

CONFIDENTIAL

GOVERNOR-GENERAL'S OFFICE

Subject **THE GOVERNOR - GENERAL'S**
PERIODIC CONFIDENTIAL REPORTS
TO THE QUEEN. PART 6.

PERSONAL AND CONFIDENTIAL

Government House,
Canberra. 2600

5 December 1977

My dear Private Secretary

The bag which will take this letter to London will be the last one before I leave this office. I therefore write to thank Her Majesty and all the Palace staff for the kindness and support that my wife and I have experienced from Her Majesty and the Palace staff.

There is not much to report from Australia. The election does not seem to me to have been very exciting. As you know it began with a heavy swing to Labor but this has been reversed according to the latest Gallup Polls and most commentators now envisage a win for the Government parties with a significantly reduced majority. The happenings of this week will be important.

My wife and I have enjoyed a number of very pleasant, well attended official farewells. There has been no significant mention of the events of 1975 during the election campaign, very little reference to myself and both parties appear to have preferred to say nothing about the constitutional issues of the last campaign.

My wife and I would like to express our humble duty and loyalty to The Queen. We look forward to some kind of interesting future activity.

*yours sincerely
John Kent*

The Right Honourable Sir Philip Moore,
K.C.V.O., C.B., C.M.G.,
Private Secretary to The Queen,
Buckingham Palace,
LONDON ENGLAND

PERSONAL AND CONFIDENTIAL

PERSONAL AND
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BUCKINGHAM PALACE

25th November, 1977

My dear Governor-General,

Very many thanks for another valuable letter of 21st November keeping us up to date on the Election campaign. The Queen has read it with much interest.

In my idealistic youth I used to imagine that the electorate were not affected by pie-in-the-sky promises made by the political parties during a General Election campaign, but now I am not so sure. Certainly, if one were to judge by the promises made by politicians, they themselves believe that the electorate can be swayed in this way right up to the last minute!

All good wishes,

Yours sincerely,

Philip Glen

His Excellency
the Governor-General of Australia.

PERSONAL AND
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BUCKINGHAM PALACE

24th November, 1977

My dear Governor-General,

Thank you so much for your letter of 14th November which The Queen has again read with great interest. Your report on the General Election is particularly fascinating. It would appear from the reports in British newspapers that the polls are again showing a trend towards Labour. Polls are however notoriously misleading and I always remember the poll result which appeared in the Sunday Times four days before the 1970 General Election in Britain which gave Labour a 100 seat majority! Most of our Australian friends in London, including John Dauth whom we are finding a most valuable addition to our office, are predicting a win for Mr. Fraser with a much reduced majority.

The result of the survey conducted by the Financial Review of the opinions of 267 leaders would appear to be reassuring and you must have been very satisfied with the verdict on the role of the Governor-General.

I am most grateful for your kind good wishes on my appointment. I am already enjoying myself enormously.

Warmest good wishes,

*Yours ever,
Philip Snow*

His Excellency
the Governor-General of Australia.



BUCKINGHAM PALACE

PERSONAL AND
CONFIDENTIAL

21st November, 1977

My dear General - General,

I am replying to your letter of 8th November 1977 since Martin Charteris retired on 12th November. I have shown your letter to The Queen, who was as always greatly interested to read your account of the Australian scene.

Prince Charles's visit to Australia was extensively reported in the British Press and seems to have gone very well - as indeed it did in the U.S.A. This is probably the most important tour he has undertaken and we are delighted with the tremendous success he has enjoyed.

We are of course following the General Election campaign in Australia very closely and your comments on Queensland and the by-election in Victoria, including the emergence of the Australian Democratic Party, were fascinating. I have today received your telegram about the resignation of Mr. Lynch but I would not know whether this will significantly affect the outcome.

Your official Parliamentary farewell at Parliament House, Canberra, must have been a moving occasion and I am so glad it was a happy

one in spite of the boycott by the Labour Party.

I look forward very much to seeing you
in London. Meanwhile, my warmest good wishes to
Lady Kerr and yourself.

~~Yours sincerely,~~

Philip Glen

His Excellency The Governor-General of Australia

Government House,
Canberra. 2600

21 November 1977

My dear Private Secretary,

This letter will be in two parts. I am dictating the first part before the delivery tonight of the Prime Minister's policy speech and will accordingly add a paragraph tomorrow when he has spoken. The political situation here is very fluid indeed. The Gallup Polls, all of which were taken before recent political developments at first showed a further slight increase in Government support. The percentage figure going up to 47 but later there has been a quite dramatic fall in Government support according to the polls and Labor has a 3% advantage over the Government. Since these polls however there have been a number of very dramatic happenings.

The first was Mr Whitlam's policy speech which was somewhat unexpected. The main points in it were that he said that the payroll tax which is imposed by the states and paid by the employers would be abolished. He would ask the states to abolish it and compensate them for the loss of revenue by Commonwealth Grant. The payroll tax is an unpopular tax with business generally. Mr Whitlam's object in seeking to abolish it is to encourage employers to employ more men and hence to bring down unemployment. The point has been made that there is no guarantee that this will happen. Business will not employ more men, so it is argued, until there is an increase in demand. Money saved by not having to pay payroll tax could go into profits or further investment in labour saving machines. The amount of money involved in Mr Whitlam's suggested abolition of the payroll tax is very considerable and he hopes to meet this or a substantial part of it by abandoning the reductions in personal income tax which the Fraser Government in the last Budget said would apply from February next.

It is true that the people have not yet actually experienced the increased income which the cutting down of income tax will produce next February but asking people to forego their expected increase in income is thought to be an unpopular element in his policy. His policy speech has not however been reflected in any Gallup Poll taken since its delivery nor indeed has the crisis over the position of the former Treasurer, Mr Lynch, who has resigned from his office of Treasurer in the midst of the campaign.

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The reasons for his resignation have to do with his own personal financial affairs and nothing to do with the Government or its policies.

I shall not go into detail about what caused Mr Lynch's resignation except to say that the allegations included (1) that he was given advantageous terms to enable him to purchase an apartment on the Gold Coast in Queensland and (2) that his family company engaged in a land deal with another company under supposedly dubious circumstances.

As to the last mentioned matter it is not suggested that anything illegal was done. Two of the people involved in the company associated with Mr Lynch's family company have been the subject of criticism in the Victorian Royal Commission on so-called land scandals. The deal in which Mr Lynch's family company was involved is not the subject of investigation in that Royal Commission.

Pages have been published in the press about this matter and it is not important, so I believe, to go into the details in this letter. What is clear is that the Prime Minister took the view that he could not be under running fire for the whole election campaign about Mr Lynch's dealings. The latter offered to stand aside until the campaign is over and the Prime Minister gave some indication that the door is not closed to Mr Lynch coming back as Treasurer some time after the election, presumably when the whole matter can be looked at calmly and impartially. The first reaction to Mr Lynch's resignation was that it was a severe blow to the Government parties but some now think that it will die down as an issue. Certainly it is no help to Mr Fraser, part of whose campaign was undoubtedly to have been reference to the constant series of crises in the days of the Whitlam Government resulting in the resignation and dismissal of Ministers.

Despite all of these happenings the Prime Minister told me when I met him before swearing in the new Treasurer who is an able young man, that he still feels sure that his parties will win the election. It is however too early to make an assessment about the likely outcome.

22 November 1977

Mr Fraser's policy speech last night was unexpectedly generous. Its main points were abolition of death and gift duties on property kept within the family and cheaper petrol for country areas. There were several other attractive promises, the opinion being that the generosity is designed to offset the disadvantages of the Lynch resignation. Labor will be concentrating on

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reducing unemployment but presumably resorting to higher taxation and public spending. The Government will be stressing the battle against inflation, which it claims has gone down from 19% to 9% the reduction in the deficit and reduction in interest rates. These and other measures will, it argues, improve confidence and hence demand and thus reduce unemployment. The Government is pressing its general point that it should be allowed to finish the job it has started.

The parties appear to be very close to each other in prospects of victory whereas a short time ago the Government seemed certain to win. Mr Fraser has been forced to resort to greater generosity.

Please assure Her Majesty of my continued humble duty and loyalty. We are all glad about the birth of Her Royal Highness Princess Anne's baby and that His Royal Highness The Prince of Wales has fully recovered.

Yours sincerely,

JOHN R. KERR

The Right Honourable Sir Philip Moore,
K.C.V.O., C.B., C.M.G.,
Private Secretary to The Queen,
Buckingham Palace,
LONDON ENGLAND

Government House,
Canberra. 2600

14 November 1977

My dear Private Secretary

I write to wish you well on your assumption of your most important office as Private Secretary to Her Majesty The Queen.

My association, indeed friendship, with your predecessor has been a most valuable experience for me and I am sorry that, except for a letter or two between now and my own retirement, there will be little official contact between us.

So far as Australian affairs are concerned I am sure you will have a quieter time in the coming few years than has been the case during my period in office. As I understand the position you will have been kept informed about developments here through my correspondence with Sir Martin. There is accordingly no need for me to repeat anything that I have said to him in recent letters.

My wife and I shall be living for a time in London. For how long this will continue we do not yet know. We shall be arriving there in early March after a period of rest and holiday in Europe.

I should appreciate very much an opportunity to pay my respects to The Queen and to have the privilege of an audience with her. My desire would be to express my profound appreciation and gratitude for her understanding and sympathy during my period in office.

There is little that I can add to the last letter I wrote to the Palace except to say that His Royal Highness completed his visit on 11 November and that it was universally regarded as being highly successful.

I shall say something about the Queensland election. This election, held last Saturday, resulted in the return of the Bjelke-Petersen Government with a reduced majority. The National Party lost five seats as did the Liberals. There are still some doubtful seats - three. The Australian Democrats polled well -

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10.9% in the electorates in which its candidates stood. There is not much comfort for either Mr Fraser or Mr Whitlam in the result. Labor improved its voting from 36% on the last State election to 43.3% but it needed 47% to enable it to face the Federal election on December 10 with confidence in its Queensland chances. The National Party was down on the last State election result only by .8% - from 27.9% to 27.1%. The Liberals were down from 31.1% to 24.9%.

The Premier comes out of his internal coalition battle with the Liberal Party stronger than he entered it. The National Party for the first time in the twenty years of the coalition government out-pollled the Liberals. Mr Chipp is claiming that his Democrats will, through their preferences, determine the result of the December election. Mr Fraser has pointed out that the total coalition result - 52% of the voters is the most overwhelming victory the coalition parties have had except for 1974 when Labor suffered a devastating defeat.

There are two small points which may be of some interest to add to your information about Australian affairs. The last Morgan Gallup Poll which was taken on the weekend immediately after the announcement of the intention to hold an election on December 10 indicated that the Government has improved its level of support. The level of support for Mr Fraser has also increased while that for Mr Whitlam has declined. The poll would indicate that if an election had been held at the time of the poll the Government would have been returned with a reduced majority.

The parties in the coalition government have moved up to 46% since the poll taken a week before which gave a 44% result. The Labor Party has fallen by two points from 44 to 42. The Government reached its lowest point for a long time last August when it had the support of 40% of those polled whereas the Labor Party then had the support of 45%. The Government parties have improved month by month reaching their present top figure of 46% which brings them closer to the high level of support which they had at the beginning of the year. Labor has fallen over the same period of time from 45% to 42%.

As I mentioned in my last letter there is a new party called the Australian Democrats which has been receiving a significant share of the voting support as shown in the Gallup Poll. Its support has been currently running at 8% on a nation wide basis during the month of October. This does not take into account the high vote

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which this group got in an actual election recently held in Victoria. I mentioned this in my previous letter. The Government parties appear to be quite confident that they can hold their position to win the election.

The other point which may be of interest to you is that the Financial Review, a paper published in Sydney but having a nation wide circulation conducted what it called a "survey" of the opinions of 267 leaders in business, trade unions, federal and state politics, the Commonwealth Public Service, the mass media, the church; liberal and conservative voluntary associations and academics. This was a so-called "leadership" survey of the opinions of people of importance. The main part of the survey, a copy of which I enclose, which was of special interest to me is to be found in the attached clipping under the heading of "The Whitlam Sacking". This examined the opinions of the "leaders" as to whether the removal of the Whitlam Government was contrary to the spirit of the Constitution and if so by reason of what improper conduct did it occur. The table at the end of the clipping shows that 43% of the "leaders" thought that the removal of the Whitlam Government was contrary to the spirit of the Constitution but the break up of reasons is very interesting. 47% felt that the removal of the Whitlam Government resulted from improper conduct of the Whitlam Government itself. 20% thought that it resulted from improper conduct of the Liberal N.C.P. Opposition. 17% thought that it was due to improper government by both parties but only 6% of the "leaders" thought that it was due to improper conduct by the Governor-General alone or with others.

You will find the break up of the figures relating to the Governor-General interesting. Only 18% of A.L.P. supporters, 14% of unionists, 10% of public servants, 7% of other centre leaders and no business or Liberal N.C.P. supporters at all regarded the removal of the Government as being due to improper conduct of the Governor-General. I found the overall figure of 6% for the whole group very satisfying. Of course a survey such as this tells us little about general opinion. How the "leaders" were selected I do not know. The Financial Review has not been supportive of the Government nor indeed of me but I assume the selection of the 267 leaders was fairly done. It certainly would not be slanted in favour of the Liberal - National Country Party or myself.

You will note that in the middle of the attached clipping there is a reference to republicanism. 37% of national leaders are said to have agreed that "over"the long run Australia will be better off with a republican form of Government". The article interpreting

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the results of the survey mentions that the phrase "over the long run" is important and of course this must be so. There are doubtless a number of people who believe that republicanism will arrive "in the long run" who do not believe that it will come or should come soon. Most people are not capable of considering this question in its constitutional setting.

May I again wish you success and happiness in your new appointment and ask you to assure The Queen of the continued humble duty and loyalty of my wife and myself.

Yours sincerely
John Kerr

P.S. I have discovered from the Financial Review of 8 November the composition of the group of leaders and attach a short clipping indicating how the 267 top position holders were made up.

The Right Honourable Sir Philip Moore,
K.C.V.O., C.B., C.M.G.,
Private Secretary to The Queen,
Buckingham Palace,
LONDON ENGLAND

Political trust: the 'system' takes a blow

Australian political leaders have lost confidence in their ability to control the direction in which Australia is moving.

This is one of the major findings to emerge from a survey of opinion leaders' views on political stability in Australia (see accompanying panel).

The survey is important as it has contrasted opinion

This is the last of three articles analysing a survey of the opinions of 267 business, trade-union, Federal and State political, Commonwealth Public Service, mass media, church, liberal and conservative voluntary associations and academic leaders.

The survey, conducted between July 15 and October 15 this year, followed a similar survey of these same leaders during the second half of 1975.

As in previous articles, the comparatively small number of leaders sampled in each leadership area and the limitations of the survey questionnaire need to be borne in mind when seeking to generalise the results.

For convenience in presenting these, leaders are grouped into three broad categories based on similarities in their response patterns: Left (n-69), Centre (n-85) and Right (n-113).

In this article we examine leadership opinion on a number of issues pertaining to political instability in Australia. By comparing leaders' 1977 opinions with those they expressed in the 1975 survey we also try to assess some of the changes in their thinking after the dismissal of the Whitlam Government in 1975 and during the two-year incumbency of the Fraser Government.

"Political instability" has frequently, if casually, been used to characterise the Australian political scene in recent years.

But political instability is a relative concept. In the extreme it refers to political systems in which irregular seizures of political office by force are a common occurrence. In Australia, however, it is most often used to denote the political turbulence of the past five to ten years.

When most Australians speak of political instability today they have in mind the recent frequency of elections, the rapid turnover of Prime Ministers and other top political leaders, several departures from established political conventions, a felt polarisation of the main parties and of the power blocs which support them, and most especially the surprising and unprecedented events of late 1975 which culminated in the Fraser Government's election.

There are many explanations for political instability. One of the most self-evident and persuasive is the lack of trust which political and other national leaders have in each other and in the political institutions which they jointly operate.

In conditions of extreme instability Constitutions, political conventions, electoral procedures and the like have no common value for most or all national leaders. Instead they are regarded merely as devices to be used, and abused, in the unchecked pursuit of partisan ends.

Whether the recent and current turbulence of Australian politics might eventually lead to such political instability is a question worth considering, and some of the opinions which we solicited from national leaders bear on it.

System Effectiveness

A small majority (55 per cent) of all national leaders in the survey agree that "the political system is working well in handling Australia's problems." Not surprisingly Right leaders most frequently (71 per cent) hold this opinion, although a third of business leaders do not.

Among Centre leaders, however, such confidence exists among no more than half of media editors, top public servants and leading academics and economists.

Only one-third of the Left endorse the effectiveness of the political system at present. Although ALP leaders think the system is working well about twice as frequently as do leaders of Liberal voluntary associations and non-manual trade unions it is apparent that the Left's belief in the system's effectiveness is conspicuously low.

