, he returned to Sydney as NSW's Chief Justice.

He took over as Chief Justice at the age of 57, and set about dragging the NSW Supreme Court into the twentieth century, a task only just begun when the call to Canberra came last year.

The breadth of his background may be extremely useful in the next several weeks. He is a man to whom the value of tradition is not unknown; equally, he has not been afraid in the past to think for himself, to weigh conflicting advice and use initiative in making a decision.

I suspect he is of two minds today. On the one hand he will be acutely aware of the enormous responsibilities which political circumstances are thrusting upon him, perhaps a little apprehensive at the role demanded of him.

On the other, I doubt he would wish to be anywhere else than at the centre of great national events; he is not a man who lacks a sense of history, nor one afflicted with false modesty.

## Extraordinary manoeuvrings

In any event, whether he likes it or not, he is the occupant of Government House where, as the vice-regal notice on the opposite page shows, it is still business as usual: an ambassador's credentials accepted, diplomatic callers received and a formal dinner—attended, incidentally, by both the Prime Minister and the Leader of the Opposition—for a visiting head of government.

In the weeks to come it will be a paragraph worth watching. It will give in skeleton form, in dull, pedantic officialese, the story of extraordinary manoeuvrings.

Sir John Kerr will not, of course, be party to the manoeuvres, simply the umpire. Australians may well have cause to give thanks for the fact that he is no stranger to the game nor a man afraid to blow the whistle.



Sir John Kerr, the breadth of his background may be extremely useful when he faces up to the awesome problems of the next several weeks.

MELBOURNE HERALD 16-10-75

# The scenario for chaos

By DON WHITTINGTON, one of Australia's most distinguished political commentators. He is the author of six books on Australian politics.

AUSTRALIA is facing at least another six months of utter political chaos.

The main factors are:

- The decision of the Opposition to flout a convention of 75 years that the Senate should not reject a money bill from the House of Representatives.

- The power in the hands of the Prime Minister to use every constitutional ploy at his command to thwart Opposition efforts to force him to resign.

- The possibility of public servants and others dependent on income from the Government being financially deprived or at least embarrassed by the Opposition's refusal of supply.

- The likelihood of at least some State Premiers refusing to issue writs for a half Senate election until or unless it suits them, which means there could be perhaps two separate Senate elections between now and next June.

- The decisions the Governor-General and the Queen will have to make now and in the early future.

- The claim by the Opposition Leader, Mr Fraser, at his Press conference yesterday that he could force a House of Representatives election if the Government refused to resign. (He did not disclose how he could do this with only a minority vote in the House).

- The unequivocal refusal of the Prime Minister, Mr Whitlam, in Parliament, yesterday to resign.

All these, singly or together, suggest that the Australian public is facing months of uncertainty, upheaval, unrest, economic disruption and possibly even violence.

Only two things are clear at this stage. The Opposition is going to use its numbers in the Senate to reject supply, which means it is going to refuse to grant the Government money with which to carry on essential services

and the Government is simply going to hold a half Senate election, which the Constitution demands must be held before June 30 next.

A half Senate election almost certainly would not resolve the present parliamentary impasse.

The Government almost certainly would not gain a Senate majority in this way.

There are too many imponderables and unpredictable to attempt to forecast what the result might be.

Much could depend on when separate State Governors agreed to issue writs for a Senate election in their States, which the Constitution requires them to do.

Much would depend on whether, in the event of them refusing, the Governor-General sought the Queen's assistance in directing them to do so.

Only one State is required to issue writs for a Senate election for a poll to be held for election of new Senators in that state and for the Northern Territory and the A.C.T., as validated by the High Court last week.

Such an election would not necessarily strengthen the Government's hand, except for the possible entry to the Senate of Mr John Gorton, who has said he would support a government financial

measure if he won one of the two A.C.T. seats.

Mr Gorton's presence would not be sufficient. The Government needs at least the two senators from Queensland and NSW to gain in Senate elections in those states, which is almost certainly why the non-Labor Premiers of those States won't issue writs for elections there until the last possible moment.

Thus, after a half-Senate election, the Government would still not have the numbers to pass its financial measures in the Senate.

## Hardship

The question the Opposition would then have to decide would be whether to continue opposing supply in the New Year in the face of the hardship and the possible personal and public disasters that had already resulted from its intransigence.

The parliament would be called together as soon as possible after the half Senate election and the Opposition would again be faced with the need to accept the supply bills or precipitate yet another election.

That election almost certainly would have to be a double dissolution though

**6** *No political leader in my 35 years in Canberra has performed so ineffectually and been so embarrassing to his own supporters as Mr Fraser at his press conference in Canberra yesterday.*

the Government could still resist this, claiming the Senate's duty was to pass a money bill.

Three vital factors that have largely escaped notice so far could make all the other speculation almost irrelevant. One of them is the Opposition Leader, Mr Fraser. Another is the Prime Minister, Mr Whitlam. The third is the Governor-General, Sir John Kerr.

Mr Fraser fairly obviously has no great stomach for the fight facing him. A conservative himself, all his inclinations would be to follow the conventions that have existed since his grandfather sat in the first Australian Senate in 1901.

But he has been pressured by his own impatient followers, and the more impatient Country Party, to make a decision that in many ways at least must be anathema to him.

No political leader in my 35 years in Canberra has performed so ineffectually and been so embarrassing to his own supporters as Mr Fraser at his press conference in Canberra yesterday.

Faced by the biggest press gathering for years, but consisting mainly of the representatives of newspapers that have been advocating the decision he has now taken, he equivocated, side-stepped, hedged his bets and was generally unimpressive.

So much so that he repeatedly occasioned loud and derisive laughter and unflattering interjections from his audience.