Whereas national leaders disagree about the effectiveness of the political system, majorities of the Left, Centre and Right (and 62 per cent overall) agree that "leaders of the major institutions have lost confidence in their ability to control the direction in which Australia is moving."

Among the Right only majorities of L-NCP leaders and media owners believe otherwise.

Nearly two-thirds of Centre leaders, including all but one of the media editors, doubt the effectiveness of national leaders. Partisan opposition to the Fraser Government may partly explain the still greater disaffection of Left leaders (73 per cent) in this regard.

A comparison of leaders' 1975 and 1977 opinions on these two points reveals sig-

nificant change during the past two years.

Per cent agreeing that "the political system is working well..."

	1975	1977	Change
Right leaders ...	56	71	+15
Centre leaders ...	52	53	+1
Left leaders ...	58	33	-25

Per cent agreeing that "leaders have lost confidence..."

	1975	1977	Change
Right leaders ...	66	52	-14
Centre leaders ...	63	64	+1
Left leaders ...	52	73	+21

These comparisons show that Right leaders have become more content with the political system and the performance of leaders since they gained control of the Government in late 1975.

Over the same period Left leaders have become more discontented. Meanwhile, the balance of Centre leaders' opinions has hardly changed.

But it would be unduly complacent to view these opinion changes among the Right and the Left as routine reflections of changing political fortunes.

In 1975 both those in and out of power affirmed the effectiveness of the political system and of leaders in almost equal proportions. This is not the case in 1977. Particularly on the first item a sharp division between the different leadership categories exists now that was absent in 1975.

In short, diminished trust in the system and its leaders is now widespread among the Left. Moreover, the Centre's trust has not increased during those two years. Although this hardly means that a condition of political instability has been reached, or is even near, it indicates that leadership alienation, already substantial in 1975, has increased still further.

Constitutional Reform

The lack of legitimacy which political institutions have for most leaders is a key aspect of political instability.

The Whitlam Government's tenure in office and the manner in which it was dismissed heightened conflict over the residual ties with the British monarchy and over the powers of the Senate as prescribed by the Constitution.

Possibly as a result of spreading republican sentiment after 1975, 37 per cent of national leaders agree that "over the long run Australia will be better off with a republican form of government."

Support for this basic change in governmental structure is most widespread among the Left, of course. Seventy per cent or more of ALP, manual trade-union and liberal voluntary associations leaders endorse republicanism, although less than three-fifths of non-manual trade-union leaders do so.

More than a third of Centre leaders also favour a republican government, including

Per cent agreeing that:

	ALP	Unions	Public Servants	Other	Bus-ness	L-NCP	All
Australia will be better off with a republican government	70	75	41	32	13	11	37
Deprive Senate of power to block Supply	70	75	41	32	13	11	37
Deprive Senate of power to block Supply	96	86	62	61	10	18	49

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takes a blow

that "over the long run" Australia would be better off as a republic.

● Ninety-five per cent of all national leaders see "improper conduct" by some person or group as causing the dismissal of the Whitlam Government. The findings are divided into System effectiveness, Constitutional reform and the Whitlam sacking.

The Whitlam Sacking

Clearly the many accusations of wrongdoing which surrounded the Whitlam Government's dismissal by the Governor-General, Sir John Kerr, implied a growth of distrust among national leaders. Two years later how do these leaders assess the proprieties of the actions which led to the dismissal?

A large minority of leaders (43 per cent) agree that "the removal of the Whitlam Government was contrary to the spirit of the Australian Constitution."

Except for a significant proportion of non-manual trade-union leaders (42 per cent), Left leaders are virtually unanimous in this opinion. Centre leaders are divided evenly on the issue, but Right leaders reject it almost without internal dissent.

In short, national leaders remain more or less totally divided over the constitutional propriety of the Whitlam sacking.

But the ways in which leaders apportion responsibility for the dismissal complicates this otherwise clear-cut division. Nearly half of them (47 per cent) think that "improper conduct" on the part of the Whitlam Government itself led to its removal.

This is the opinion of more than four-fifths of the Right, but it is also the opinion of more than a third of Centre leaders, including 41 per cent of the top public servants who served under the Whitlam Government. Among Left leaders, however, only two trade union officials hold that view.



On the other hand, one-fifth of all leaders think that improper conduct by the L-NCP Opposition coalition alone brought about the Government's dismissal. This is the opinion of a majority of the Left (56 per cent), of 14 per cent of the Centre, but of only three leaders on the Right.

One in every six leaders thinks that both party groups acted improperly. This "pox on both your houses" view is held most frequently by Centre leaders (32 per cent), including a third of the top public servants, but it is also held by eight Right and eight Left leaders.

Surprisingly, only 6 per

cent (all of them Left or Centre leaders) thought to add the Governor-General to the list of "improper actors" contained in our questionnaire.

In summary, 95 per cent of all leaders see "improper conduct" by some group(s) or person(s) as causing the Whitlam Government's dismissal. In this sense distrust among national leaders appears to be widespread.

The strong, continuing willingness of both Left and Right to blame each other, and the willingness of Centre leaders to take partisan sides on this issue augurs poorly for a more mutually trusting and co-operative national leadership in the near future.

Per cent agreeing that:

	ALP	Unions	Public Servants	Other	Bus-L	L-NCP	All
Removal of Whitlam Government contrary to spirit of Constitution	96	83	49	48	9	7	43
Removal of Whitlam Government resulted from improper conduct by:							
(a) Whitlam Government itself	0	6	41	29	81	89	47
(b) L-NCP Opposition coalition	50	56	15	13	2	4	29
(c) Both party groups	14	11	31	33	9	7	17
(d) The Governor-General alone or with others	18	14	10	7	0	0	6

For convenience in presenting the results, leaders are grouped into three broad categories based on similarities in their response patterns:

LEFT LEADERS

- 23 ALP Federal shadow ministers, Premiers, Deputy Premiers, State party leaders and other party officials.
- 24 Federal and State secretaries of the largest annual trade-unions and officers of the ACTU and State Trades and Labour Councils.
- 12 Federal and State secretaries of the largest non-annual trade-unions and officers of ACSPA and CAGEO.
- 10 national executive directors of "liberal voluntary associations" (ie, major consumers, conservation, women's and other reform groups).

CENTRE LEADERS

- 39 secretaries of Federal departments and heads of major statutory authorities.
- 19 editors of the largest newspapers and magazines and top managers of the ABC.
- 10 archbishops and presidents of Catholic and major Protestant Churches.
- 10 Vice-Chancellors of the largest universities.
- 7 leading academic economists.

RIGHT LEADERS

- 68 board chairmen and managing directors of the largest corporations and national executive directors of the major business and agricultural pressure groups.
- 27 L-NCP Federal Cabinet ministers, Deputy Premiers, State party leaders, deputy leaders and other party officials.
- 13 presidents and executive directors of "conservative voluntary associations" (ie, legal, medical, veterans, and public affairs groups).
- 5 owners and board chairmen of the largest commercial media organisations.

The comparatively small number of leaders sampled in each leadership area needs to be borne in mind when seeking to generalise the results.

The intention was to ascertain the opinions of the highest echelon of national leaders only.

Further, these leaders responded to a tightly structured questionnaire which forced them to choose between simplified alternatives on complex issues.



BUCKINGHAM PALACE

PERSONAL AND
CONFIDENTIAL

3rd November, 1977.

My dear John

Thank you very much for your letter of 27th October which The Queen was able to read as she flew back from Barbados in Concorde yesterday.

Her Majesty was most interested to read what you have to say about the election which is to be held on 10th December. From what you say of the advice tendered to you by the Prime Minister, it seems that it would have been extremely difficult for you to have denied him the Dissolution for which he asked. It was, I think, a harder decision for him to ask for it than for you to grant it but it must, nonetheless, have required a good deal of careful thought on your part.

I was as surprised as you to hear that Sir William Slim's letter of 8th November, 1955 to Sir Michael Adeane and Sir Michael's reply of 17th November, had found their way on to a file dealing solely with procedural matters. I do, of course, have these letters here but they are kept in a confidential file which contains correspondence between Governors-General and the Private Secretary and is, of course, confidential.

I do not think you need have felt any reluctance in reading these letters and indeed I think they contain sound constitutional doctrine which ought to be available for any future Governor-General and it is, perhaps, for this reason that

Sir William Slim put them in the file rather than taking them away with him, as part of his personal archives which is what I assume he must have done with the other letters he wrote to my predecessor.

I am sure it would be right to remove them from the file in which they now reside and keep them somewhere else on a confidential basis.

The Queen thanks you and your wife for your good wishes which she warmly reciprocates.

With all best wishes

Yours ever

Marlin

His Excellency the Governor-General
of Australia.

Government House,
Canberra. 2600

8 November 1977

My dear Martin,

His Royal Highness The Prince of Wales is half way through his tour of Australia. It has so far been a great success and has attracted wide attention. We greatly enjoyed his stay with us at Government House and hope that he was happy there.

I had a long conversation with him about things in general including the political situation here, explaining to him in broad outline how I believe the current situation had developed.

As you are I believe aware, the Prime Minister had very great difficulty making up his mind whether to go to the people at the present time or not. I believe I may have mentioned to you in an earlier letter that he regarded this decision as a harder one to make than the decision to deny Supply.

The Prince of Wales was very interested in the general political background and the personalities involved. Our conversation ranged over other matters and he was kind enough to express the wish that in London when we are living there other conversations between us may be possible.

As far as I know he has had no experience of demonstrations so far and there should certainly be none of any significance. He leaves Australia from Perth on 11 November which happens to be, as you will realise, the second anniversary of the dismissal.

It is traditional for the Governor-General on that day to attend the Remembrance Day Service in Canberra but it would have been possible for me to fly to Perth afterwards. I took the view of the security people on the likely consequences should I be present at a farewell in Perth on that day. The answer was that if I did it without advance publicity there could still be a not insignificant demonstration, and if I did it with advance publicity there could be a much larger one.

The Prince of Wales himself without knowing any of this, because I made the enquiries later, said

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that he could see no reason why I should fly to Perth to say farewell. There have been varying precedents in cases of members of the Royal Family other than The Queen. I said that I would like to go and he asked me to let him know what decision I made.

Having made my enquiries from security I had a message sent to Squadron Leader Checketts giving him the information and saying that as there were precedents to support my absence and, for the other reasons mentioned above including the fact that His Royal Highness had indicated that my presence would not be necessary, I thought it better not to go. The Prime Minister will be there and of course all of the Western Australian leaders.

There is another reason why I believe this decision to be the correct one. Namely that I have already made my official farewell visit to Western Australia and the tradition is that such a visit should be the last. Of course this, in the case of a Royal Visit can be overcome but in a sense it is not quite fair to the Premier and the Governor for a Governor-General who has already said farewell to the people of Western Australia to appear on the scene in the circumstances mentioned.

I believe that the visit of the Prince of Wales is winding up the Jubilee Year in Australia with great pleasure all round and that it has been a great help to Monarchy here. There have been no republican meetings nor as far as I can see much expression of republican views whilst he has been in the country. I believe that it is becoming more and more obvious how difficult are moves to change our monarchical system under our constitution and republican enthusiasm limited though it has been, is waning.

The election is under way though the policy speeches will not be made until several days after the departure of His Royal Highness. The issues are unemployment and the economy involving the question of economic management and how each side in politics can best tackle it.

Mr Whitlam has done a couple of rather peculiar things which have caused him a little embarrassment. First he announced that Mr Hayden, his last Treasurer when in Government, would not be Treasurer if he wins the election but would be Minister for Foreign Affairs and probably Minister for Defence. Mr Hurford would be the Treasurer. As Mr Hayden had been presented widely as the Opposition's top economic expert this caused a great deal of discussion and criticism, especially inside the Labor Party, and Mr Whitlam had to retreat saying that although Mr Hurford would be Treasurer Mr Hayden would head up a new Department of Economic Development.

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Mr Whitlam has also announced that if he wins the election he will remain for only two years and will then resign. One would think that this would be a difficult position to take, asking the people to elect a Prime Minister who intends to go after two years. The assumption is that Mr Hayden would then succeed. Of course in politics anything can happen and if Mr Whitlam won what he has said will take place may not occur.

The Government parties are confident that although they will lose seats they will retain power and I understand that their private opinion polls support this view. The Ministers to whom I talk are confident, including the Prime Minister, but it is too early yet to assess how the campaign will go.

One of the big unknown factors has to do with the position of a new party called the Australian Democrats which is headed by Mr Chipp, a former Minister in earlier Liberal Coalition Governments, not selected for the Ministry by Mr Fraser. The result was that in due course he resigned from the Liberal Party and formed the Australian Democrats. This group has attracted a considerable amount of support which it has been thought has come largely from the dissident Liberals' dissatisfaction with the Government policies. The Gallup Polls have measured this support as quite significant and political commentators have felt that the outcome of the election could depend on the second preferences of Mr Chipp's supporters.

Last Saturday there was a by-election for a State seat in Victoria. A number of very significant local State issues were involved including a great deal of dissatisfaction over a serious strike in the electric power industry and scandals in relation to land deals which are at present the subject of a State Royal Commission. The Victorian Liberal Party is accordingly weaker than it has been for a very long time. The seat in question is a swinging seat. It was won by the Labor Party. An interesting fact is that the Australian Democrats obtained about 17% of the votes. It is not clear yet how the preferences were distributed between the Liberal Party and the Labor Party but Labor claims to be getting between 50%-60% of those preferences.

A lot of people are arguing that this by-election is bad news for Mr Fraser because inevitably federal issues, especially unemployment, were brought into the campaign. However the State by-elections are

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notoriously a bad guide for a federal general election and future Gallup Polls will perhaps provide a better guide to the nation-wide position.

There is also an election currently being held in Queensland where the people go to the polls on Saturday next. I recently had my official farewell in Queensland. It seems likely that the Labor Party will do better there than in the last election in which it was very badly defeated. However the Coalition Government in Queensland is thought to be certain to be returned with the loss of some seats. One frill on this election is that the Liberal Party, led by the Deputy Premier, Mr Knox, is engaged in a fight with Mr Bjelke-Petersen's party (with which it is in coalition) in a number of electorates. It is seeking to win them from sitting National Party Members (former Country Party). This is an important issue for the Premier. If by any chance the Liberals turn out to have more members of the new House than his own party Mr Knox would take over as Premier and the present Premier would presumably become Deputy Premier.

It remains to say that yesterday I had my official Parliamentary Farewell at Parliament House, Canberra. It was, as expected, boycotted by the Labor Party but was a very happy occasion in which the main dining room was crowded. There are, as you will appreciate, as a result of the last election a very great number of Government Members of Parliament. Many of their wives attended together with senior public servants, diplomats, heads of the Services and others. It was inevitable that the proceedings would take on a political flavour and there was no avoiding a newspaper reception this morning with some kind of political emphasis or criticism. As things happened the Prime Minister and Mr Anthony made speeches which were flattering to me but inevitably took on a rather political tone. Both the speakers attacked the Labor Party for the boycott. My own speech, which had been circulated to the press and had been cleared by the Prime Minister's advisers, was interpreted as entering into the election campaign because it allegedly supported the Government parties.

I attach a copy of the Prime Minister's speech and Mr Anthony's speech as well as a copy of my own. I have sidelined a few in my own touching upon economic matters.

It seemed to me reasonably safe, though I expected adverse comment, to refer to the economic recession and unemployment, to mention the indications of some recovery in the economy and to express optimism about the future in this respect. I also touched upon the desirability of development. These subjects

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seemed to me to be substantially bi-partisan and I was so advised. After all both parties are saying in the election that they are capable of producing improvement in the economy and if elected will do so. Both are anxious to tackle unemployment and both are committed to development. My reference to development was interpreted as being an indirect reference to the uranium issue upon which the parties are divided. It would have been impossible for me to make any kind of speech which was not platitudinous and avoid the charge of speaking politically.

After all, as there is an election on and as one side in politics had boycotted the farewell the ground was set for a journalistic picnic. I do not think the Governor-Generalship will be an issue of any significance in the campaign, not only because I am retiring but also because it probably is not to the advantage of the Labor Party to remind people of 1975. However we must await events.

This may be the last letter to reach you whilst you are holding your present office. I hope the issues, pressures and challenges of my three and a half years here have not unduly pressed upon you and have not unduly worried Her Majesty. I take refuge in the fact that it was not I who denied Supply and it was not I who attempted to govern without it. Everything has flowed from the clash between those who took these two decisions.

I wish you, on behalf of my wife and myself as I believe I have already done, happiness and satisfaction in your retirement and we both look forward to seeing you next year.

Please assure Her Majesty of the continued humble duty and loyalty of my wife and of myself and of our delight at the all round success of her Jubilee Year especially in Australia where, as I see it, the Monarchy is stronger than ever.