His advisers were so concerned that after only 25 minutes of a conference that could and should have lasted another half hour, considering the vital importance of the occasion, they terminated the proceedings.

By contrast, the Prime Minister gave a virtuoso performance in the Parliament at question time early in the day.

Like a war horse shuffling the breeze of battle, Whitlam, flushed and defiant, challenged the Opposition to do its worst, and quoted Sir Robert Menzies at length to support his contention that no Opposition was justified in refusing supply in an Upper House.

Finally, there is Sir John Kerr, who could really be the key to the whole situation.

He is bound to take the advice of the government of the day, which in this case is Mr Whitlam.

If the Prime Minister recommends a half Senate election the Governor-General is bound to accept that advice.

If Mr Whitlam recommends anything else in the way of an election such as a double dissolution or a House of Representatives election — which Mr Whitlam certainly will not at this stage — the Governor-General would accept that.

If the Prime Minister asked the Opposition to reconsider its rejection of the Budget he would do that also.

## The Queen

He would almost certainly ask the Queen to request State Governors to issue writs for a half Senate election if Mr Whitlam advised this, and State Governors would be bound to do as the Queen directed.

There is one other possibility that could short circuit all this speculation.

According to Government House authorities, the Governor-General's prime responsibility is to officiate and act in the best interests of the Australian people.

It is conceivable that Mr Whitlam's advice would be that the interests of the Australian people could be best served by giving the Royal Assent to the supply bill regardless of the Senate's rejection, and that any other course could lead to hardship, poverty and perhaps even civil disturbances.

The Governor-General could reject that advice and seek some other solution.

What is little known, however, is that the Prime Minister would still hold the final ace.

The Prime Minister has the power to dismiss the Governor-General in the event of disagreement. It is a power he almost certainly would not use, but it is still a power he, or any other Prime Minister, possesses.



"IT'S NICE TO KNOW THEY'RE FIGHTING OVER ME!"

**GRAHAM WILLIAMS examines the options open to the Governor-General as Australia moves toward a constitutional crisis in which he may have a pivotal role in deciding whether or not democratic processes endure**

# The uneasy choices facing Sir John

THE Governor-General, Sir John Kerr, is understood to have told the Queen that Australia will be plunged into a perilous constitutional crisis if the Opposition blocks the Budget.

This indicates his grave concern at the dimensions of the crisis that is now becoming reality: the complete breakdown of effective government and the drying up of funds within the next four or five weeks.

The Prime Minister, Mr Whitlam, and the Leader of the Opposition, Mr Fraser, both brought the country closer to the brink of constitutional and economic chaos yesterday.

Mr Fraser was adamant that he would block Supply unless Mr Whitlam permits a House of Representatives and Senate election, and the Prime Minister, equally intransigent, made it clear he plans to "tough it out."

And it will be up to the boy from Balmain, Sydney, who became an outstanding QC and brilliant judge, and who is now Governor-General and therefore guardian of the Constitution, to resolve the crisis, and prevent anarchy and collapse of the government process.

Sir John's role in the looming crisis will be of utmost importance. For the Government's funds will soon begin drying up in various departments — and by mid-November there will be no money left to run the country.

Unless either Mr Whitlam or Mr Fraser gives in, the country will be plunged into chaos. Public servants will not be paid. Payments to States will dry up, pensioners will not receive their cheques.

Mr Whitlam will advise Sir John to call a half-Senate election. Mr Fraser wants a double dissolution — for if there is only a half-Senate election, he still will not be able to form a Government.

The catch with the half-Senate election is that it takes and declare the poll. The result would not be known until mid-December. In the meantime the Government's funds would become exhausted.

weeks of massive chaos and Therefore, unless Mr Fraser agrees to pass the Budget before the country will be plunged into three weeks to count the votes he still would have gained nothing.

## Impasse

The Governor-General, constitutionally, acts on the advice of the Executive Council — which comprises the Prime Minister and his ministers.

This makes him, in normal circumstances, no more than a figurehead. But Australia is moving into uncharted waters that the Constitution did not

envisage and where Sir John's role is less defined.

The view of some constitutional authorities is that Sir John should abide by the advice of his Executive Council — and thus mount tremendous pressure on Mr Fraser to cave in.

That is, he would try to exert pressure on Mr Fraser to pass the Budget before the half-Senate results are known.

This is a logical and highly plausible theory. For Sir John would be anxious to do nothing to abrogate his traditional role of acting on the advice of the Executive Council.

Another compelling argument is that this is a money bill and should be passed as a matter of principle by the Senate. If Sir John takes this view, then he will almost certainly back his Prime Minister to the hilt.

But what if Mr Fraser re-

mains obdurate? Professor Colin Howard, professor of law at Melbourne University, says that Sir John would be entitled to summon Mr Whitlam and Mr Fraser and warn them of the enormous chaos and the almost irreparable harm to democracy that would result from continued obstinacy.

He could even take his case to the people — and in national radio and television broadcasts, place the odium fair and square on the shoulders of Mr Fraser.

With the country already edging close to bankruptcy, this might not be as fanciful as it may now seem. But almost certainly events would not reach this stage — for Mr Fraser would be facing political suicide.

The more likely scenario is that if Sir John took such a



SIR JOHN... tricky scenarios

hard line. Mr Fraser would back off and pass the Budget.

Professor Howard said that it was quite feasible that the Opposition's rejection of the Budget would backfire.

"If Mr Whitlam does tough it out, God knows what will happen as the money dries up. I think Sir John would be obliged to listen very closely to the advice of his Executive Council. But he may also feel compelled to seek outside professional advice.

## Drastic

But if he does not intervene, the Government can simply keep trundling the Budget up to the Senate every day or so. And each time it is rejected, the pressure on the

say that Game's action was unconstitutional.

Indeed, the arguments against Sir John taking any action contrary to the advice of the Executive Council are rooted in the very fabric of the Westminster system of government.

The party with the majority in the Lower House has the right to govern and to instruct the Governor-General. It is this party alone which has the power to initiate a money bill.

The Upper House has only the power to pass or reject a money Bill — it can neither amend nor initiate one.

But if the two leaders remain obdurate and the country slides slowly into chaos, and Sir John is unhappy about the advice of his Executive Council, what does he do then?

According to one highly speculative scenario, he might invite the Leader of the Opposition to form a Government.

"Mr Whitlam would immediately move a vote of no confidence in the minority Government, which would be carried, and Mr Fraser would have to resign," Professor Howard said.

But other constitutional experts believe that if Mr Fraser could form a Government for a few hours he could form an Executive Council to advise Sir John to call an election in the House.

Sir John's room to manoeuvre independently of his Executive Council is limited — unless he rejects the council's advice.

He does have power under Section 5 of the Constitution to dissolve the House of Representatives "as he thinks fit." This looks as if it could give him some independence to manoeuvre. But even if he did at an advanced stage decide to call an election for the House, he would immediately be in trouble.

For he can issue writs for the election only on the advice of the Executive Council under Section 32. Thus a hostile Executive Council could presumably hold up an election even though Sir John himself might want one.

But the rejection of the Budget is not ground for a double dissolution — and cannot be until three months after it has been three times presented. Sir John must try to ensure somehow that the money is kept flowing by way

of appropriation, and that the Constitution is upheld.

Professor K. Ryan, professor of Law at the University of Queensland, says that the likelihood of the Government's funds drying up in the next few weeks is clearly of great concern to Sir John.

"He must see that funds are allocated — interim funds if need be — until the dispute is resolved or an election is held," he said.

"If Mr Whitlam wants a half-Senate election, then Sir John will have to make sure that interim funds are appropriated by the Parliament to ensure that the country keeps going."

Sir John's chief role in the coming crisis will be to ensure the continuity of funds and the maintenance of the Constitution. His task will be to reconcile differences and reach some workable agreement with both parties.

## Key issue

What happens if, however, Mr Fraser agrees to the half-Senate election but the Liberal States instruct their governors to refuse to issue writs — thus holding up elections in their States until May or June next year?

Can Sir John intervene and instruct the governors to issue the writs so that the election can go ahead?

Professor Howard finds it unthinkable that States should overturn the 75-year-old principle of issuing writs for an election — and delay them until they want the elections to take place.

"I think that if an impasse was reached on this, Sir John could appeal to the Queen and ask her to instruct the governors to issue the writs in the national interest.

"The Liberal Party, by urging States to refuse to issue writs reminds me of Mr Snedden's remark about 'political bikies pack-raping democracy.' I think that remark now has relevance."

But Professor Ryan and other constitutional lawyers say that the States quite clearly have the power to issue writs at a time to please them — though if they do break this established practice and delay the issuing of writs, it will almost certainly rebound on them in subsequent elections.

He cannot see the Queen intervening in an election in this way.

# The Fraser strategy

# The Fraser strategy

**QUESTION:** Will it be acceptable to you if the Prime Minister calls a half Senate election?

**Answer:** The House of Representatives must go to an election.

**Q.** Under those circumstances, what would you do?

**A.** After this statement the ball will be in the Prime Minister's court. Let him say what he will be doing but he should take the House of Representatives and half the Senate at least to an election.

**Q.** What are the constitutional options open to you if he doesn't?

**A.** Let's see what happens when the Prime Minister has made his decision about whether he'll behave with propriety in one of the remaining acts that he will be able to do of service to Australia.

**Q.** Mr Fraser, can you force the Prime Minister to a double dissolution?

**A.** We can get the House of Reps to an election. Yes.

**Q.** How?

**A.** When we know the Prime Minister's other moves, our other moves will also be revealed.

**Q.** Mr Fraser, do you feel restricted by an application to the High Court by South Australia asking for the application for their decision one vote one value for redistribution before any House of Representatives election?

**A.** Mr Ellicott (former Solicitor-General and now a Liberal MHR) and I think Senator Greenwood (Shadow Attorney-General) has looked at this but I know Mr Ellicott has and he doesn't believe there is anything in it.

**Q.** This is the second time in 18 months that you have threatened to reject money bills in the Senate to force an election. Why should the people of Australia think that this is none other than another attempt by the Opposition to take power?

**A.** I suggest that you read this morning's newspapers.

**Q.** On the 21st August you said that your intention at that time was to pass the Budget through the Senate. Could you tell us precisely what's happened over the past seven weeks to make you change your mind?

**A.** Over the past seven weeks the Budget has been an admitted failure on two counts as I mentioned in my statement, and in addition to this it is the totality of the Government's action for which it must be brought to count. The most recent of its actions concerns the resignation of Mr Connor, and I think that you know all about that, or as much as anyone else does.

**Q.** If the Prime Minister does call a half Senate election, how long do you think they can last without Supply?

**A.** Well, Treasury officials would know that better than I would. But I understand from some people around Canberra that they've only got one or two salary cheques left that they will get under present circumstances.

**Q.** Mr Fraser, there is no question at all that you will give the Government short term Supply?

**A.** Once there is going to be

This is a major extract from the Federal Opposition Leader's Canberra press conference yesterday, at which he announced the Opposition's decision to block Supply



FRASER ... There must be a House election.

an announcement of a Senate and a House of Representatives election, of course appropriate arrangements can be made.