*Yours ever
John*

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

REPLY BY HIS EXCELLENCY THE RIGHT HONOURABLE SIR JOHN KERR,
A.K., G.C.M.G., G.C.V.O., K.St.J., Q.C.,
GOVERNOR-GENERAL OF THE COMMONWEALTH OF AUSTRALIA
AT THE PARLIAMENTARY LUNCHEON IN HONOUR OF THEIR EXCELLENCIES
THE GOVERNOR-GENERAL AND LADY KERR,
AT PARLIAMENT HOUSE, CANBERRA

MONDAY, 7 NOVEMBER 1977

Thank you, Prime Minister and Mr Anthony, for all you have said. My wife and I are most grateful to you and to all those assembled here today in this last week of the thirtieth Parliament, to say farewell to us.

I specially appreciate, Prime Minister, the mention you made of my personal sorrow early in my term of office.

A leave-taking from office is always an occasion for mixed emotions. There is for me, a sadness at stepping out of an office which is important to Australia and which has years of tradition behind it and to part from a loyal and efficient staff - a staff which has done so much to make our system work efficiently and to make my task much easier. I thank them all.

Against that there is of course the satisfaction of a duty carried out and completed. It engenders in me both a feeling of deep pride and a sense of relief. It also leaves me with a sense of humility that I have been privileged to march in high office; for some part of the

distance, in the long procession of Australian history.

My three and a half years in office have been challenging years and have embraced historic events. They have been, in consequence, enjoyable if to some extent turbulent. Future historians will measure and assess those years better than we can now, close as we are to the events that have crowded our time. As a participant I shall leave my own records. The judgment of history in our democracy can be relied upon to provide an impartial final assessment.

There have been some burdensome moments. But these are now falling into perspective. There have also been occasions of considerable responsibility, of pleasure in carrying out the duties of the office which would not have been possible except for the immense personal support given me and my wife during my term of office.

Two other matters of moment I would like to mention.

The first is this Silver Jubilee Year of Her Majesty The Queen and the opportunity given to me by your Government, Prime Minister, to attend the celebrations in London after her stay with us here. The evidence in crowded London - and I know it came over strongly on the television screens here - showed in quite a dramatic way the special place that the Monarchy has in the community life of Great Britain.

Here too, in Australia, where of our own free will

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we give loyalty and allegiance to the Crown, Her Majesty's Jubilee Visit this year attracted similar enthusiastic responses. That visit was a great success.

There is no doubt that our affection for The Queen extends naturally and warmly to The Prince of Wales who is visiting Australia at the present time, and who has captured the hearts of all Australians by the sincerity of his interest in all that goes on in Australia and by his vitality and warm personality.

The evidence everywhere is of the constancy of the Crown, its durability and the affection given so spontaneously to the Royal Family.

It is clear that, in this context, while there are influences that divide, they are, in the measure of time, of passing moment compared with those influences, like the role of the Monarchy, that unite and are of lasting quality. Of that I am very confident. Superficial manifestations to the contrary are passing phenomena which will disappear in the sweep of history.

The debate on republican Australia ebbs and flows like the tides. It has been fashionable for it to be raised by every generation. It is healthy to have constitutional debate in a free and virile country. But I do not see Australia becoming a republic in the foreseeable future. I believe that though the forces of change are constantly at work around us -

and it is good that they are - the link of the Crown will hold. It has, after all, survived longer than any other. There has been and is nothing of greater worth to displace it by all the hard tests of history.

The Monarchy as an institution is not static. It has moved closer to the people, the Members of the Royal Family - hardworking, understanding and dedicated - command our respect as well as our affection and not only in The Queen's own realms as the Royal Visits made to other countries demonstrate.

The second matter I want to mention is "the state of the nation" as I see it today. In my term of office Australia has been caught deep in a painful economic recession with serious unemployment. This period has been, and still is, a testing time for us all.

But some signs of recovery appear to be emerging. I have confidence that the recovery will gather strength in the next year or two. And wherever I might be in the immediate future I am sure I shall be watching from the sidelines with a sense of relief that there are better days ahead for all Australians.

This is a time of opportunity for all Australians to make the recovery real, lasting and large and for all of us to enjoy the prosperity which the whole world recognises as being available to us. I would go further and say that our opportunity for ultimate recovery and lasting prosperity will

be aided if we set out sights on recovery and get on with the business of developing Australia as it is meant to be developed.

We cannot shut ourselves off from the rest of the world, a world desperately anxious about the economic future.

Let us think and plan for the longer term, for the generations to come, for the children of our children. There is much to be done. Let us get on with it. And with that I take my leave of public affairs in this Parliament.

My wife and I will be travelling abroad for a period of rest, refreshment and activity. I do not plan to live an idle life and if I can serve in any other way I stand ready to do so.

My own personal writings and archives will be available for history, some not for a long time. I have made no decision as to when I shall publish what personal writings may be appropriate for publication. That is for leisurely decision in retirement. I shall bear in mind that people are entitled to as full an account of the historic happenings of their time as is possible and as soon as is fitting but there will be many factors to be taken into account. There is no book ready for publication. But as to the future - who knows? That is for another day.

Prime Minister: just one final word of thanks and it is to those who are not here - to my fellow Australians across the length and breadth of this continent. I wish them all happiness, success and prosperity.

Thousands of them have sent my wife and me messages of support and encouragement in difficult days during my term of office and many more thousands have welcomed us all over Australia. It was good of them to do so. Lady Kerr and I say a very warm "thank you" for that too.

My successor is a man of great character, competence and wisdom.

He has, at his side, as I have, a talented and competent and charming wife, ready to share the tasks that belong to this honourable office.

Lady Kerr and I wish Sir Zelman and Lady Cowen much happiness and fulfilment in their new role.

I thank you, Prime Minister, your gracious wife and your colleagues, the Presiding Officers, Members of the Parliament and their wives and others present for this day and say farewell to you and the Parliament.



PRIME MINISTER

FOR PRESS

7 NOVEMBER 1977

ADDRESS AT PARLIAMENTARY LUNCH TO FAREWELL THE GOVERNOR GENERAL

Your Excellency, we are delighted to be with you and Lady Kerr today. As Prime Minister, I know I speak for the overwhelming majority of Australians in saying that you have carried out the duties of your office with dignity, calm, and integrity.

Sir, you are respected by Australians. You are respected for your personal strength, your courage and your determination. This strength and resolve-characteristics displayed throughout your life - was never more publicly evident than early in your term of office with the loss of your first wife. I and my colleagues greatly admired the way you did not allow that time of personal suffering to diminish - in any way - your utter commitment to carrying out your duties.

You set standards of a high order. You have never allowed yourself to be distracted from carrying out the tasks of the Queen's representative. You have faced some difficult times, but you have always faced them with dignity. I do regret that the Leader of the Opposition and his colleagues have not seen fit to attend this Parliamentary function.

Political debate in Australia is vigorous and criticism harsh. This is a fact of politics. Politicians - of all political persuasions, and at all levels - live with the rough and tumble of political debate. We learn to accept it. But beyond this conflict, and beyond that competition, the politician in a democratic society has a cardinal responsibility to unite, a responsibility not to divide. It is his task to strengthen the common bonds that make society workable, not to erode them. The personal bitterness that has manifested itself in the kind of boycott evident here today, has no place in Australian parliamentary life. It has no place in Australian politics.

Your Excellency, you are one of a group of outstanding men who have represented Her Majesty in Australia. Your achievements in law and administration prior to your appointment as Governor General in 1974 marked you as an outstanding Australian. As Governor General, your integrity, and your commitment to this country and to the freedom of all Australians, has added immeasurably to that stature.

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The ultimate role of the Monarch is to ensure that the country is governed within the terms of the Constitution - a cardinal principle of which is the supremacy of Parliament, and through it the people, over the Executive. In this way, the Monarchy is the ultimate protector of the people. The residual powers of the Monarchy are few and rarely used - but one instance when they may properly be called upon arises when the Executive tries to usurp the role of the Parliament. Any attempt, for example, by the Executive to continue to govern without appropriation of funds by Parliament demands that the supremacy of Parliament and of the people be upheld.

That is the exceptional situation you had to face in 1975, and I believe quite certainly history will judge you a faithful servant of the Constitution who discharged his responsibilities under the Constitution in a time of exceptional difficulty.

Your Excellency, I am unaware as to whether you intend to write memoirs. If you were to do so, I am sure there would be some passing interest in them. It is fair to say that distinguished Australians have traditionally - in time - recorded their own account of their public achievements. I hope, Sir, that one day we may have a chance to read your account of an important and fascinating period.

My comments today would not be complete without special mention of Lady Kerr. I know that Lady Kerr has stood beside you throughout the difficult times, and has been a source of strength and encouragement. We all, in public life especially, owe much to our wives. They endure what we endure yet are always ready to lend willing support, sympathy and understanding. Lady Kerr has certainly fulfilled this role.

Your Excellency, on behalf of the Government and the people throughout Australia who think so highly of both of you, can I offer my sincere wish for many useful and enjoyable years ahead. You have made a significant contribution for many years to Australia's development.

I know you will continue to apply your talents to the good of our country and the benefit of all Australians.

ADDRESS AT PARLIAMENTARY LUNCHEON TO FAREWELL THE GOVERNOR-GENERAL

Someone told me the other day of an ancient Chinese curse which says: 'May you live in interesting times'. I don't know why, but I thought of Your Excellency when I heard it!

If anyone has lived in interesting times, then you have. And you have conducted yourself throughout that period with a degree of courage and resolution which few of us could match. To weaken would have been a triumph for those people who believe in the use of intimidation and the fears of mob rule.

I would say that rarely has anyone been so strongly criticised, so abused, so villified, for doing his duty - for doing what was right.

When you were faced with a situation which had to be resolved, you chose to allow the Australian people to resolve it themselves. As I've said before, if what you did was a threat to democracy, then it was the first time in history that democracy was threatened by giving people the right to vote in an election. And if ever you felt the need to look for vindication of your action, it was abundantly given in the decision the people made in the election you gave them.

There are still people in Australia - there are still people in this Parliament - who believe that the Government of Australia was changed by the Governor-General. The Government of Australia was changed by the Australian people - and no-one else.

I have no doubt, Your Excellency, that throughout the time when the going was hard, you have been sustained by the knowledge that the great majority of the Australian people supported you and respected you - not only for the difficult but firm decision you made, but for the way you endured the consequences of it. For those of our colleagues who are not here today, I have some understanding, but I do feel sad that their feelings run so strong.

GOETHE: German Philosopher:

"Hatred is a heavy burden. It sinks the heart deep into the breast and lies like a tombstone on all joys".

I say, those who fester lasting bitterness do themselves no good. And those of us who are today present, are glad to pay our respects to a man of courage. For to acknowledge courage is to acknowledge an essential of high character.

We are all pawns in the passage of time. As we are moved along life's path we all have options we can exercise - some small, some large - that can be for better or for worse.

Fate thrust upon you, Your Excellency, the responsibility of exercising an option which held great and lasting implications. You did it and you paid an enormous personal price at the hands of people who had been friends and associates. But in taking what I believe to be the correct and only option, you have helped to strengthen our Constitution and our Parliamentary system. For this I thank you - and Australia does too.

Our democracy is a fragile system which is only as good as the manner in which people in positions of responsibility will respond to it and accept it.

Your Excellency: We have been honoured to have you as our Governor-General and we thank you for the service you have given to the nation. We offer you our best wishes, and the hope that you and Lady Kerr will take with you a sense of duty well and courageously done.

Thank you Prime Minister.

(Address given by the Deputy Prime Minister,
Rt. Hon. J.D. Anthony)

Government House,
Canberra. 2600.

27 October 1977

My dear Martin,

You will know from my telegram that I have decided to accept the Prime Minister's advice that the House of Representatives be dissolved and the necessary notices of Senate elections be given in time for elections for both Houses on 10 December 1977.

The Prime Minister saw me last night and handed me a letter of advice. We had a detailed discussion about it. In his letter he refers to the need for a half Senate election no later than May. He outlines the general practice prior to 1963 to hold elections for the House of Representatives and for half the Senate on the same date and refers to what happened in 1955 when Sir William Slim on the advice of the then Prime Minister dissolved the House of Representatives much earlier than its three year term to synchronize elections for the two Houses. In that case the election for both Houses was held some eighteen months after the previous election for the House of Representatives.

The Prime Minister then refers to the recent referendum in which 62 per cent of all voters favoured elections for both Houses at the same time though the referendum was not carried. The Prime Minister then states that the next election should be a simultaneous one for both the House and half the Senate. He states that this would mean an election at least by May 1978. If there were no simultaneous election there would have to be a separate election for the House of Representatives before April 1979 and another election for half the Senate before July 1981 and so on. This would mean a major federal election every one or two years.

Such a situation is not conducive to sound Government and is not in the public interest. The Prime Minister goes on to say that in practical terms a simultaneous election would need to be held in December this year or before the end of May next year. He states that after consultation with his ministerial colleagues he has decided to advise me that the elections for both Houses should be held in December 1977.

A substantial argument in favour of this advice is the economic one. When the Government was elected in December 1975 Australia was in a state of severe depression,

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marked by rapid inflation, high unemployment and declining output. Since then the Government's policies have required steady and resolute action and there are now encouraging signs that they are succeeding. Nevertheless he says that there is still much to be done and real economic growth can only be sustained by the continuance of present policies.

A fundamental requirement for their success is an atmosphere of certainty and confidence in the community. An election in December would provide, he argues, an early opportunity to end election speculation and the resulting uncertainty and to enable the Government to seek from the people an expression of their will. It would also enable the pattern for the half Senate to be followed. Since 1949 leaving aside double dissolutions elections for half the Senate have been held in November or December on seven occasions and in May on one occasion only.

His timetable is:

Issue of Writs:	10 November 1977
Nominations close:	18 November 1977
Polling:	10 December 1977
Return of Writs:	on or before 8 February 1978

I had a discussion with the Prime Minister about his advice including a discussion on the pros and cons. He told me that he found the decision a very hard one to make, indeed as hard if not harder than the decision to deny Supply made in October 1975.

I should like to mention to you that I had the official file relating to the analogous situation of 1955 taken out so that I could see what happened then. I was greatly surprised to find on the official file a copy of a confidential letter sent by the Governor-General to Sir Michael Adeane and Sir Michael's reply. These had apparently been placed on a file, which otherwise related solely to procedural matters in relation to the election, with the then Governor-General's approval. It began with the Prime Minister's letter to Sir William Slim giving details in favour of dissolution and Sir William's reply.

The letter from Sir William Slim is dated 8 November 1955 and indicates that the Governor-General played an active part in the dissolution. He had two discussions with the Prime Minister. As a result of the first the Prime Minister sought the return of his official letter of advice which was given back unopened and sought permission to see the Governor-General later on the same evening. (I am referring to Sir William's letter to Sir Michael.)

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By this time the letter in its new form had been prepared and Sir William had made a list of arguments for and arguments against an election which he handed to the Prime Minister on two sheets of paper. He had previously told the Prime Minister that he thought a sound argument for the double election would be an economic one and this in due course appeared in the letter of advice.

In his letter to Sir Michael Adeane the Governor-General said "on principle too, I believe that a Governor-General should clearly consider his Prime Minister's constitutional advice, not so much from the point of view of whether there are good reasons for accepting it as from the point of view of whether there are good reasons for refusing. If there are no strong reasons against it he should accept it. In this case the only reason of weight against the advice was that it was palpably tendered to gain a political advantage. This I did not consider a justification for refusing it. Such reasons would be - if the advice were offered for corrupt reasons; were plainly against the wishes of the people; likely to make The Queen's Government impossible or were unconstitutional or disloyal. Mr Menzies' advice was more of these, and as far as taking a political advantage was concerned, the Australian people are quite aware of it and, if they feel strongly against such action, can signify so in the usual way."

Sir Michael Adeane in his letter set out on the official file dated 17 November 1955 said "if I may say so, I particularly enjoyed reading the middle paragraph of your fourth page, which reduces to very clear terms a dilemma which must always be difficult and in the past has frequently been made unnecessarily confusing."

This paragraph of Sir Michael's refers to the passage I quoted above from the Governor-General's letter.

You can well imagine my surprise at finding these two letters on a file which is an official Government House file and not a private one. You may be assured that none of the correspondence which has passed between us has found its way to any such file. I am a little puzzled and worried about what to do about these two letters which are placed where they are presumably because of the approval of the Governor-General of the day. Should they be left there or should they be placed in some special separate place? You may care to have the whole of the two letters looked at in the Palace because they are obviously very confidential and contain material of an important political kind. It seemed to me, though I was reluctant to do so, best for me to read the two letters on the official file and to give you an indication of their contents. We know of no other case where

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PERSONAL AND CONFIDENTIAL

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correspondence of this kind has found its way on to an official file but no detailed search has yet been made. If this correspondence were to come out - and twenty-two years have already passed since the letters were written - they would be used politically and the comparison between the position in 1955 and the position at today's date would undoubtedly be made.

Please assure Her Majesty on behalf of my wife and myself of our continued loyalty and humble duty.

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

PERSONAL AND CONFIDENTIAL



BUCKINGHAM PALACE

PERSONAL AND
CONFIDENTIAL

18th October, 1977.