**Q.** Mr Fraser, how soon after you become Prime Minister will you be able to get jobs for school leavers, homes for young people, restore the savings of the aged and shore up the life's work of small businessmen?

**A.** The country has I believe been so severely damaged by the present Government that it would take a full three-year program of responsible government to restore the situation to one that we would like to see.

## Rejected

**Q.** Mr Hayden suggests that you are involved in a drastic cut-back of finances. Are people's jobs at stake if you get into government?

**A.** If we get into government there will be more people employed than if the present Government stays in power.

**Q.** You mention that one of the key reasons for your taking this action is the dismissal of ministers, including two ministers who acted as Prime Minister. You yourself were a central figure in the dismissal of Mr Gorton as Prime Minister. Do you think the DLP and the Labor Party in the Senate would have been justified in rejecting the Liberal-Country Party Government by refusing Supply?

**A.** I can see no point in commenting on matters that occurred several years ago.

**Q.** Some of Australia's leading lawyers have called this

action an action of constitutional vandalism. How do you feel being accused of being a vandal?

**A.** I prefer to take the view of Mr Frank Galbally that was in the reputable journal, the Melbourne Sun, this morning. Unfortunately not the edition of the Sun that came to Canberra. He said the constitutional right was there and that the humble people of Australia who haven't got access to the media and the columns of the journals should be given an opportunity to influence the affairs of Australia in the only way that's possible through the ballot box. And it's worth noting that one...

**Interjection:** He's a criminal lawyer.

**A.** I think that was one of the better efforts. It's also worth noting that on the ABC this morning or one of this morning's programs, one of those professors, or constitutional lawyers admitted, I think, that he was making a political judgment and not passing a legal opinion. And he indicated that the events of the last three days had very substantially changed his mind.

**Q.** If the appropriation bills come to a vote in the Senate, can you guarantee that every Opposition senator will oppose them?

**A.** Yes.

**Q.** If you get into government, would you consider payments to Mr Khemlani for any claims he may have had on this Government, apart from any payments authorised by the court.

**A.** No.

**Q.** Have you caught Mr Whitlam with his pants down?

**A.** Maybe you can judge that.

**Q.** If Mr Whitlam digs in, how can you resist the cutting off of pensions, Public Service salaries, and unemployment benefits?

**A.** If Mr Whitlam takes that course we'll judge our actions appropriately.

**Q.** Do you support the right of the State premiers not to issue writs for a half Senate election if such an election was called?

**A.** State premiers, I think, are quite capable of speaking for themselves. Certainly some of them.

**Q.** Do you fully understand and are you concerned by the implications of the precedent you are creating? Do you believe that your decision could in fact turn out to be a reprehensible act, which could lead to an erosion of the present system of government?

**A.** That didn't happen in 1947 when the Victorian Upper House rejected Supply. An act that was supported very strongly by Sir Robert Menzies. It didn't happen in 1952 when I think the Victorian Upper House also did the same thing, as a result of which the Labor Party came into power in Victoria.

## Figurehead

**Q.** With all respect Sir, we are talking about the Commonwealth Government.

**A.** The same sort of parliamentary system. I was just indicating that precedents have been set within the Australian context.

**Q.** If there is to be an election what will be the key issue?

**A.** The key issues will be the incompetence of the Government, the improprieties of the Government, the incapacity of the Prime Minister to understand the economy and to set standards for the behavior of his ministers.

**Q.** Have you any evidence of illegality and will you present this evidence to a royal commission?

**A.** The evidence is already there in relation to the executive council minute. If the Commonwealth has power to borrow money for temporary purposes, it can't be for 20 years for national development projects that will endure for 50 years.

**Q.** Are you going to have any economic proposal for the Opposition during an election campaign, assuming there is one?

**A.** Of course.

**Q.** Can we take it from your remark a moment ago that your alternative Budget is now non-operative?

**A.** No, it is not non-operative but it could be... in the sense that it is an Opposition Budget and therefore it doesn't have an impact on the life of the economy. Of course its non-operative but we stand by the positive proposals we made in that alternative Budget.

THE AUSTRALIAN

16-10-75

THE CANBERRA CRISIS...

# His is the key role

IAN HICKS interviews  
PATRICK LANE,  
Professor of Law  
at Sydney University

THE DIVISION bells in the Senate are not particularly raucous. They can be heard throughout Parliament House in Canberra but hardly cause the world outside to pause.

But the ringing of the bells for a vote to reject a Budget is something else. The echo will be heard in Cabinet and Caucus rooms, in Canberra and the capitals. It will sound in the elegant homes of Australia's six State Governors. It will positively boom at Yarralumla, the lakeside home of the Governor-General, Sir John Kerr.

And it will not die away quickly.

When it does, a new chapter in Australia's political and constitutional history will have been written. Which is not to say that Australian society will have been convulsed, that democracy will have been slaughtered on the altar of expediency, or that the nation will be in chaos.

That is the way the immediate political-constitutional future looked yesterday to Professor P. H. Lane, Professor of Law at Sydney University.

We talked at his home, looking out on to a quiet park on the cliffs at Coogee.

Professor Lane, short and wiry, speaks in rapid-fire fashion; he delights in addressing a question to himself and then replying in a faintly deprecating way.

If our conversation had a

title, it would be *Where Do We Go From Here*, the "here" being the Opposition's decision to throw out the Federal Labor Government's Budget.

There was not the slightest doubt in his mind about the legality or respectability of a Senate's rejecting a Budget.

The Senate had the power to do so; there was no convention preventing it using that power; and that was that.

"The leading writers in the field accept the refusal of Supply by an Australian Senate as machinery to bring a Government to the people," he said, supporting his statements with the views of eminent constitutionalists of the past, and an odd couple — Mr Whitlam and the former Senator Murphy — from the present.