My dear John

Many thanks for your letter of 13th October which I have sent to Canada for The Queen to see and which I know Her Majesty will read with keen interest.

I am not accompanying Her Majesty in attendance on this occasion as I am fully occupied in clearing up 28 years of accumulated papers in this office!

I think it is a good thing that the Prime Minister has come into the open about the date on which Sir Zelman should take his oath of office and I am also very glad to learn that there is to be a farewell function for you in Parliament House. What a good opportunity this would be for the Labour Party to bury the hatchet but I do not expect they will.

The Prime Minister certainly has a difficult problem to decide in respect of the date of the next election and I know that The Queen will be extremely interested to learn what his decision is when he has made it.

I know that The Prince of Wales is much looking forward to his visit to Australia and to staying with you when he is there.

Although I shall not be in Office when you reach London I know you will let me know so that we can meet on the basis of friendship rather than on official business.

*John
Martin*

His Excellency the Governor-General
of Australia.



BUCKINGHAM PALACE

PERSONAL AND CONFIDENTIAL

11th October, 1977

My dear John

I have just returned from ten days in America to find your Personal and Confidential letter of 4th October waiting for me. In the meantime it was of course shown to The Queen and I had the opportunity of saying a few words to Her Majesty about it when I saw her this morning.

The Queen is of course very interested to learn of your discussion with the Prime Minister about the date of the next election and will be very glad to receive any further information that you can give her about the likely date as matters develop.

In the meantime I have only one comment to make. The Queen has indeed announced the appointment of Sir Zelman Cowen to succeed you as Governor-General, but has not I think made any statement about the exact date of the swearing in. In so far as The Queen is concerned therefore there is I think some flexibility in respect of this. It would for instance be absurd for a swearing in to take place on polling day.

If this sort of conflicting date arises the better course might possibly be to advance the date of the swearing in by one or two days so that Sir Zelman is indisputably Governor-General before the actual election takes place.

We can however discuss this further when it is known for certain whether or not there is to be an election and on what date it is to be held.

With all best wishes

Yours truly

Martin

His Excellency the Governor-General
of Australia.

Government House,
Canberra. 2600

13 October 1977

My dear Martin,

There have been a few developments. In conversations with Sir Zelman Cowen it became obvious to me that he quite understandably was not at all happy about the possibility that his swearing in might be delayed for the reasons mentioned in my earlier letter. His view was that the decision had been made and The Queen had announced the intended appointment in July with a nominated future date and this would take it outside any convention about appointments on the eve of an election. He told me he intended to put this point of view to the Prime Minister and asked me my attitude. I, of course, said that I was ready and anxious to have things crystalised on 8 December, the date which had been in mind and that if the Prime Minister spoke to me on the subject I would say that it seemed to me appropriate for the announced appointment to proceed.

Sir Zelman did in due course speak to the Prime Minister on the subject and he, in turn, spoke to me. In the course of this conversation the Prime Minister mentioned that an exact date of swearing in, although understood between those involved had not been brought into "the public domain". He said he thought he would have a question asked which would enable him to announce the date.

Yesterday one of his back-benchers said that Members of Parliament would like to farewell the outgoing Governor-General (this in the circumstances would apply, of course, to members of the coalition parties). He asked whether any arrangements for such a farewell had been made. The Prime Minister used this opportunity to say both that there would be an appropriate farewell on one of the days immediately prior to the swearing in of the new Governor-General and this would take place on 8 December.

I understand there is to be a farewell function for me in Parliament House which doubtless will not be attended by any members of the Labor Party. Members of the Diplomatic Corps and Permanent Heads of Government Departments and others as well as Parliamentarians will probably be invited.

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Fixing a date for the actual swearing in does not mean that a final decision about swearing in has been made, in the event of an election being held but now that the date is out in the open if nothing oppositional is said it would be very difficult I think for anyone to complain about the swearing in going ahead on the 8th. The particular problems of ceremony in connection with it may be affected if everyone is campaigning.

I am told however that even if there is an election a farewell function for myself will be held in Canberra though attendances of parliamentarians and Cabinet Ministers could be affected. All of this however is subject to adjustment in the light of actual circumstances.

The date of the swearing in has been interpreted by the press as meaning that there will probably not be an election this year. My conversations with the Prime Minister have always been kept by him in the realm of options. He has always said no more than he is keeping open the option of approaching me for a dissolution to enable an early December election to take place if he comes to the conclusion that he would like it. This we discussed always in the context of his other options. I have scrupulously refrained from asking him whether he has made up his mind but the implications in what he has said are that he has not yet done so.

There is to be a meeting of the Federal Conference of the Liberal Party in Canberra beginning tomorrow and continuing throughout the weekend. This will probably help the Prime Minister to gauge the opinion of his Party. There is a great deal of opposition to an election this year as far as I can judge within the coalition parties who would stand to lose a considerable number of seats. This would almost certainly also happen in May next year, possibly to a greater extent. This difficult question of what to do about an election will have to be decided by the Prime Minister about the end of October.

On 24 September I had a long conversation with the Prime Minister in Sydney. He asked me to see him early on the morning of that day before we both left that city. The conversation was general, had to do with the economy and political options. The Gallup Polls indicate that a substantial majority of the people express themselves as not wanting an election this year. These polls have a very dubious value on a question such as this.

There are many very difficult matters for the Prime Minister to consider. They include the state of the

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economy, now and in the first half of next year, the incidence of serious strikes and the possibility of industrial confrontation on industrial issues and also on uranium and the problems of leadership within the Labor Party. I think the Prime Minister would probably like to fight the next election against Mr Whitlam and if he fights in December this undoubtedly will happen. One matter he presumably has to weigh up is whether the Labor Party may change its leader some time before a May election producing a situation in which the new leader would be still in the "honeymoon" period at the time of a May election. As you will see from this letter the situation remains much the same as when I last wrote.

We have the Crown Prince and Princess of Jordan with their suite staying in the House at the present time. They are leaving today. We look forward very much to having His Royal Highness The Prince of Wales stay with us and to the successful development of the Jubilee Appeal which that will help to produce.

My wife and I, as I previously told you, are looking forward to moving to London and Europe and to developing a new way of life about which I shall be able to have a talk with you next year. At least I hope so.

Please assure Her Majesty of the continued loyal and humble duty of both of us.

Yours ever,

John

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

Personal and Confidential



29th Sept 1977

BUCKINGHAM PALACE

My dear John

Please forgive this hurried and handwritten
reply to your letter of 21st September.

I, as you see ^{am} ~~am~~ in London and leave
early tomorrow morning for U.S.A. and Canada.

I shall be back on 10th October and will be
in touch with you then.

The Queen who is at Balmoral has
of course seen your letter and read it
with much interest.

Should there be an election on 10th
or 17th December this will clearly pose
considerable problems in regard to the date
of your "hand over" to Sir Zelman: but
let us jump that hurdle when we know

we have to!

I think Mr Whittam would find it very difficult not to accept Sir Selma as Governor General. He may not have said anything in favour of this appointment but at least, as far as I know, he has not gone on the record as opposing it. It would look very odd if he suddenly repudiated it if he gained office. I would hazard a guess that he will not do so.

I am sure The Queen will wish to receive you on the relinquishment of your office when you arrive on these hospitable shores.

With all best wishes

Yours

Martin

Government House,
Canberra. 2600

4 October 1977

My dear Martin

A short letter with two points. First I have had a long talk with the Prime Minister. This took place on 24 September so it is now perhaps out of date. We talked about his options as to an election. He said he had not made up his mind and I feel sure that this was the case at the time when we were talking. Nevertheless I had a very strong feeling that he was rather disposed to having an election in December but this is, as I see it, by no means certain. Since then he has been on a kind of campaign tour around Queensland and has been in Bourke in Western New South Wales. The press seem to believe that an election is on but I do not think the idea is very popular amongst the Prime Minister's supporters including members of the Ministry. There will inevitably be a loss of many seats.

He is to meet the Federal Executive of his party in mid-October and will wait until then before making his final decision. I think he will also keep his own mind open and not come to any decision for another two or three weeks. I am enclosing a copy of today's editorial in the "Financial Review" which gives one newspaper's impression of his allegedly complete domination of the coalition parties.

The second point is to do with my successor, Sir Zelman Cowen, who with his wife has been staying with us. He raised with me the matter that I discussed with you in my last letter, namely the possibility of his swearing in being delayed. He is not at all happy about this and can see no reason why this course of action should be adopted. His attitude, and I must say I think there is a great deal to be said for it, is that The Queen has dealt with the matter and decided it. She has made an announcement. The convention that appointments should not be made in the build-up period to an election should not cover a situation like this. He is to be having dinner with the Prime Minister this week and will doubtless try to have this sorted out. I think the application of the theory

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PERSONAL AND CONFIDENTIAL

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about appointments immediately prior to an election in this particular case is probably of bureaucratic origin. There are obvious dangers in it and perhaps this is the point. If by any chance the Prime Minister decides upon a December election and loses it and if Sir Zelman has not been sworn in by then I suppose it is not beyond the bounds of possibility that Mr Whitlam may say that the appointment is of a person who is personally a fine man but not the sort of person he would like to see at the present time as Governor-General. I do not think that this is likely especially as Sir Zelman tells me he had a pleasant telegram from Mr Whitlam. However, once a campaign gets going it could be bitter and anything could happen. Mr Whitlam has said nothing publicly about the appointment.

As I said in my last letter all of this will be sorted out once we know whether an election is to be held or not.

Mr Whitlam is still under attack within his own party.

My wife and I are off to Western Australia tomorrow for a farewell official visit of five days so this is my last chance to send you a word or two of background information for the time being.

Please assure Her Majesty of the devoted and humble loyalty and duty of my wife and myself.

*Yours ever
John*

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

PERSONAL AND CONFIDENTIAL

FRASER: PARTY LEADER OR ROGUE ELEPHANT

As of now Malcolm Fraser has more power than this country has ever accorded a single individual.

Nothing illustrates this critical point better than the speculation on whether there will be an early election.

All the talk proceeds on the simple and correct assumption that the decision is solely that of Malcolm Fraser.

It is now taken for granted by all in politics that the Cabinet, that the Parliamentary Liberal Party, the party machine and, indeed, the party's traditional supporters, are unable to deter Mr Fraser once he has made up his mind to pursue a particular course.

The systems of checks and balances which political institutions have either in written constitutional form or in the form of convention have been suspended for Malcolm Fraser.

It is, for example, doubtful that one Liberal member of the Cabinet is actually enthusiastic about the idea of a premature election.

The National Country Party ministers can be taken to be in favour of the idea because one result of the election would be the strengthening of their party's position within the coalition.

It is accepted that Mr Fraser would win an early election, though this confi-

dence is not entirely justified by the opinion polls, and that he would lose up to 20 Liberal seats.

If this happened the National Country Party would once again be in a position to threaten the Liberals with withdrawal of support. That bargaining chip is not available to the National Country Party at the moment.

The Liberal Cabinet ministers who do not favour an early election are disinclined to confront the Prime Minister with their doubts and objections.

This reluctance to beard the leader stems from a Fraserian definition of loyalty, a word used with increasing frequency in Liberal circles these days.

What we are seeing more publicly in the early election talk is the way in which the Fraser Cabinet operates.

The most obvious feature is the total domination by Mr Fraser.

The second feature is a preoccupation with short-term political considerations, minimal attention being paid to governing.

The reason Mr Fraser wants an election is that he feels he can get himself another three years by going now. He has absolutely nothing else in

mind — no long-term economic strategy, no major issue on which he is seeking a genuine mandate.

The implications of both these aspects of the early election talk go beyond what that election will decide.

Even with the wisest of men it is dangerous for a political party to release to him a monopoly of power.

Mr Fraser is not the embodiment of Australian Liberalism. He is a most idiosyncratic politician who has arrived where he has by a process of accidents and manipulation.

You do not have to go far to find examples of Mr Fraser's day-by-day political battlefield style. Only last week he was quite seriously postulating the proposition that one oil company was failing in its national duty by locating its petrol outlets only where business was best.

If anyone else had said that he would have been dismissed as some sort of socialist economic crank.

Instead such sentiments come from a Liberal Prime Minister of Australia.

Merely by raising the concept of national duty Mr Fraser invites serious people to ponder what our Prime Minister is likely in the future to define as patriotism.

THE AUSTRALIAN

FINANCIAL REVIEW

TUESDAY, OCTOBER 4, 1977

The second aspect of the early election talk that causes concern is the Prime Minister's obsession with short-term politics.

While it would be nonsense to worry about any Prime Minister who constantly had his finger on the political pulse of the nation there is a time when this in itself can become obsessive and destabilising.

Mr Fraser has reached that.

His personal history reveals a disturbing capacity for creating drama and tension around him.

An early election is consistent with that.

Consequently, while the election itself may not be cause for concern, it is if it is a symptom of something of more continuing importance, namely, a Prime Ministerial personality and psychology sustained only through political hype.

Malcolm Fraser is Prime Minister because he leads the Liberal Party. It has deferred to him in a quite unprecedented fashion.

It is about time that the party realised the danger inherent in such a situation.

It is about time that the checks and balances were reactivated.



BALMORAL CASTLE

13th September, 1977

My dear John

Thank you very much for your letter of 8th September about the resignation of Mr. Ellicott from his office as Attorney General. The Queen has seen your letter and read it with much interest with particular reference to the constitutional position of the Attorney General.

As you probably know, Mr. Silkin, the British Attorney General, was recently involved in a case and whilst not in any way similar to Mr. Ellicott's it did raise the question of responsibilities of the Attorney General to the Government and to the public. I shall study Mr. Ellicott's resignation speech with great care and it is very useful for us to have it on our files.

I can well imagine that the Attorney General's resignation, coupled with the continuing trouble over the uranium issue, will make it very difficult for Mr. Fraser to decide when to appeal to the electors for a fresh mandate.

As you say, it may well be that your last three months as Governor-General will not lack the excitement which seems to have dominated your time in office!

With all best wishes

Yours sincerely

Martin

His Excellency
the Governor-General of Australia.

Government House,
Canberra. 2600

21 September 1977

My dear Martin,

Thank you for your letter of 6 September.

The political scene has changed a little in that the Labor Party has been returned with an increased majority in South Australia and has had some success in the Local Government elections in New South Wales. The Premier of Queensland is almost certain to be holding an election in November. This will probably be announced at any moment. The Prime Minister accordingly in the existing and expected economic situation will have to make up his mind about whether to go to the people in December or wait until May.

Mr Whitlam said in a public television interview that he believes the House of Representatives should go to the people at the same time as the half Senate election. The holding of these two elections at the same time did not become constitutionally necessary because of the defeat of the recent referendum designed to produce that result, but 62% of the Australian people voted in favour of a scheme along those lines and Mr Whitlam argues that because the people obviously want a joint election the proper thing to do is to have one.

The referendum was defeated despite the large popular vote in favour of the amendment because there were not majorities in Western Australia, Queensland and Tasmania.

Mr Whitlam accordingly argues that May is the time when the joint election should be held and says that it should not be held in December. There is a great deal of press speculation about what is going to happen and, because of doubts about further economic deterioration, it is regarded as a real possibility that there will be a December election.

The Prime Minister will not have to make up his mind until about the second half of October and he will not have to announce his decision until the early part of November if the election is to be held in December. Alternative dates are 10 and 17 December with 10 December being favoured.

This possibility has been taken so seriously that its consequences on technicalities of my departure and Sir Zelman's swearing in have had to receive attention.

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It is apparently thought that if an election is decided upon it would not be right to swear Sir Zelman in a few days before such an election is held. Because of the possible difficulties in getting a final result of the election, if it is close, and because of the difficulties in forming the new ministry assuming the present government wins, the swearing in of Sir Zelman may have to be delayed until the end of January.

However he is proceeding, so I understand, and so am I on the basis that there will not be an election and we are making our plans accordingly. My bookings will be made and the Government will be moving me and my goods to London where I am to be provided with an office and other facilities.

If an election is held it will open up the possibility for me whether I proceed overseas as planned with an Administrator acting. I should on this hypothesis remain Governor-General until my successor is in fact sworn in. One possibility is that I would cancel the bookings and live quietly at Admiralty House until the time comes. In the meantime it would be necessary for me to swear in the new ministry if it comes from the present Government parties.

The other possibility is that an election will be held and it will be won by the present Opposition. This raises an awkward question because Mr Whitlam has not said, as far as I know, a single word of approval of the appointment of Sir Zelman. It is obvious enough that Sir Zelman has all the qualities which Mr Whitlam would regard as a disadvantage. He certainly would not be a figure head, rubber stamp or puppet but would see the office as carrying with it discretions, the existence of which Mr Whitlam denies.

It is therefore a possibility, one hopes a remote one, that he would not regard himself as bound, after an election, to appoint a Governor-General whose qualities are different from those he would want himself. As he has to have a Governor-General it is a possibility that he might wish to select, say, an absolutely "reliable" Labor man.

I would not wish to stay here in the event of a Labor victory. My Commission requires me to remain as Governor-General until my successor is sworn in and I have not examined whether there may be a way of coping with the position that would arise, so far as I am concerned.

I have not talked about these matters with the Prime Minister but his senior public servant who looks after Government House and who is attending to my departure

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and Sir Zelman's arrival has discussed these matters with me in detail and also, I believe, with Sir Zelman. We are therefore not talking about a matter which is not receiving top level attention. The public servant in question, Mr Yeend, is not privy to the Prime Minister's intentions and I doubt very much whether the Prime Minister has yet made up his mind but the possibility is serious enough for the problems outlined in this letter to be receiving attention.

By the time Sir Zelman reaches London all issues will be resolved. Of course by then it will be known whether there will be an election or not. If there is no election the complications I mention will not arise.

Turning to another matter there was a censure motion in the Labor Caucus yesterday directed against Mr Whitlam because of a statement he made in the same television interview as is referred to above. He is said to have made a statement about our relations with Indonesia and Timor inconsistent with the Labor Party's policy as settled at its Perth Conference in June. The motion which was moved was "that this Federal Parliamentary Labor Party censure Mr E.G. Whitlam for his public repudiation on the ABC television programme Monday Conference on September 19 of decisions of the recent National Conference and decisions of Caucus at its meetings on September 7 and 14 on the subject of East Timor".

The censure motion was not actually put to the Caucus but instead a motion was moved and passed as a last warning to him that a further breach of party policy would not be tolerated. This motion was carried by 31 votes to 17 and in order to prevent the censure motion being put, he himself, according to the press, voted for the "last warning" motion. The press reports a fairly bitter debate in which the question of his resignation in favour of a younger man is said to have been raised.

Returning to the first matter dealt with in this letter I should, of course, say that I hope that none of the complications adverted to will arise.

My wife is busy planning a European holiday for us before we arrive in London where we shall be confronted by the problem of finding somewhere to live.

Please assure Her Majesty of our humble duty and loyalty. I hope that it will be possible to have an

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audience with Her Majesty at some convenient time after our arrival in the United Kingdom and trust that she will feel it possible to permit this.

Yours ever

John

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



BALMORAL CASTLE

6th September, 1977

My dear John

Thank you very much for your letter of 1st September which The Queen has seen and read with the customary interest and attention she gives to all your letters.

Your account of your visit to Manila for the World Peace Through Law Center meeting was interesting and amusing and one must hope that President Marcos will fulfil the assurance he gave to the Conference.

What you say about the political scene in Australia does indeed indicate that politics there are in a volatile state, and I can imagine that the recent polls must give Mr. Fraser much occasion for thought about the timing of the next election.

I have no doubt that you are right in thinking that the Prime Minister is keeping his options open and will not make up his mind until he has to.

The Queen sends you both her best wishes as do I.

His Excellency
the Governor-General of Australia.

John
Marina

Government House,
Canberra. 2600

8 September 1977

My dear Martin,

I sent a telegram on Tuesday about the resignation of Mr Ellicott, Q.C., from his office as Attorney-General. He had just returned from overseas and, whilst overseas, he had made up his mind that he was on a collision course with the Prime Minister over the case at Queanbeyan.

He had been to a Law Ministers Conference in Winnipeg and had heard the unanimous assertion of their claim to complete independence in their exercise of their discretion in matters of criminal law. No political direction was regarded as tolerable. He apparently came to the conclusion that the matter would have to come to a head on his return and it did.

The central point was the decision of the Cabinet to refuse to allow the Attorney-General access to the evidence of public servants and to the files of the Public Service relating to the Loan Affair upon the ground that there was a convention that a government should not have access to information as to the deliberations of its predecessor. The Attorney-General's view was that such a convention could not apply to prevent an investigation into the possible commission of a crime.

In fact the Attorney-General decided at first to take the proceedings over and to call all the relevant witnesses without having the benefit of prior investigation of the facts as to which they could speak. It would I think have been an impossible position for him, or rather his counsel to take this course if bound by a Cabinet decision to claim total privilege for all written and oral evidence coming from Crown sources. If he were conducting the proceedings this reversal of the previous Cabinet decision not to claim a privilege for all published material would have made it difficult for him to persist with the tender of such material. A private prosecutor could do so, resisting the claim of privilege.

As to oral evidence Cabinet was most unlikely to reverse its decision to claim privilege on behalf of the Crown for all senior public service witnesses and this would have made it difficult, indeed impossible, for the Attorney if he took over the proceedings to call them.

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Mr Justice Murphy's letter was a help in enabling the Attorney-General in all the circumstances to decide not to take over the proceedings leaving it to the private prosecutors to argue that the claim of privilege should be denied by the court.

Whilst the Attorney was away the Government refused to pay the private prosecutor's costs though it had agreed to pay the defendants' costs.

The Attorney interpreted all of this as being calculated by Cabinet to ensure that the private prosecution was aborted whilst denying him the right as Attorney-General properly to consider whether he should take it over. So he decided to resign. The Government takes the view that the people decided publically on 13 December 1975 where the guilt lay on the loan issue and things should be left to rest on that political decision. Had Mr Ellicott been allowed to investigate the matter fully, and Mr Whitlam and Mr Connor appeared to have no objection to this, he would probably, in my opinion, have ended up coming to the conclusion that there was insufficient evidence to justify continuing the criminal persecution. The irreconcilable clash occurred, on the political and bureaucratic side, because of support for the convention that a previous Government's records and information were sacrosanct and, on the Attorney's side, because he believed no such convention could prevent a criminal investigation from being undertaken.

Mr Ellicott's reference to a "collision course" indicates that he realised that he could produce no change in Cabinet opinion and that his discretion was to be bound by political decision.

I am enclosing the full text of Mr Ellicott's resignation speech from yesterday's Sydney Morning Herald and the editorial from that paper and from the Financial Review. I do this because the constitutional point is very important and you will want, I believe, to have someone look at these documents for the benefit of the Palace.

Whether this development will affect the approach of the Prime Minister to the timing of the election remains to be seen though the Financial Review this morning says that it is a factor which will prevent a December election.

We have had further violent demonstrations on the uranium issue and trouble is brewing about industrial relations legislation. The resignation could be interpreted as a first sign of the breaking up of Governmental stability but this will probably not weigh heavily in the Prime Minister's mind. If a confrontation issue, with real law

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and order implications, develops Mr Fraser may decide to go to the people in December but he will have to watch, in the current volatile situation, that he is not moving in an artificial or provocative way. He faces a very difficult decision. Wednesday's Bulletin carries the latest Gallup poll indicating, after the Budget, a further drop in Government support which is down to 40%. This is said to indicate a Labor victory if an election were held now.

The Prime Minister has played the resignation in a very low key fashion. He has not used the opportunity to reshuffle his Cabinet and this is interpreted by some as indicating that he may still be keeping his options open for a December election.

The A.C.T.U. executive has decided that a referendum should be held on uranium but this has to go to their full Conference later this month and is inconsistent with A.L.P. policy which requires a moratorium on mining and export. The Government will reject the idea of a referendum in which event a total A.C.T.U. ban on mining and export is a possibility though individual unions may refuse to comply. If the A.C.T.U. comes down in favour of this policy the Government, in rejecting a referendum, may embrace the idea of an election on the uranium issue, saying it needs a mandate in a confrontation situation.

You will probably agree that we are having, as usual, an exciting and troublesome time out here. Many people in business are worried about the state of the economy and the Government's apparent failure to provide any stimulus to recovery. A central question is the very high interest rate. Pressure is developing for Government action to lower it but on this point there is much difference of opinion.

My last three months will doubtless pass with the breathtaking speed of my whole Governor-Generalship.

I look forward to seeing you at Eton and to a good talk about "retirement".

Please assure Her Majesty that I regard my whole period in office as having been a stimulating opportunity to serve her in loyalty and humble duty as I shall always do.

Yours ever
John

Lieutenant Colonel the Right Honourable
Sir Martin Charteris, G.C.B., G.C.V.O.,
O.B.E.,
Private Secretary to The Queen,
BUCKINGHAM PALACE,
LONDON ENGLAND



The Ellicott resignation

The text of Mr Ellicott's speech to the House of Representatives yesterday.

Mr Speaker, the loans affair has claimed another victim. Its tentacles have stretched into 1977. It has caused yet another resignation, voluntary though it be.

As a preface to what I wish to say, I would like to read two passages — one from a speech I made on July 9, 1975, and the other from a speech of October 21, 1975.

On July 9, 1975, I said: "We now know who gave the legal advice that the loan in fact sought could be dressed up as a loan for temporary purposes."

"The oral advice of the then Attorney-General was given. Let us just read what was stated because it is very interesting. The former Attorney-General advised orally:

"In the exceptional circumstances I have outlined the borrowing could probably be regarded as a borrowing for temporary purposes within the meaning of the financial agreement."

I do not want to be discourteous to a justice of the High Court, nor do I want to be discourteous to somebody I served under.

But that is not the sort of advice that honest men would seek on an occasion like this with this extraordinary loan in their minds.

It is not the sort of advice that honest men would seek if they were going off to the Governor-General to tell him that this was a loan for temporary purposes.

I have given this matter the most careful thought but I cannot believe that any honest man could advise the Governor-General to approve of that minute if he knew that the borrowings were for 20 years and were to meet the long-term energy purposes of the Government.

I do not believe an honest man could do it. I believe it was an illegal and unconstitutional act.

On October 21 I said this: "For many months I watched the Government's incompetence. I watched it last September, I watched it into March. I watched a minister dismissed and I watched another minister dismissed. Then came the events of July 9 last. That was when I resolved, in no uncertain terms, to throw myself behind the throwing out of this Government as soon as possible."

"That day and the documents produced revealed the greatest dishonesty that one could ever find in government."

I saw the situation then, I said so then and I made a charge then. I appealed to honourable members opposite to set up a royal commission

because I wanted some questions answered. I did not want a government that was disreputable or dishonest. I wanted a government that was decent.

I would not mind a little bit of incompetence, but I did not want dishonesty for a moment. I wanted a royal commission. No trumped up situation in the Senate did I want. I wanted a royal commission where people and ministers could appear and give their evidence and clear up this terrible mess.

When I became Attorney-General on December 22, 1975, proceedings had already been instituted on November 20 by Danny Sankey against the honourable member for Werriwa (Mr Whitlam) and others.

For ease of reference I will refer to these proceedings as the "Sankey proceedings."

Honourable members will recall that one of the charges in these proceedings was that the defendants had conspired with each other to effect a purpose that was unlawful under a law of the Commonwealth.

The charge was laid under Section 86 of the Commonwealth Crimes Act and was therefore a Commonwealth matter.

'Special role'

The special role of the Attorney-General in criminal matters in Australia and the United Kingdom is well known.

It has been the subject of many statements which are set out in "Edwards on the Law of the Crown," the description of the role by Sir Hartley Shawcross (created Baron Shawcross in 1959) is well known.

I think the true doctrine is that it is the duty of an Attorney-General, in deciding whether or not to authorise the prosecution to acquaint himself with all the relevant facts including, for instance, the effect which the prosecution, successful or unsuccessful as the case may be, would have upon public morale and order and with any other consideration affecting public policy.

In order so to inform himself he may, although I do not think he is obliged to, consult with any of his colleagues in the Government and indeed, as Lord Simon once said, he would in some cases be a fool if he did not.

On the other hand the assistance of his colleagues is confined to informing him on particular considerations which might affect his own decision and does not consist and must

Tentacles of loans affair stretch into 77 — Ellicott

I had in mind that when the evidence was collected through the Crown Solicitor I should seek the advice of independent counsel as to whether it established a prima facie case.

I first approached the Solicitor-General and the secretary and other officers of my department who were able to give material evidence. In due course they supplied these statements.

Statements were also obtained from officers of the Executive Council — two in number.

I decided to seek a statement from Sir Frederick Wheeler, Secretary of the Treasury. However, he took the view that because I was seeking evidence of what took place during the period of the Labor Administration, he was not entitled to know his evidence or to see any relevant file.

As a result of counsel's advice and having regard to the fact that all evidence was not before counsel, I decided that it was not appropriate for me at that stage to take over the proceedings. Accordingly, I informed the informant's solicitor on November 12, 1976.

During November, 1976, a question of privilege arose. This is a matter which has arisen on the basis of Crown privilege, it is a matter which has arisen on the basis of parliamentary privilege.

To put it very shortly and succinctly, Cabinet decided that privilege should be claimed in respect of evidence and documents except those documents which, in fact, had been published, and they included documents such as the minute and explanatory memorandum of December 1976, which, in fact, had been published in this House and in other places and in Telex which had been sent overseas.

On April 20, 1977, three of the defendants, that is those defendants named Mr Justice Murphy, sought legal aid. In view of certain things that have appeared in the press may I say that it is not a part of the Attorney-General's discretion to determine a matter of legal aid.

That is a matter for the Government. It is a matter of the appropriation of funds. It is a matter that had to go to Cabinet.

Cabinet had before it certain advice and certain documents and, in May last, Cabinet decided, although it was not communicated until a later date, that the costs of the defendants should be paid.

At that time also a decision was made by Cabinet to alter the decision on privilege insofar as it related to documents which had been published. That is to say, it was decided in relation to those documents a claim should be made in future that they, too, are privileged.

I also thought that I should seek the assistance and the agreement of Cabinet in the first instance for the reason I have just mentioned.

The matter came before Cabinet on July 16 last.

I sought access to all records and I sought permission to interview and obtain statements from persons who were in the employ of the Commonwealth or its instrumentalities.

Cabinet refused to agree that I should have this access. Cabinet made it plain to me that in its view I should take over the proceedings and terminate them.

I took the position that I could not do so unless I first ascertained all the material facts according to my duty.

I also made it clear that only I could exercise the discretion. I have to say that in making this decision I regarded Cabinet as preventing me from exercising my duty. I had an application to take over the proceedings.

I needed to know all the evidence.

I regarded Cabinet as trying to control me in the exercise of my discretion by suggesting that there was only one option — termination of the proceedings.

I have to say with great regret that I regard Cabinet as having acted wrongly on that occasion. I do not believe that Cabinet should prevent the law

I took strong exception to that decision by Cabinet, and I resigned at the time. I then discussed the matter with the Prime Minister. As a result of that discussion it was agreed that that particular question would be resubmitted to Cabinet and that I would abide by the decision of Cabinet.

The Prime Minister was going overseas at that time and the matter would be resubmitted after he returned.

Towards the end of May, at their request, I saw Messrs Whitlam and the late Rex Connor in my office. During the course of that discussion — do not propose and I do not think it is relevant to go into the detail — reference was made to the fact that I had not taken over the proceedings.

I said to the two defendants that they had not asked me to take over the proceedings, that that was a matter for them.

I said that they could go away and talk to their solicitors and that if they wished to make an application to me to take over the proceedings it was open to them to do so.

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Honourable members will appreciate, however, that counsel did not have the testimony of people like Sir Frederick Wheeler, Sir Lenox Hewitt, Mr John Menadue, Mr Larkin and others, nor the relevant files. It was advice based on less than all the material evidence.

On March 29, 1976, I received an application by Sankey's solicitors to take over the proceedings.

Honourable members will recall that during 1976 there were proceedings in the Supreme Court of NSW, and from recollection those proceedings did not conclude until October, 1976.

As a result of counsel's advice and having regard to the fact that all evidence was not before counsel, I decided that it was not appropriate for me at that stage to take over the proceedings. Accordingly, I informed the informant's solicitor on November 12, 1976.

During November, 1976, a question of privilege arose. This is a matter which has arisen on the basis of Crown privilege, it is a matter which has arisen on the basis of parliamentary privilege.

To put it very shortly and succinctly, Cabinet decided that privilege should be claimed in respect of evidence and documents except those documents which, in fact, had been published, and they included documents such as the minute and explanatory memorandum of December 1976, which, in fact, had been published in this House and in other places and in Telex which had been sent overseas.

On April 20, 1977, three of the defendants, that is those defendants named Mr Justice Murphy, sought legal aid. In view of certain things that have appeared in the press may I say that it is not a part of the Attorney-General's discretion to determine a matter of legal aid.

That is a matter for the Government. It is a matter of the appropriation of funds. It is a matter that had to go to Cabinet.

Cabinet had before it certain advice and certain documents and, in May last, Cabinet decided, although it was not communicated until a later date, that the costs of the defendants should be paid.

At that time also a decision was made by Cabinet to alter the decision on privilege insofar as it related to documents which had been published. That is to say, it was decided in relation to those documents a claim should be made in future that they, too, are privileged.

I also thought that I should seek the assistance and the agreement of Cabinet in the first instance for the reason I have just mentioned.

The matter came before Cabinet on July 16 last.

I sought access to all records and I sought permission to interview and obtain statements from persons who were in the employ of the Commonwealth or its instrumentalities.

Cabinet refused to agree that I should have this access. Cabinet made it plain to me that in its view I should take over the proceedings and terminate them.