For emphasis, he added: "The refusal of Supply by a Senate is an accepted way of bringing a Government to the people — not half the Senate but the Government."

Why, he asked himself, should that be so? If the Senate was doing the obstructing, why did that require dissolution of the whole Parliament?

"It has been a practice for a Government to go to the



Professor Lane

people in these circumstances; it is a device for resolving a conflict between a Government and an electorate," he said.

"That is how the Senate views it. That is why they would say: 'It is not an issue between us and the Lower House; it is not a parliamentary situation so much as a Government against an electorate'.

"The Senate would say: 'This is a practice accepted by writers in the past and by this present Government to bring a

Government to the people; how else do we bring them to heel?'"

And, angrily: "For Pete's sake, let's stop all this humbugging about convention and law and the done thing, and all this hysteria about crisis and anarchy and civil war.

"This is perfectly respectable machinery which, if followed through, just means that the Government is put before the people and the electorate might say 'give them a fair go' or 'they've had a fair go; give us a new Government'."

So far, so good. There is a political crisis; there is no constitutional crisis.

Assuming there was no opposition to the Budget, the Prime Minister would be required to call an election for half the Senate before June 30 next year but he would not set the date.

Professor Lane said the Governor-General, on the advice of his ministers, would suggest to the six State Governors that, for the sake of uniformity, it might be a good idea to have a uniform date in each State and would ask the Governors to issue writs for it.



The Governor-General, Sir John Kerr.

Almost as a matter of course, the Governors would agree and issue the writs for the suggested date.

The Constitution said quite explicitly that writs for a Senate election were issued by the State Governors.

"If the Governors — that is to say the State Premiers — decide they will issue writs for a different date, they are standing on very firm ground," he said.

"Suppose the State Governors do this, you have an impasse. How do you make them come to the party? There is no way in the world you can make them come to the party and there is a High Court judgment which states that quite explicitly — the Commonwealth has no control over the State Governors.

"And the court has also ruled that the discretionary powers of the State Governors do not fall within the court's control."

Thus, the impasse. Mr Whitlam wants a half-Senate poll; the States refuse to give it to him. He can't force their hand, nor can the Governor-General.

## No humbug

As to the latter's powers, Professor Lane is blunt.

"There is no question — and here there is a strong convention, it is no humbug — that by convention the Governor-General usually follows the advice of his ministers.

"And there is no question that the Governor-General has a discretion, a personal discretion. Evatt said so in his book, *The King and His Dominion Governors: A Study of the Reserve Powers of the Crown in Great Britain and the Dominions*.

"Hasluck more recently said the same thing, that the Governor-General follows the advice of his ministers usually, but he insisted that he had an ultimate discretion.

"Moreover, he made the point that the Governor-General, in the sort of circumstances we may find ourselves in, can take advice from people other than his ministers — from the Chief Justice and eminent counsel.

"And, having received that advice, Hasluck said that a Governor-General then had a solemn responsibility to make a judgment on whether a dissolution is needed to serve the process of good government by giving to the electorate the duty of resolving a situation which Parliament cannot resolve for itself."

"So what might Sir John Kerr do if an impasse arose?"

"He would simply dismiss the Whitlam Ministry, call in the Leader of the Opposition and ask him to form a Government. The Fraser Government would be defeated immediately on the floor of the House and would ask the Governor-General for a double dissolution."

Shades of Jack Lang, indeed, but not the end of the world.

"I see the whole thing as a series of ditches with, for each one, a respectable machinery to overcome each situation," Professor Lane said.

## Safety valve

"You start with the refusal of Supply; the next acceptable thing is for the Government to go to the people.

"What if they don't? They go for a half-Senate poll but the States won't have it on.

"So you go to the High Court? No. They won't take it on either.

"Impasse? Yes. But there is another safety valve: the Governor-General. Certainly, he usually follows the advice of his ministers but he has a discretion. He can seek his own advice — make his own decision.

"And the net result is that the Government goes before the people."

Professor Lane said he quarrelled with the assumption that the Government must avoid going before the people at all costs.

"The Government will be defeated? That isn't necessarily so because the people could say, as they appear to have said last year, that the Government should be given a fair go.

"And, if they say otherwise, who can argue that they ought to have been denied the opportunity to do so?"

# Queensland Governor backs move for election

BRISBANE, Wednesday.— Queensland's Governor, Sir Colin Hannah, today backed Federal Opposition moves to force a general election.

Stepping outside the traditional neutral role of the Queen's representative, Sir Colin told the Chamber of Commerce that he deplored the "fumbling ineptitude" which had plunged Australia into its present economic state.

He agreed with an earlier address by the chamber's outgoing president, Mr Charles Mortensen, who called for an election.

Mr Mortensen said: "The sooner Mr Fraser presses the button and starts the countdown for an election, ignoring the bleatings of academic lawyers, the sooner business confidence will be restored."

Sir Colin's remarks brought loud applause from guests, who included Queensland's Deputy Premier, Sir Gordon Chalk.

Sir Colin said: "I'm forced to say I believe I would be guilty of sheltering behind convention, of denying my heritage and failing in my regard for the people of Queensland, if I did not say that I agree with the tenor of his (Mr. Mortensen's) address."

He said Queensland was rich in mineral and human resources and if it were to achieve its potential, a period of political and individual stability was needed.

State ALP members were stunned by Sir Colin's remarks. They were upset that he had diverted from convention and made comments on a political issue.



Sir Colin Hannah

The Deputy Leader of the State Opposition, Mr Jac Melloy, said he was surprised and dismayed.

"I'm certain it will come in for some party criticism over the next few days," he said.