I took the position that I could not do so unless I first ascertained all the material facts according to my duty.

I also made it clear that only I could exercise the discretion. I have to say that in making this decision I regarded Cabinet as preventing me from exercising my duty. I had an application to take over the proceedings.

I needed to know all the evidence.

I regarded Cabinet as trying to control me in the exercise of my discretion by suggesting that there was only one option — termination of the proceedings.

I have to say with great regret that I regard Cabinet as having acted wrongly on that occasion. I do not believe that Cabinet should prevent the law

I took strong exception to that decision by Cabinet, and I resigned at the time. I then discussed the matter with the Prime Minister. As a result of that discussion it was agreed that that particular question would be resubmitted to Cabinet and that I would abide by the decision of Cabinet.

The Prime Minister was going overseas at that time and the matter would be resubmitted after he returned.

Towards the end of May, at their request, I saw Messrs Whitlam and the late Rex Connor in my office. During the course of that discussion — do not propose and I do not think it is relevant to go into the detail — reference was made to the fact that I had not taken over the proceedings.

I said to the two defendants that they had not asked me to take over the proceedings, that that was a matter for them.

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Mr Justice Murphy

"Although I do not consider their consent to be necessary, I would be glad to know whether your clients have any objection to me or persons on my behalf having such access or interviewing and taking statements from such persons for the purposes of the request being considered."

"I would also like to know whether for that purpose each of your clients would at an appropriate stage wish to be interviewed."

"I note that in the House on April 28 last your client, the Hon E. G. Whitlam, said in relation to the matter: 'The normal procedure in criminal cases is for prospective defendants to be interviewed by the police so that their statements may be considered before informations are laid.'"

"That did not happen in this case. On receipt of your reply I will consider the matter further."

On June 24 I received this reply: "We are instructed to advise that our clients would have no objection to you, or persons on your behalf, having access to your documents and interviewing and taking statements from persons in the circumstances to which you refer."

"We also advise that if, after you have considered such documents and/or the statements of such persons, you consider there are matters requiring clarification and/or additional information in which our clients or any of them can assist, we would be pleased to provide you with any such clarification or information upon request."

Honourable members will see that at this stage I then had an application by three defendants to take over the proceedings.

It was on the basis of the consent of those defendants to having access to witnesses and having access to documents in the possession of the Commonwealth.

It seemed to me that I should then seek Cabinet's approval to my having access to persons on whose statements I was based in looking into the affairs of a previous Government.

The view I took at the time was that there was no objection and could be no objection based upon looking into the affairs of a previous Government.

I had in mind that I would appoint a special counsel and that this special counsel would have submitted to him all the statements and all the relevant documents and advise me as to whether there was a prima facie case against the defendants which should go to a hearing.

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officer from investigating any criminal matter.

This is a criminal matter. There are politicians involved, in that sense one can say that it is political.

But the fact is that these are criminal proceedings before a court. It is a criminal matter and I believe that a basic principle is involved.

That basic principle is that where the law officer of the Commonwealth believes that there is a matter which ought to be investigated for the purpose of determining whether some breach of the criminal law has been committed, he should not have the obstruction of Cabinet. He should have every assistance which Cabinet can give.

And if Cabinet has confidence in the law officer it will not question him.

In this particular matter it seemed to me that Cabinet had a duty to assist me in the determination of the application which was before me. It was suggested that I already had enough evidence.

This, of course, is patently not so. I did not have the evidence of Sir Frederick Wheeler or Sir Lenox Hewitt.

I did not have the evidence of Mr John Menadue or of Mr Larkin and there may have been others. These were all material witnesses.

I did not have enough evidence simply because I had before me statements from the Solicitor-General and officers of my department.

It was suggested that there was no justification for going any further, that it ought to be patently clear that the proceedings ought to be terminated.

The Prime Minister on July 9, 1975, when Leader of the Opposition, said: "Let us come to that more serious charge which goes to the very integrity of Australian institutions. Facts are before the public which raise the strong possibility that there was an illegal conspiracy to defraud and to deceive."

"Facts now before the public indicate a deliberate attempt to avoid by a subterfuge the constraints of the Constitution and to defraud the States."

Let me read what the Prime Minister, when Leader of the Opposition said on August 21, 1975:

"The Prime Minister's involvement began when, on December 13, he signed an Executive Council minute which was an evasion of the Constitution, a conspiracy to defraud the Loan Council."

I did not think I would have to convince the Prime Minister that I would need to look at all material facts and that I would have to interview or have interviewed people such as Sir Frederick Wheeler and others — anybody who could give material evidence on these matters.

"Material facts"

In relation to this case, which will continue to stay with us for some time, I do not believe that the proper course is other than for all the material facts to be looked at and considered.

The course that I was proposing was that those facts be looked at not by me but by an independent counsel who would advise me as to whether there was sufficient evidence in the circumstances.

On July 26 Cabinet agreed, however, that it should be left open to me, as Attorney-General, in respect of the application by the defendants, to pursue the course I might determine.

I therefore decided to make another direct approach to witnesses. I must say that in doing so I did not expect much success, and that was the result.

I approached Sir Frederick Wheeler. I approached the head of the Department of National Resources. I approached Mr Larkin. I approached Mr Carmody.

The result of those approaches was that I still was not able to obtain statements or files in relation to this matter.

I then decided that I might consider taking over the proceedings and calling these witnesses, that is to say, not personally, but through a chosen counsel.

I then gave that matter consideration and I decided that it was a proper course that I could take.

It seemed to me that in the circumstances it was a course

Continued Page 15

The battle is not yet over — Sankey's QC

By GRAHAM WILLIAMS

Danny Sankey, Sydney solicitor and 29-year-old son of a Polish cocktail sausage manufacturer, plans to continue the criminal proceedings that have dragged on for 21 months and cost both sides an estimated \$175,000.

The case that began before Mr D. F. Leo, SM, in the Queenbeyan Court of Petty Sessions back on December 8, 1975, is due to resume there on September 26.

Mr Whitlam and two of his former ministers, Dr Cairns and Mr Justice Murphy, will once again face the conspiracy charges that were initiated on November 20, 1975 — just nine days after the Whitlam Government was dismissed.

The Queenbeyan Court seems an unlikely setting for a case of such vast cost, such complexity and such ramifications that reach to the heart of our parliamentary system.

Mr Sankey has instructed that we proceed with the case," his barrister, Mr David Rofe, QC, said last night.

The Federal Government has decided to pay the costs of the defendants, estimated, date, about \$100,000 — but will not pay the estimated \$75,000 costs of Mr Sankey.

In the 21 months it has dragged on, the case has gone twice to the NSW Supreme Court, twice to the NSW Court of Appeal, to the High Court — and now back to Queenbeyan.

And ironically, Bob Ellicott, the man who resigned yesterday from Cabinet, was one of those who lit the fuse for the case that has now consumed him.

The case has its genesis in the famous loans affair debate in Federal Parliament of July 9, 1975, when the House of Representatives was called for a special one-day sitting to debate the issue.

It was Mr Ellicott, Member for Wentworth, who said in a trenchant speech: "Detect fabrication and falsify have all appeared in the events which flowed from the decision to seek (\$US4,000 million) overseas funds in this illegal and unconstitutional manner."

"I believe there is a prima facie case against the Government that it has deceived the Governor-General, a case that it has produced a document that is false, a case that there is deception."

"The action was unconstitutional, unlawful and based on deception. That is the charge. There is a prima facie case."

Mr Ellicott clearly saw that a case could be established in court. The Liberal Party obtained the advice of senior counsel, Mr William Deane, who was of the strong opinion that the loan could not have been for temporary purposes and as such was probably in breach of the financial agreement and illegal.

It was this affair that gave Mr Fraser his "reprehensible circumstances" to justify blocking the Budget and forcing the dismissal of the Whitlam Government on November 11.

But Mr Sankey and other lawyers were also keenly interested in the matter — and it was Mr Sankey who moved first, 17 days before the Whitlam Government was dismissed.

On October 25 he submitted a petition to the House of Representatives through Mr Ellicott seeking leave to see certain documents tabled on July 9.

On November 20, 1975, just nine days after the dismissal of the Whitlam Government, he laid information at the Queenbeyan Court.

This charged that the Prime Minister, Mr Whitlam, and three of his ministers, Dr Cairns, Mr Connor and Mr Justice Murphy, were party to a criminal conspiracy in conspiring to raise \$4,000 million in loan funds in breach of relevant acts.

The other charge alleged that they conspired to deceive the Governor-General. Sir John Kerr, in that they recommended for his approval that Mr Connor be authorised to raise this loan in contravention of the same acts.

The nub of the Sankey case



Mr Justice Leo

is that the attempted loan raising was unconstitutional, that it was not for temporary purposes and should not have been submitted to the Loan Council for approval.

When the case came before Mr Leo on December 8, counsel indicated it might "take some little time." Hardly an overstatement.

Legal argument developed over whether Mr Leo had jurisdiction to hear the case and, after six days' argument, Mr Leo gave a reserved decision on February 13 that he had jurisdiction.

On April 5, Mr Whitlam and Mr Connor began proceedings in the Supreme Court which then went to the NSW Court of Appeal, which found against them and ordered them to pay Mr Sankey's legal costs — later taxed at \$11,000.

The case went back to Queenbeyan, where the issue of parliamentary and executive privilege was argued.

On January 19, Mr Leo disqualified himself from the case on the grounds that since he had issued writs for defamation he might be seen to have a personal interest in the outcome.

Mr Sankey sought a writ of mandamus to prevent the

The voice of the master



Mr Katz... his master's voice.

from DAVID BALDERSTONE
In Jerusalem

SAMUEL Katz doesn't have Menachem Begin's penchant for ties and suit coats — like most Israelis, he prefers an open-neck shirt. But that, it seems, is where the differences end.

"The reason for the absence of peace in the Middle East is that the Arabs don't want to see us in any territory," Mr Katz firmly declares. "People who do not understand the problems of the Middle East believe the Arabs would give us peace if we withdrew to the pre-1967 war lines. We Israelis don't have to fall for this."

Mr Katz, a writer and politician, has settled into his Jerusalem office now as the new Israeli Prime Minister's most senior aide and troubleshooter. He is recognised to be one of the most influential people in the new administration. He has been described as his master's voice.

Samuel, or Schmuel, Katz first met Menachem Begin in Poland in the 1930s. He fought against the British administration in Palestine as a member of the Irgun — the extreme Jewish guerrilla movement commanded by Mr Begin.

Soon after the Israeli elections this year, Mr Begin sent his old friend Samuel Katz to the United States. The mission was aimed at improving the image of Mr Begin and the Likud, which was suffering from an extremely hostile world press, particularly in the United States.

Forcefully articulate

He is not the kind of man to change the hard-line image of the new Israeli Prime Minister. He doesn't try to. But he is forcefully articulate in explaining the reasons for the firm stands of the new Government — as I found out during a long talk in his office.

The passionate refusal of Israel to agree to participation by the Palestine Liberation Organisation at Geneva is based only partly on the fact that the PLO is seen as a terrorist organisation operating against civilian targets within Israel.

The more significant reason for refusal to deal with the PLO is based on the Israeli Government's belief that the Arabs still harbour the desire to eliminate Israel altogether — to drive the Jews into the sea.

This view would not change until the Arabs agreed to sit down face to face and negotiate peace treaties. Only sovereign States, Israel says, can sign peace treaties.

The Arab Governments, Mr Katz says, have done a tremendous job of turning the problem around — of focusing attention on the "so-called Palestinian problem" rather than their aim of elimination of Israel. "I take my hat off to them."

Withdrawal rejected

He says that if Israel withdrew to the pre-1967 war lines — and a width of 15 kilometres at the narrowest point — the Arab aim of elimination would become clear again.

"The chances of war in the Middle East would be greater if Israel withdrew from the occupied territories without proper peace treaties. The reason for the absence of peace in the Middle East is that the Arabs don't want to see us in any territory."

"If they can get around to sitting down with us face to face at a peace conference then they will be beginning to indicate they are considering alternatives to our elimination."

"We will not accept the status of someone they will not talk to directly because what we would be negotiating would be our existence — or territory vital to our existence."

Mr Katz said the PLO had never been a party to Geneva — and nothing the PLO did would persuade Israel to allow PLO participation.

"We will not talk to the PLO and we do not like the idea of the United States talking to the PLO, talking to that pack of murderers."

British 'disease' in beholder's eye

from H. V. HODSON
in London

THE outburst by Mr Ian Sinclair, Australia's Minister for Primary Industry, against immigrants from Britain who were importing the "British disease" of militant trade unionism did not get under British skins.

Those of the British public who paid more than momentary attention can be divided into people on the Left who think it is a good thing for Australia to have militant unionists, and people on the Right who think it is a good thing for Britain to have got rid of some of them.

What did offend many middle-of-the-road people in Mr Sinclair's fulmination, however, was his remark that, as a result of union militancy, Britain's economy was on the point of collapse.

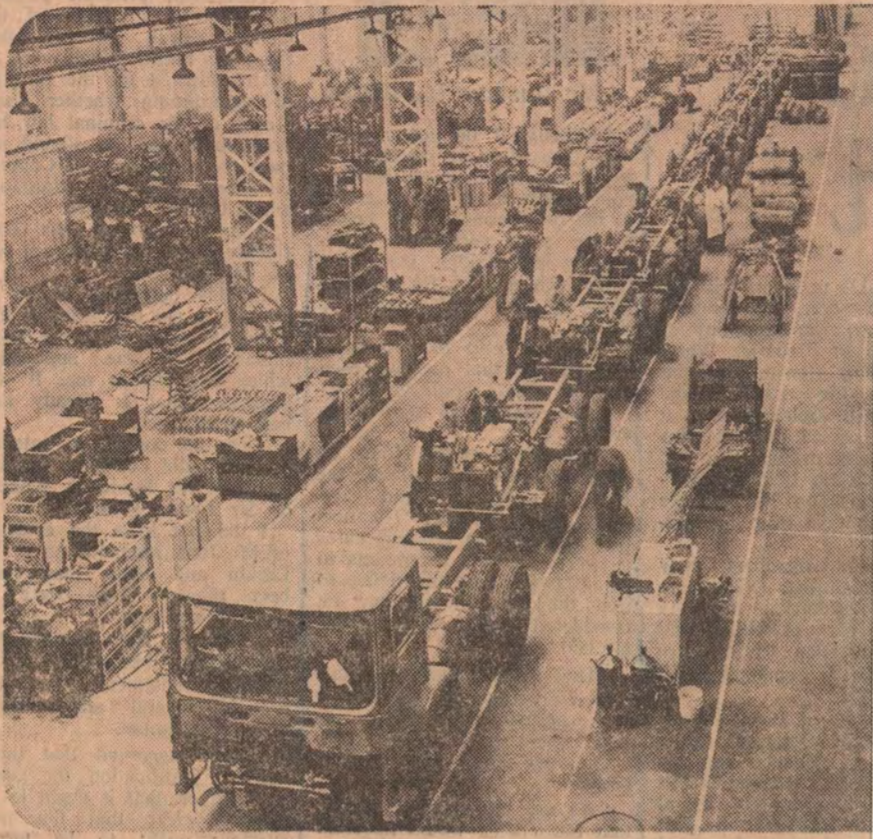
We had not noticed that here. But, if it is true, then Australia's economy must also be on the point of collapse. For there is an extraordinary similarity between the current economic indicators in the two countries.

Unemployment in Britain is 5.8 per cent of the work-force. In Australia it is 5.4 per cent. Since "normal" unemployment is much higher here than in Australia (partly for social and structural reasons, partly because of differences in how it is measured), the Australian figure is probably the worse.

The scissors of wages and prices have been working in the same way in the two countries. In Australia, in the June quarter, wage earnings were up about 12 per cent on a year previously, while the Consumer Price Index was up 13.4 per cent. In Britain, in July, earnings were up 9.7 per cent on the year, while consumer prices were up 17.4 per cent. Thus in both countries real wages have been falling, but much more so in Britain than in Australia.

The British rate of price inflation is indeed still alarmingly high. But the trend in wages, in the value of sterling, and in world and local supply of commodities, is bringing it down, so that the immediate object of single-figure inflation may well be achieved early in 1978; in Australia it may be achieved by the end of 1977.

Here is an extract from the latest issue of an economic bulletin published by one of Australia's leading



A British Leyland production line... the problem is, too many

management consultant firms.

The wage explosion in 1974 — running 20 per cent above productivity — has priced many workers out of jobs, and unless real wages are cut back further as the rate of inflation comes down that tendency will continue for perhaps another year.

The first half of that Australian description is an exact account of what happened likewise in Britain to raise unemployment and domestic inflation in the past three years. The difference is that the cut in real wages has now gone far enough in Britain, if it can be held through the coming 12 months, as is the Government's aim.

Economic experts are cautious about the future, and, as usual, divided. But you would not find any of them, let alone British Ministers, saying that the Australian and British economies, so alike in their present conditions, are on the point of collapse.