The State ALP secretary, Mr Bart Lourigan, said: "With all due respect to the Governor, but it was very silly and stupid of him to do this."

Air Marshal Sir Colin Hannah was sworn-in as Governor of Queensland in March, 1972 the first RAAF man to attain the position.

He was born in Western Australia in 1914 and joined the Air Force in 1935. He commanded a bomber squadron against the Japanese in New Guinea in 1943-44.

Two weeks ago Sir Colin found himself in a neighbour wrangle about excessive noise. He had complained from his holiday home at Surfers Paradise and a woman neighbour had been arrested and charged with drunkenness.

SYDNEY  
MORNING  
HERALD

THURSDAY

16.10.75



15 - 10 - 75

# Queen could have role in crisis

From PETER BOWERS

CANBERRA, Tuesday. — The Queen could become directly involved in a constitutional crisis developing from the Government's being denied supply.

This is how the crisis could develop:

The Opposition would use its numbers in the Senate to block the appropriation bills, probably by resolving to adjourn the debate until the Prime Minister announced a double dissolution of Parliament.

But instead of agreeing to a double dissolution — as he did in April, last year — Mr Whitlam would ask the Governor-General, Sir John Kerr,

to bring forward the election for half the Senate. This election must be held by June 30 next year.

The Opposition's counter-move would be to ask the four non-Labor Premiers to direct their respective Governors not to issue a writ for a Senate election in their State.

Mr Whitlam's response would be to ask the Governor-General to ask the Queen to ask the State Governors to issue the writs.

Alternatively, Mr Whitlam could decide to go for elections only in the two Labor States, South Australia and Tasmania, and the two Territories.

By now the Govern-

ment would be running short of money. Mr Whitlam would keep the House of Representatives sitting and keep returning the appropriation bills to the Senate.

The Senate election could not be held before the first week of December.

The four senators from the ACT and the Northern Territory would take their seats immediately, in contrast to the other senators who would have to wait until July 1.

Mr Whitlam would be gambling on winning three of the four Territory seats. Then, with the support of two independents, he would force the Opposition to rely on the independent Senator Albert Field.

# Half-Senate poll: premiers told not to issue writs

# Liberals rebuke NSW, Qld — stick with convention

CANBERRA, Monday. — The Federal Council of the Liberal Party virtually recommended today that the non-Labor Premiers should not issue writs if the Prime Minister, Mr Whitlam, called an election for half the Senate soon.

The recommendation was implicit in a special urgency resolution carried unanimously during the final session of the council's annual general meeting.

The resolution was moved by the president of the Queensland division of the party, Mr J. C. Moore, and seconded by the NSW Minister for Education, Sir Eric Willis.

They indicated that the resolution was based on Mr Whitlam's "manoeuvring" of the Senate by political appointments of senators.

They believed that a

half-Senate election now, at which the vacancies caused by the appointment of Senator (now Mr Justice. Murphy) and the death of Senator Milliner would be filled, and at which the ACT and NT would each get two new senators, would give the Government short-term control of the Senate because these six senators would take their seats immediately.

Sir Eric said a half-Senate election now could result in the wishes of the electorate being denied if Labor gained control.

The resolution called on Federal and State parliamentarians and all Liberals to do "all in their power" to prevent the Government from gaining this control.

Mr Moore and Sir Eric said that a Labor-controlled Senate would result in the passage of a number of bills which had been rejected by the Opposition in the Senate.

These included the Australian Government Insurances Corporation Bill; the National Compensation Bill; the Minerals (Submerged Lands) and Minerals (Submerged Lands) (Royalty) Bills; the Corporation and Securities Industries Bill and the five bills seeking electoral redistributions for NSW, Victoria, Queensland, South Australia and Tasmania.

In a later interview, Mr Moore denied that any Government which refused to instruct its State's Governor not to issue election writs would be acting immorally.

"When one person sets out on a course of action which is immoral in itself, surely one has to defend those actions," he said.

The Minister for Labour and Immigration, Senator McClelland, said in a radio interview later that the council decision was "inciting civil law."

It had been made by "political primitives."

"They are giving the green light to all the extremist elements in our society," he said.

It could lead "to a battle between the League of Rights and the communists."

The Queensland Premier, Mr Bjelke-Petersen, also in a radio interview, said he was not prepared to indicate at this stage whether he would give instructions for writs to be issued.

"We will make our decision in consultation with the other Premiers," he said.

The non-Labor Premiers had had general discussions on the issue, but had not reached any agreement.

The NSW Premier, Mr Lewis, said last night he would not comment on the call by the Federal Liberal Party.

"The matter will be

raised at the Cabinet meeting tomorrow morning," he said.

The Premier of Western Australia, Sir Charles Court, said "not even for my friends in the Federal Council of the Liberal Party am I prepared to reveal Western Australia's attitude to this request."

In Melbourne, the Victorian Premier, Mr Hamer, said the States were not bound automatically to adopt any date suggested by the Federal Government if it decided to call an early half-Senate election.

The question of issuing writs would be considered in the light of all the circumstances when it arose.

CANBERRA, Monday. — The Queensland and NSW Governments were rebuked by the Liberal Party's Federal Council today for filling casual Senate vacancies with appointees who were not from the same political parties as the Senators being replaced.

The council carried a resolution supporting "the retention of the convention relating to the filling of casual vacancies."

It rejected a Queensland division amendment which sought to add the words "when such a vacancy occurs as a result of natural circumstances," at the end of the resolution.

The resolution follows

the action of the NSW Government in February of appointing an independent, Senator Cleaver Bunton, to fill the vacancy caused by the appointment of Senator (now Mr Justice) Murphy to the High Court.

It also follows the Queensland Government's action in September of appointing Senator Field to replace the late Senator Milliner. Although Senator Field was a member of the ALP, as was Senator Milliner, he was automatically expelled for nominating for the vacancy against the party's official nominee, Dr M. Colston.

Today's resolution was moved by the South Australian division of the Liberal Party.

DECODE OF A TELEGRAM ADDRESSED TO MR DAVID SMITH  
FROM THE PRIVATE SECRETARY TO THE QUEEN  
DATED LONDON 16 OCTOBER 1975

16 OCTOBER        CONFIDENTIAL (.)

I RECEIVED A TELEPHONE CALL THIS MORNING FROM RICHARD  
CASTLETON OF A.B.C. (.) HE ASKED IF THE QUEEN WAS  
BEING KEPT INFORMED ABOUT CONSTITUTIONAL CRISIS (.)  
I REPLIED HER MAJESTY WAS ALREADY KEPT CLOSELY INFORMED  
ABOUT AFFAIRS IN AUSTRALIA BY HER GOVERNOR-GENERAL (.)  
HE NEXT ASKED TO WHOM WOULD THE QUEEN LOOK FOR ADVICE  
IN CONNECTION WITH REQUESTS SIR COLIN HANNAH SHOULD  
BE DISMISSED (.) I DECLINED TO MAKE ANY COMMENTS ON  
THIS OR ANY OTHER MATTERS

CHARTERIS

DIS:CD

Government House,  
Canberra. 2600.

10 October 1975

*Dear Martin,*

The Governor-General is in Sydney today and there is no way in which he can get a letter to you in tonight's diplomatic bag. However, His Excellency thought that you would be interested to see the main feature story in today's Canberra Times and he has therefore asked me to send it to you.

*With kind regards,  
Yours sincerely,*

DAVID ~~HEWITT~~

Lieutenant Colonel the Right Honourable  
Sir Martin Charteris, K.C.B., K.C.V.O., O.B.E.,  
Private Secretary to Her Majesty The Queen,  
Buckingham Palace,  
LONDON ENGLAND

CONSTITUTIONAL QUANDARY

# The options facing the Governor-General



The Governor-General, Sir John Kerr . . . "Crisis? What crisis?" may be his attitude, at least for a time.

IF the Senate does knock back the Appropriation Bills and the Prime Minister does decide to spin out the drama consequent on a constitutional crisis as far as he can (as members of his Cabinet are convinced he will), he is unlikely to get much overt opposition from the Governor-General, Sir John Kerr.

In fact, "Crisis? What crisis?" is likely to be the chief response from the direction of Government House to the expected chorus that the Governor-General, as "guardian of the Constitution", must forthwith dissolve the House of Representatives or, maybe, invite Mr Malcolm Fraser to form a Government.

Not that that response will be either loud or even discernible, to the bulk of the electorate. But to the extent that inquiries at this time can indicate what is going on inside the essentially (and even constitutionally) private mind of Sir John Kerr, it is probable even to the extent of near-certainty that the Governor-General will permit the Prime Minister, if Mr Whitlam chooses, to call the bluff of the Opposition and the Senate for at least two or three months.

Sometime during that period, the money for public-service salaries will run out. But when the Victorian Legislative Council cut off supply in 1947 the banks happily extended overdrafts to State public-service customers, secure in the knowledge that the money would turn up eventually. There is little reason to expect the banks to treat Australian public servants less leniently.

Presumably they would do much the same for contractors and others unable to be paid from the Consolidated Revenue Fund, for the time being. Possibly typing paper and slide clips would run out. But that would hardly constitute a "crisis".

## Ambiguous

Pensioners would not receive the increments scheduled for the turn of the year. But their existing pensions would continue at existing rates. They would have cause for annoyance — a fact that may not have escaped the Prime Minister, if he plans to try to turn a denial of Supply against the Opposition — but probably not for starvation.

Among others whose incomes would not be touched by a failure to pass Supply would be the Governor-General himself, whose salary is fixed by ongoing legislation at \$30,000 a year.

It takes the threat of a constitutional crisis, of whatever order, to throw into relief the ambiguous position of the Governor-General within the Australian constitutional system — and to establish just how ill-defined and misunderstood are many of its dimensions.

Certainly, among the most concerned spectators of (if not so far, a major participant in) the present situation is the Governor-General himself. Sir John is said to be hardly stimulated by the prospect of a central role in a crisis situation, but "very, very interested" in its constitutional ramifications.

A major factor in determining what action he will take in the event of being called on to take (or not to take) action, will be his own strongly felt commitment to the conventions that hitherto have provided both the lubricant and much of the fuel on which the Australian constitutional machinery has run.

The Constitution — as Professor Geoffrey Sawer pointed out on this page on September 24 — has never been popular reading in Australia. As a result a great deal of nonsense is often said or written about the functions and powers of its central figure, the Governor-General.

## Scenarios

For the record, the Constitution catalogues those functions and powers under two heads. Where it refers to things that may be done by "the Governor-General in Council" it means, according to Section 63, things the Governor-General shall do "with the advice of the Federal Executive Council", in other words, of the Government.

Where the words "in Council" are omitted the Governor-General is officially able to exercise his powers off his own bat. But in point of fact, constitutional conventions insist that here, too, in the exception of what Mr Fraser might call "extraordinary circumstances", he will act only as advised by his Ministers.

A number of scenarios for a post-rejection-of-Supply situation have been advanced. Some of them permit the Governor-General, in the event that he chose to cast aside convention, a free hand. Some do not.

One notion, floated by the Minister for Manufacturing Industry, Mr Bowen, with some support from the Attorney-General, Mr Enderby, is that the Government might present a Senate-rejected Budget to the Governor-General for his assent, on the grounds that Senate

approval is unnecessary for the Bill.