When, then, does the so-called "British disease" come

in? Britain is popularly supposed to have a high incidence of strikes, but in fact, reckoned by days lost against total of working days, her strike record is better, over a period of years, than that of many other industrial countries, including the United States.

Since the miners' strike in early 1974 it has been, on any international or historical comparison, very good. Last year the number of working days lost was barely half the number lost in 1975 or 1973, a quarter of the number in 1974 or 1971, and one-seventh of the number in 1972. So, if strikes are the main symptom of the "British disease," the patient appears to be in pretty good shape.

True, the record may well become much worse in the later months of 1977 and thereafter, as workers strive for higher wages, not so much against employers as against the Labour Government's pay policy. This seeks to limit the overall increase in basic wages to less than 10 per cent in 1977-78, while

prices are expected to rise faster than that, leaving little room for respite. The differentials in training and retraining, which have been eroded by two years of policy deliberately to favour the lower

We had a foretaste of such coming to go-slow and threat of assistant air controllers which caused flights into and out of airport. These men demanded immediate payment of bonus for their skill and possibility which upon with the end of 1975, but frozen in restraint policy.

The Government demand transgressed guidelines for which insist that be a gap of 1 between higher payments for any workers, and they allow the Civil Authority to pay wage. Result, dead-end. But this sort of

Square peg Ellicott out of a round hole

from MIKE STEKETEE
in Canberra

ROBERT James Ellicott's principles have been getting him into trouble for as long as he has been in politics.

In fact, the marriage of Ellicott the politician to Ellicott the lawyer was never consummated in the little over three years he has been a Member of the House of Representatives. He was always a square peg in a round hole.

Or, as one Liberal backbencher put it yesterday afternoon after he had listened to Mr Ellicott's resignation speech to the House: "He is too sincere, too honest, for the dirty game of politics."

One of his more memorable political blunders occurred when Mr Fraser, as Opposition Leader, assigned him and his fellow NSW lawyer John Howard (now Minister for Special Trade Negotiations) to ferret through the crate of documents obligingly provided by Mr Tirath Khemlani, the Pakistani money dealer who was the central figure in the Labor Government's attempts to secure a large overseas loan.

The time was late in October, 1975, and there has scarcely been a period when the political atmosphere was more charged.

The Opposition in the Senate had blocked Supply. Mr Whitlam was using his favourite tactic of trying to crash through political barriers by toughing it out.

There were high-speed car chases through the streets of Canberra, with Mr Lynch's staff and the Khemlani documents being pursued by a panting press.

Mr Fraser, delighted at the turn of fortune which had landed the documents in his lap, was hoping they would enable the Opposition to extend the loans affair net to the prize catch — Mr Whitlam himself.

Mr Ellicott emerged from his hours of scrutiny of the documents to calmly tell the inquiring press: "I can only say there is no direct evidence in the documents I saw which involves the Prime Minister."

Mr Fraser was less than amused at this piece of candour. He hauled Mr Ellicott over the coals and got him to



Mr Ellicott... into the wilderness.

put out a clarifying statement which considerably watered down his original comments.

It was the following year that Mr Ellicott again found his conscience troubling him. During the 1975 election campaign, in his capacity as caretaker Minister for Aboriginal Affairs, he sent telegrams to Aboriginal leaders throughout Australia telling them there would be no cuts in Government funds for Aborigines.

In the mini-Budget of May 20 the following year, the Government announced cuts. Mr Ellicott, who by then had graduated to Attorney-General, protested to Mr Fraser and the Cabinet. One version of the story has it that he threatened to resign. There was subsequently some partial restoration of the cut funds.

Mr Fraser had further problems with his Attorney-General in the early days of Government. Mr Ellicott made what is regarded as a fundamental political mistake by all parties: he tried to answer fairly and fully questions asked by the Opposition in Parliament.

Momentarily, when Mr Ellicott was on his feet, Question Time was almost fulfilling its original purpose: a means for the Opposition to elicit information. Suddenly, Mr Ellicott became the most popular person for the Opposition to direct questions to.

He made some revealing but embarrassing comments about Commonwealth Police investigations into the Iraqi loans affairs which helped Mr Whitlam eventually get off the hook. But Mr Fraser soon put a stop to this bout of frankness, as Mr Whitlam would have in the same circumstances. Mr Ellicott's answers suddenly became much less comprehensive and much briefer.

Now Mr Ellicott has resigned on another matter of principle: perhaps an obscure one to most outsiders, but fundamental to a person who emphasised his role as a lawyer as opposed to a politician by often referring to himself as the first law officer of the Crown, rather than Attorney-General.

One interpretation of his action (an interpretation which was not discouraged by sections of the Liberal Party yesterday) is that he is an egocentric who has an overbearing conviction about the correctness of his view.

Whether Mr Ellicott is a vain man or not, there is no doubt that his decision yesterday was one based on conscience and principle. He enjoyed the job of Attorney-General, it was the pinnacle of his career, and he has now consigned himself to the poli-

tical wilderness. The facts speak for themselves.

Mr Ellicott entered Parliament in 1974, giving up the post of Commonwealth Solicitor-General. The then Opposition Leader, Mr Snedden, was sufficiently impressed with his abilities to immediately give him executive responsibility for consumer affairs and commerce.

Later that year Mr Snedden, who had been concentrating heavily on winning support in Tasmania, made Mr Ellicott the shadow Minister responsible for Tasmanian Affairs.

For a while, this seemed to be the point of transformation of Ellicott the lawyer to Ellicott the politician, since he was associated with a swing to the coalition from a situation in 1974 where Labor held all the five seats to one at the end of 1975 where the Liberals had won all of them.

However, Mr Ellicott did not have the portfolio all that time. During the leadership struggle in early 1975, he supported Mr Snedden against Mr Fraser and initially refused a shadow portfolio—because, he said, he did not like Mr Fraser's rule that he could not devote a few hours a week to his legal practice.

But within several weeks, he was shadow Minister for Aboriginal Affairs—and doing a little private legal work as well.

The threads running through the less than two years he occupied the portfolio were those of great activity and a concern to put a brake on authority, particularly the authority of the bureaucracy. He introduced the legislation setting up the office of Ombudsman and established other machinery to enable appeals against administrative decisions. He has announced the introduction of freedom-of-information legislation to provide the public with a right of access to some Government documents.

If he stays in politics, it is not inconceivable that Mr Ellicott could one day again be Attorney-General, but it will certainly not be for several years. In the meantime, he can devote much more of his attention to what he seems to like doing most—practising in law, unencumbered by other constraints.



All for vanity — Whitlam

The following is the text of the speech of the Leader of the Federal Opposition, Mr Whitlam, in Parliament:

A statement by a minister who has resigned is probably the most dramatic moment that ever occurs in a Parliament.

It is one of those moments when political opponents frequently forbear to make any comment.

Since I shall have to make some comments on a matter in respect of which I have been mentioned today and in respect of which I have been harassed for two years, I would like to make plain my own personal relations with the Honourable Member for Wentworth (Mr Ellicott).

When I became Prime Minister he had, as is well known, sought the selection for the Liberal Party as the candidate for Berowra.

He knew, and I assured him, that this in no way inhibited me in seeking his advice and appreciating the advice which he volunteered.

In fact, I was very closely associated with him in matters of great moment for this country.

He was one of the counsel for my Government before the International Court of Justice in the French nuclear tests case. He represented my Government in negotiations with Indonesia on the sea borders between Indonesia and Australia.

He represented my Government in negotiations with British ministers and law officers on the procedure for abolishing appeals to the Privy Council.

He would know that throughout the time that I was Prime Minister and he was Solicitor-General I constantly conferred with him on any matter in which he or I thought there might be litigation affecting the Australian Government.

I would have hoped, knowing how I always consulted with him as Solicitor-General, although he had declared his politics to be other than mine, that at least he would have given me credit for consulting with the succeeding Solicitor-General on any matter where there might be litigation concerning the Australian Government.

About three-and-a-half years ago the Honourable Member told me that he was again seeking Liberal selection, this time for the division of Wentworth.

I told him that I believed that senior persons on the public payroll, heads of Government departments, persons in many ways of similar status although statutory status such as he held should not be precluded from the right, exercised by other citizens, of standing for public office.

I wished him well in his selection.

I assured him that if, as was not likely, he were to get the selection and not be elected he certainly would be reappointed as Solicitor-General.

I recite this to illustrate that throughout the time that I was Prime Minister and until he be-

came a member of this House my relations with him had been professionally intimate.

I must say, although I will not deal with it in such detail, that I have been disappointed in some subsequent matters at the way in which he has treated me.

For instance, at one stage he expressed the view that he would consider having me prosecuted for seditious libel in the light of remarks I had made in public about the Governor-General, who also is resigning.

The Honourable Member for Wentworth also had the Commonwealth Police report on my movements during the last election campaign.

"But, Mr Speaker, I must refer, as the Honourable Member has referred, to the Sankey prosecution: It should be pointed out that this is a private prosecution.

"It has been very useful to have, at length and in public, the chronology of this matter as far as the Honourable Member has been concerned because a great number of people have thought that these proceedings have been protracted by some actions on the part of myself or my fellow defendants.

"The Premier of Queensland (Mr Bjelke-Petersen), who had initiated inquiries, was encouraged to continue, and that was with the knowledge of many members of this Government, including very senior members.

"I do not propose to pursue

those matters on this occasion, but it is significant that this private prosecution was also initiated at that time.

"It was initiated with the encouragement and on the incitement of the New South Wales branch of the Liberal Party, acting on the advice of the Honourable Member for Wentworth, given publicly for the first time on July 9, 1975.

"At this stage I shall quote from the last speech made in the House by the late Honourable Member for Cunningham, Mr Rex Connor, whose own last months were harassed by this private prosecution, as were those of his wife until she died last April.

This is what the late Honourable Member had to say on April 28 last:

"The subject summonses are in breach of the announcement of the Prime Minister, Mr Malcolm Fraser, in this House on November 11, 1975, of an undertaking required by the Governor-General that there would be no inquiry into the affairs of the former Administration during the election campaign.

"The informations were laid in Queensland nine days later on November 20, 1975, returnable at Queensland court four days before polling day."

That is the same days as that on which the Premier of Queensland called a special session of the Queensland Parliament. He went on to say:

"Naturally, we were represented in our absence by counsel, whereupon Mr Rofe, QC, demanded that bench warrants be issued for our arrest. The waiting media had been baulked of their political prey, so delightfully timed."

I mention Mr Rofe and, of course, the honourable member has mentioned Mr Sankey. On the same day, April 28, I had myself referred to one of the two occasions only on which I have spoken on this matter in the Parliament. I said this:

"This is not the first time that Mr Sankey and his counsel, Mr David Rofe, QC, have striven to subvert parliamentary privilege. They appeared for John Giles Bourke in a defamation action against Mr Neville Wran for statements he made in speaking to an urgency motion he moved as Leader of the Opposition on September 10, 1974, by Mr Justice Lee, who, incidentally, had once sought to enter this House when he stood against me in 1954."

The particular point I am making is that there were, in breach of the Government's written undertakings to the Governor-General on November 11, proceedings initiated and continued against me and some of my colleagues.

First, there were those by the Premier of Queensland, secondly, there was the prosecution by Mr Sankey, who briefed Mr Rofe.

As I said on that occasion, and as I can now say with still more force because the facts have become better known the Fraser Government got others to do its dirty work and that was in breach of an undertaking to the Governor-General who had installed it. The honourable member for Wentworth has quoted correspondence which passed between him and my solicitors.

I must say that I regard it as extraordinary that, as far back as last May, Cabinet took a decision to pay our costs and also took a decision that privilege would be pleaded in the proceedings in which the Commonwealth had intervened in respect of published documents of my Cabinet.

The decision about costs was not communicated until August 13.

For three months we were left in the dark and our interests were prejudiced by the financial limitations we thought we were enduring.

If we had known that our costs would be paid we would have proceeded with the High Court appeal.

Furthermore, we have not been told until today that Cabinet had enlarged its decision on the claim of privilege. And that also should have been communicated.

In the meantime, because of the delay, there have been quite large legal costs incurred so as to substantiate a plea of privilege in respect of some other

documents always to consult with the Solicitor-General, including the honourable member for Wentworth when he was Solicitor-General. I continued that practice.

But on June 3 last, in a letter which my solicitors sent to the honourable member, the answer is given about the advice of the Solicitor-General, Mr Byers. The letter states:

"You expressed the view on July 9, 1975, on the basis of documents and facts then known to you that the action on which these proceedings was based was illegal and unconstitutional . . .

"You then asked if the Solicitor-General's advice had been sought and said that if it were tabled it might satisfy a lot of us.

"We are instructed that the Solicitor-General gave advice orally, as in Karen Green's case, that the course proposed was not unlawful.

"His advice was, we are advised, recorded by the Secretary to the Treasury on December 13, 1974, in a minute to the effect that the Solicitor-General invoked the use of Section 61 of the Constitution and advised that an opinion given the Treasury in writing four days before in regard to Mainline Corporation could be applied to the current proposals.

"My clients have been inhibited from publicly quoting such documents believing they are precluded by their Executive

improper in a prosecutor, which he had with a Canberra journalist.

"This journalist is willing to call on you to repeat this account if you so desire.

"Mr Rofe also expressed the view in court on November 19, 1976, that your claim of privilege was not only wrong in law but might reasonably be construed as an attempted cover-up."

"He further canvassed the matter in a letter to The Sydney Morning Herald of May 28, 1977. He does not have the confidence of the defendants and could not have, we submit, the confidence of the Crown as a fair and impartial prosecutor.

"Should you agree to take over the prosecution, our clients would of course instruct us to withdraw the proceedings presently before the High Court of Australia so that the matter might more promptly proceed.

"Unless you advise us that you would consider it inappropriate for it to be done, we are instructed and therefore propose to request our counsel to advise the Court of Petty Sessions in Sydney on Monday that an application has been made by our clients to you to take over the prosecution and that if you do so the application to the High Court will be withdrawn."

At least we should have been told that the costs would be paid and that privilege would be claimed in respect of all documents including those mentioned in the Parliament as well as those not mentioned in the Parliament.

One could feel some grievance over that. I have referred to this matter here because so often in newspaper interviews and letters to newspapers the impression has been given that somehow my colleagues and I have something to hide and that we are spinning out the matter. We know today, for the first time, the full ramifications of why it has taken so long.

I refer to a statement which I made, again on April 28, as repeated in Hansard.

I said:

"For without doubt the case has no merits.

"The Governor-General was not deceived by his ministers. Not only did he sign on December 14, 1974, without demur a minute signed by them the previous day, but on January 28, 1975, he signed with them a minute in precisely identical terms, although for half the amount."

"No point can be made that His Excellency signed the first minute later than his ministers, because, to quote Mr Carmody's affidavit of 12 November last supporting the claim of privilege, 'If the Governor-General is not present at the meeting of the Executive Council the minute and the schedule are subsequently submitted to him for signature.' Any State Government could have challenged the propriety or legality of our action under the financial agreement in the Loan Council of the High Court; none of them did.

"The idea that the ministers involved had broken the criminal law is absurd. Even if it was found that they had acted in breach of the constitution or of the statutory or common law — and no Government, State or Federal, has asserted that — no Government would take criminal proceedings against them.

"There were no criminal proceedings, for instance, against the Judges of the Commonwealth Court of Conciliation and Arbitration when the High Court in the boiler-makers' case decided that they had acted unconstitutionally.

"There are not likely to be criminal proceedings against Senator Margaret Guilfoyle, who the High Court has just declared had acted contrary to statute on school leavers.

Constantly public servants act in a way which the courts say was illegal.

"It is absurd to suggest that criminal proceedings would ever be taken. No Government would ever do it."

These proceedings were conceived nationally as a private prosecution. They were initiated with the incitement of the New South Wales branch of the Liberal Party.

They were timed in such a way as to conflict with the undertaking which the caretaker Prime Minister gave the Governor-General.

They were conceived improperly. They were conceived in breach of an undertaking.

They have been prolonged and prolonged to this stage through the various methods which the Honourable Member for Wentworth has now disclosed.

I do not propose to discuss what went on in Cabinet, what went on between him and his colleagues, including the Prime Minister.

All I must say now is that we see how flimsy the whole of this thing has been.

It has absorbed the time of the New South Wales courts, it has absorbed the time of the Federal Ministry. It has even absorbed some of the time of this Parliament — all to no good purpose whatever.

It has all been done to serve the vanity of a man who has now resigned.



Mr Connor

Councillors' oaths from disclosing to unauthorised persons what has passed between them and the Governor-General before he signed relevant documents on December 14, 1974, and again on January 28, 1975."

On June 3 the honourable member had from our solicitors a reference to the record of the Solicitor-General's advice. On July 9, 1975, he was asking where the advice was.

On June 3 this year he knew what the advice was. He was given a reference to it. Throughout these proceedings, as the correspondence which the honourable member has quoted has shown, I and my colleagues have never in any way sought to deny him or his colleagues or his advisers access to documents and witnesses.