The task of assenting to Bills is one for the Governor-General, not the Governor-General in Council. Theoretically, if Sir John Kerr believed (in keeping with virtually every other constitutional authority in the country) that the Appropriation Bills so served up to him were ultra vires the Constitution, he could refuse his assent.

## Strategem

His predecessor as Governor-General, Sir Paul Hasluck, speculated in a 1972 speech that "if the Governor-General were presented with a Bill, agreed to by a majority in both Houses, that was clearly contrary to some provision of the Constitution, he could return it to Parliament pointing out that conflict". Sir John's case, if presented with a half-passed Budget, would presumably be at least as strong.

In fact it is expected that Sir John — probably after insisting first on receiving written ministerial advice — would go ahead and sign the Bill, in the knowledge that it would be immediately challenged in the High Court — by any Senator or, perhaps, the Auditor-General — and its legitimacy so established. Thus he, as the local representative of the Crown, would avoid involvement in a political dispute.

The flak that the half-passed Budget proposal has drawn over the past fortnight from constitutional scholars, however, makes that stratagem increasingly unlikely. Most speculation about the Governor-General's potential role centres on the timing of an election following their rejection of Supply.

## Collapse

Basically, it is conceded that the Government has six electoral options, in the event of a protracted refusal by the Senate to pass Supply: to call a House of Representatives election, a half-Senate election, or a double dissolution as soon as possible — or the same three options at some indefinitely later date.

The half-Senate election probably is not on, unless purely as a delaying tactic. It cannot be called without the assent of the States. Given that the

replacement of Queensland's Senator Albert Field — probably by the much-reviled Dr Mal Colstow — is one of the few immediate and practicable results that might be expected from it, it seems improbable that Queensland, at least, would go along with the exercise.

It is generally assumed that, in the event that the operation of the Commonwealth Government was to run the risk of total collapse, the Governor-General could by-pass the Prime Minister (his chief regular source of advice on these matters) and call either a House of Representatives or a double-dissolution election, in order to settle the issue.

Unfortunately, the governing Section 32 says quite categorically that "The Governor-General in Council may cause writs to be issued for general elections of members of the House of Representatives". In other words, he must abide by his Ministers' advice. If they chose to "tough it out", so must he.

## Disruption

In the strict terms of the Constitution, Sir John would have greater leeway to decree a double dissolution, and a consequent election of both Houses. Where there is a deadlock between the two Houses, according to Section 57, "the Governor-General may dissolve the Senate and the House of Representatives simultaneously". No formal requirement there for the prior advice of the Executive Council.

There are, of course, a good many twice-rejected Bills sitting around, any or all of them capable of justifying a double dissolution. But the Supply Bills are not among them and, short of a deadlock on Supply dragging on until next February, are unlikely to be.

It is one thing for a Prime Minister to go to a Governor-General and say, in effect, "Because of the breakdown in relations between the House and Senate, most recently evidenced by the rejection of Supply, I advise you to call a double dissolution on the basis of the double rejection of these earlier Bills", and another for a Governor-General to use those same Bills as a ruse for getting around the possible disruption

resulting from a refusal of Supply.

In all these matters, of course, there is room for legal (or legalistic) argument about the extent of the Governor-General's autonomy. If, as it appears, some members of the High Court can seriously consider disregarding the plain wording of the Constitution to refuse Senate representation of the territories, then presumably equally bizarre things can be done with those sections relating to the powers and prerogatives of the Governor-General.

Sir John Kerr is himself a noted jurist, with a relatively recent but understandable interest in constitutional law — and, I am told, a canny appreciation of the maxim that the lawyer who advises himself has a fool for a client. But to whom can he turn for advice?

According to one school of thought, only to the Executive Council, his Ministers. But even that viewpoint concedes a difference between formal ministerial "advice" and the varieties of opinion that the Governor-General is perfectly entitled to pick up informally.

## Justified

There is some reason to believe that Sir John, as a Visiting Fellow at the Australian National University, attached to the Law School, has been making use of his contacts there to expand his understanding of his constitutional role, and his options in the event of a crisis.

Sir Paul Hasluck, in his 1972 Queale Memorial Lecture, rejected the narrow view of the Governor-General's access to advice. "It is open to the Governor-General", he said, referring specifically to the question of a dissolution of Parliament, "to obtain advice on the constitutional question

from other quarters — perhaps from the Chief Justice, the Attorney-General or eminent counsel . . .". In other words, from anywhere.

Sir John probably would not go so far. But he has noted that in 1951 the then Prime Minister, Mr (later Sir Robert) Menzies justified his call for a double dissolution with an opinion from a Sydney QC, Mr (now Chief Justice) Barwick, as well as those of the Law Officers of the Crown.

Sir John may be wondering if he can seek such external advice off his own bat — or if it is tenable only when offered by the Prime Minister.

## Prognosis

Another technically independent power of the Governor-General, of course, is to "choose and summon" members of the Executive Council. Conceivably he could invite Mr Fraser to take over the Government, then wait until he, inevitably, was forced to recommend a dissolution of at least the House of Representatives.

But the whole point of the exercise, it is pointed out, is to ensure Supply. And Mr Fraser has an even thinner chance of doing that in the present Parliament than has Mr Whitlam.

Thus the prognosis is that whatever course Mr Whitlam takes, Sir John will go along with it, at least for quite a distance. He certainly will reject none of the conventions surrounding the Governor-General's office merely in retaliation for the Senate's rejection of a convention of its own.

It will take a crisis to make him do that. And does the prospect of a worrying Christmas for a couple of hundred thousand public servants constitute a crisis? Probably not.

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