We are utterly confident what would be disclosed by those documents or those witnesses.

The witnesses would not only be Sir Lennox Hewitt or Senator Murphy or Messrs Byers and Harders.

These are people to whom the honourable member refers in such disparaging terms. There would also have been Sir Jock Phillips, the then Governor of the Reserve Bank, Mr Knight, his deputy and now the governor; there would have been Sir Roland Wilson, the former Secretary to the Treasury and the then Chairman of the Commonwealth Banking Corporation; there would have been Sir Clarence Harders as he now is, the Secretary to the Attorney-General's Department; and there would have been Sir Frederick Wheeler, the Secretary to the Treasury as he still is; the Solicitor-General, Mr Menadue; and many other officials, heads of departments, statutory officers and senior officials.

Three persons are mentioned and disparaged. There is no question as to what would be disclosed if those men were called. We have not hesitated in asking to have them called.

I read from another letter and it is the letter to which reference has been made. I have quoted from it.

It bears upon the application which I and two of the other defendants made on July 3 last for the Attorney-General to take over the proceedings.

"Our clients believe that these documents I have referred to together with other records as well as personal recollections not only of the Governor-General but also of the public servants present at the time would show that it is without reasonable or proper foundation to assert that our clients, or any of them, knowingly proceeded on an unlawful course.

"If you, nevertheless, should decide to continue the proceedings our clients urge you to brief counsel other than Mr Rofe to do so. In the House on April 28, 1977, an account is given of a conversation considered by our clients to be



Mr Whitlam

documents for which the Government was not previously through counsel claiming privilege, but for which last May it decided it would claim privilege.

For three months we were kept in the dark. I believe that that is a legitimate grievance that I and my fellow defendants have.

I believe that. The whole core of this matter is that the former Attorney-General has had an obsession about it extending over more than two years.

He has taken an excessively vain attitude about his legal opinions.

We all know the attitude he took concerning the right of the Viceroy to dismiss a Government if it did not have a majority in both Federal Houses, an opinion on which the Governor-General acted on November 11, 1975, but he has also had this obsession to defend the opinion he expressed on July 9, 1975, and he has expressed it again and again.

It is on that opinion that the New South Wales branch of the Liberal Party incited this private prosecution.

I would like to illustrate the honourable gentleman's attitude to some of the people he has mentioned by continuing the quotation from his speech on July 9, 1975.

"Who were those involved? Sir Lennox Hewitt, Mr Connor and Senator Murphy. I have referred to the advice.

"By the way, where was the advice of the Solicitor-General? If this Government wanted the impartial advice of a lawyer, where was the advice of the Solicitor-General? That has not been produced.

"We know that on December 13 the law officers were gathered. We know that Messrs Byers and Harders were at a meeting in the Attorney-General's Department. They were good enough to prepare this document, this farrago of fact and falsity.

"Why was the Solicitor-General not good enough to be asked for advice on this particular matter and where is his advice?"

"If it were tabled here, it might satisfy a lot of us."

As I have said already it was my practice in any of these



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which the defendants were, in a sense, asking me to take.

They were saying that they could not get a proper hearing. It seemed to me that, if they had a Crown counsel and if the evidence were called, this would enable them at least to get a Crown prosecution.

So, on the basis of that and on the basis of doing justice to the defendants, that seemed to me to be a proper course to take. I must add that it would be a most unusual course. But it is a most unusual case. Indeed, it is most unusual for an Attorney-General not to have access to all the material evidence and all the material facts and documents.

I was in a most unusual position. That is why what may seem otherwise to be an unusual decision was, in fact, unusual.

On August 2 last I informed the Prime Minister that I proposed to take over these proceedings. On August 3 I saw the Prime Minister at the Lodge.

During that conversation the Prime Minister reiterated to me his view that the proceedings ought to be taken over and terminated.

I made it clear to him that my view, based on what I did not have, was that I could not take over the proceedings and terminate them.

That would not be proper.

Therefore, we seemed to be in complete disagreement on those two matters. On that occasion the Prime Minister asked me whether I had obtained the advice of the Solicitor-General or whether I had any objection to obtaining his advice.

I indicated that because the Solicitor-General was a witness he may have some difficulty in relation to the matter. However, I was prepared to ask the Solicitor-General.

I also indicated that I would obtain advice in relation to the matter from the Crown Solicitor; the secretary of my department then being overseas.

The Prime Minister also indicated that he had spoken to the Solicitor-General and had asked him whether he was prepared to give the Prime Minister advice on the matter.

On Thursday, August 4, I again saw the Prime Minister. I felt very strongly that we were on a collision course. I offered to resign.

However, we both agreed

that we did not have a fixed mind on the subject.

The Prime Minister was going overseas and we agreed to consider the matter the following week.

In the meantime, advice was to be obtained from counsel, the Solicitor-General and the Crown Solicitor.

It was also obtained from the acting secretary of my department, Mr Maloney.

One event of significance occurred. On August 5 I received the following letter from Mr Justice Murphy:

"I wish to make it clear that I have not joined in any application to you to take over the conduct of the prosecution of the proceedings brought by Mr Sankey.

"If the proceedings were taken over in order to put an end to them I could not object, but if they were taken over with the intention of continuing them I would strongly object as they are, in my opinion, malicious.

"In any case you should not be involved in any official decision which adversely affects the defendants. Your personal involvement in this affair, including certain statements in Parliament, should as a matter of simple justice preclude you from acting as Attorney-General in any way against the defendants.

"As you are well aware there are ways in which any necessary decision can be made without your participation.

'My decision'

"I also wish to make it clear and my counsel has informed the court that in so far as any consideration arises of Crown or parliamentary privilege I have not made and will not make any claim or privilege which would exclude any evidence."

Advice was received during the following week. That week I made a decision. That decision was not affected by anybody. It was my decision. I decided that I would not take over these proceedings.

On August 13, 1977, the following letter was written by me to the defendants' solicitors:

"At the outset I wish to point out that by letter dated August 5, 1977, the honourable Mr Justice Murphy informed me that he has strong objections to my taking over the proceedings if I had the intention to continue them.

"To enable me to consider

Loans affair sequel

your client's application I thought it proper that I should have before me all relevant documents in the possession of the Commonwealth and its instrumentalities and statements from all those who may be able to give evidence relevant to the matters the subject of these charges.

"You will recall that I raised this possibility in my letter to you dated June 17, 1977. The fact is, however, that the whole of the above material is not available to me and consequently it is not possible to make a proper assessment of the evidence that might be led in relation to the charges.

"In all the circumstances I have decided that it would not be appropriate for me to take over the proceedings at this stage."

I may say that counsel who advised in relation to the matter stressed that it was important in his view that before deciding what I should do in relation to the proceedings — that is, whether I should take them over, continue them or discontinue them — I should ascertain the facts.

That, of course, is a rather simple proposition for any lawyer. One's first task is to ascertain the facts.

But in the light of Mr Justice Murphy's letter and in the light of counsel's advice, I thereupon decided I should not take over the proceedings.

The following statement was made in the same letter:

"The defendants' solicitors were informed that the Commonwealth agrees to pay the reasonable costs as determined by the Crown Solicitor for the Commonwealth of your clients in these proceedings."

Mr Speaker, I have been absent from this House for three weeks during which time I was overseas. When I went overseas I was still deeply concerned about the decision of Cabinet made on July 26, a decision in which I was refused access to documents and to witnesses.

At Winnipeg in Canada, I attended the law ministers' conference. One of the matters that we discussed at some length — I did not participate in the discussion, I was more interested to listen because of what was on my mind — was the modern role of the Attorney-General.

The following statement was set out in a communique issued by some 31 law ministers:

"In recent years both outside and within the Commonwealth, public attention is frequently focused on the function of law enforcement.

"Ministers endorse the principles already observed in their jurisdictions that the discretion in these matters should always be exercised in accordance with wide considerations of the public interest and without regard to considerations of a party political nature and that it should be free from any direction or control whatsoever."

"They considered, however, that the maintenance of these principles depended to a large extent upon the unimpeachable integrity of the holder of the office."

Press report

Mr Speaker, while I was overseas an article appeared in The Canberra Times. This journal is not one that I find with regard to what it says about me very accurate, and I say no more than that.

This may be the experience of other honourable members. But I was once given good advice by a predecessor in the office of Attorney-General.

He said: "Do not worry about The Canberra Times — it is only circulated in Canberra, nobody reads it anywhere else."

Despite the defamations that occur from time to time it has never troubled me enough to get worked up about it. Honourable members might, however, have read what was said. The article stated:

"The decision on cost is understood to have been made

by Cabinet — a departure from the usual practice in such cases, where the Attorney-General makes his decision alone in the exercise of his power as first law officer of the Crown rather than as a minister."

As I have explained, that is quite inaccurate. The decision as to costs is a matter for Cabinet. The discretion as to whether to prosecute is very much a matter for the Attorney-General.

The article went on to state: "Mr Ellicott is understood to have opposed the decision Cabinet ultimately made, and to have twice threatened to resign over the issue."

That is not correct. The article continued: "In the end, according to Government sources, he was 'persuaded' of the ultimate view."

No such thing occurred. I have not been persuaded of anything by anybody. Throughout this whole exercise, throughout these recent months, the views I have formed and the decisions I have made in the exercise of my duty have been my own.

Further on, this article, under heading "approval," stated:

"Government sources emphasised yesterday that the decision not to intervene did not imply any approval for the continuation of the prosecutions by Mr Sankey."

"The Government's view, they said, was that the electorate had passed its judgment on the overseas loans affair at the 1975 elections and that the matter should stop."

"This was why the Government had refused a prosecution application, soon after the case began in late 1975, that it take over the case."

"A decision to intervene and then discontinue the prose-

cutions had been 'muddled' by Mr Justice Murphy's firm opposition to the idea that the Government should step in, they said."

I was deeply troubled about the Government's sources. It seemed to me that if that was accurate, that is to say, if it had come from Government sources, it was indicating something about the discretion which I had to exercise, it was indicating, in effect, that a decision had been made that these proceedings should be taken over and terminated.

But that was a decision which only I, as Attorney-General, could make. I regret to say that Mr Dickie, my press officer, has given me the following statement:

The day after the publication of the story by Mr Waterford Mr David Barnett (Prime Minister's press secretary) telephoned me. He told me that Mr Waterford had approached him the day before about the Sankey story.

'All the facts'

He said Mr Waterford seemed to have all the facts associated with the Sankey story and that all that seemed to be missing was the motivation. Mr Barnett said that he supplied Mr Waterford with the motivation.

Honourable members will be aware that recently a decision was made by Cabinet that, in answer to an application by the informant, Mr Sankey, his costs would not be paid. That occurred while I was overseas.

As honourable members can imagine, I have given this matter very careful and anxious thought. I have dealt at some length with what has happened in relation to these proceedings, and I hope I have not bored honourable members in so doing.

I have done so because I felt it was my duty to indicate what

I have done in relation to the matter.

It is with very great regret that I have decided that in the circumstances I have no alternative but to resign my position as Attorney-General of the Commonwealth.

As I have said already, I believed, and I still believe most strongly, that what Cabinet did on July 26, 1977, was wrong.

Again, as I have said, I do not believe that there is any part of government wherein criminal law does not run. I believe that a very strong and important principle is involved.

I do not want to compare it with, nor do I want to suggest in any way in what I have been saying here today, that I have been engaged in a witch hunt against any of the defendants.

What one might learn from documents and from witnesses who have not been interviewed might well be evidence which would support the defendants.

I have no reason whatsoever to want the defendants to be convicted. I might hope, in what honourable members opposite might regard as my best moments, to see them cleared.

That is just not what I want. All I want is for the facts in this case to be subjected to the light of day. Until that happens this case will plague us.

In conclusion, I simply say that having done what I have done I still remain a loyal member of the Liberal Party. I still propose to support the Government to the full.

I propose to give whatever effort I can to continuing the work which the Government is doing.

I hope honourable members will not treat my previous remarks or anything that I have said today as remarks of a divisive nature.

We on this side of the house have a task to perform. We are going on to perform that task.

PM instructed press aide

The Prime Minister, Mr Fraser, authorised his press secretary, Mr David Barnett, to give information on the Sankey case to the Canberra Times.

Mr Barnett disclosed this in a letter he delivered to Mr Ellicott late last night.

The letter, which was approved by Mr Fraser, told Mr Ellicott of the Prime Minister's involvement in a Canberra Times report about the Sankey case.

The report said the Government had agreed to pay the costs of the defendants in the case and that Mr Ellicott had threatened to resign over the issue.

"Mr Waterford of The Canberra Times rang me on August 15 and put to me in considerable detail a story that he had gleaned from sources he did not disclose," Mr Barnett said in his letter.

"He said that he had been shown documents, told that you (Mr Ellicott) had threatened to resign, and told also that the Prime Minister wished to see the case against Mr Whitlam, Dr Cairns, the late Mr Connor and Mr Justice Murphy pursued.

"Since this was incorrect, I asked for and received, authority to guide Mr Waterford.

"I did so on this one matter only, his misapprehension about the role of the Prime Minister.

"I told him it was the Prime Minister's view that these matters should not be prosecuted and that they were resolved in the elections of 1975."

Mr Barnett said he had informed Mr Ellicott's press officer, Mr J. Dickie, of the position at the first opportunity.

State Liberals deny Sankey links

NSW Liberal Party leaders strongly denied last night that the State division had been involved in the prosecution by Mr Sankey.

The general secretary of the party's NSW division, Mr J. Carlton, said the division had never had any contact with Mr Sankey, and so far as he knew, he had never met Mr Sankey.

An executive member of the division, Dr Peter Solomon, said the suggestion by Mr Whitlam that the NSW party had encouraged or incited the prosecution was "utterly preposterous."

A former Prime Minister, Sir William McMahon, said in Canberra that he did not know of any evidence of involvement in the NSW party.

Sir William said he had never had any connection with Mr Sankey, although he had been aware of trouble the "legal people were having in producing some documents for evidence.

He said he had been "tremendously worried at the time" (in 1975) that there was the "possibility that a breach of the law had occurred."

Sir William refused to comment on what steps he may have taken about his concern that a breach may have occurred.

The Sydney Morning Herald

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WEDNESDAY, SEPTEMBER 7, 1977

Mr Ellicott

THE MOST DIFFICULT moral choices are not between right and wrong; they are between principles of right which in particular circumstances prove to be incompatible or irreconcilable. It is this kind of collision which has precipitated Mr Ellicott's resignation from the Cabinet — for the second time on the same issue, as it now transpires, but this time finally.

The collision arises from the long drawn-out criminal proceedings, *Sankey v Whitlam* and others; these in their turn arose from the loans affair. However, it will be wrong to confuse the conflict between Mr Ellicott and Cabinet with the loans controversy, still more to confuse it with the supposed rights or wrongs of the *Sankey* prosecution. The conflict transcends its origins. It is essentially between Mr Ellicott's sense of his independent legal duty and Cabinet's sense of political propriety. It should be seen as an agonising conflict. Further: to say that Mr Ellicott has acted with integrity, as he has, is in no way to impugn Cabinet. Mr Ellicott's decision is admirable because it was taken on principle; resignations on principle are, regrettably, increasingly rare. But it does not, ipso facto, invalidate Cabinet's reasoning.

On June 3 defendants in the *Sankey* proceedings applied to the Crown to take over the prosecution. Mr Ellicott's case to Cabinet was that the discretion in a case of criminal proceedings was his alone, as the Government's first law officer, and must be free from political considerations. He further argued that his first duty must be to ascertain the facts so that he could properly exercise his discretion. Cabinet ruled otherwise. In its view he should exercise his discretion to end the proceedings. It further ruled that Government documents pertaining to the case should remain privileged.

The gravity of the issue raised by Mr Ellicott is obvious. He was, in his view, defending the separation of the courts and due process of law from executive

decisions, from politics. "I take the view," he told Parliament, "that there is no place where the criminal law does not run, even the Executive Council; nor can any convention that a Government should not look into the affairs of a previous Government prevent inquiry for the purposes of enforcing criminal law." Cabinet's difficulty was that this particular case was, by its nature, inseparable from politics and that the appearance in it of a member of the Government, the Attorney-General, even if represented by independent counsel (as Mr Ellicott proposed), must appear to involve the Government in proceedings against the leader of the previous Government.

It is a tradition fundamental to orderly government that Governments do not use their power to ransack the affairs of their predecessors and (Mr Whitlam's word) "harass" them for political reasons. Mr Fraser and his Cabinet, accepting that a verdict against the Whitlam Government on the loans affair was delivered by the people at the last election, and that there the matter should rest, shrank from having their Government take over and conduct a private prosecution in a case inseparable from politics. Clearly they were concerned that no precedent breaching a necessary convention should be set. For them, presumably, Mr Ellicott's stand on legal principle passed beyond reason. On balance, their attitude seems wise—even though it amounts to quashing a private citizen's recourse to law.

The pity is that the affair may not end here. Mr Ellicott argues that if the facts are not ascertained so that the proceedings can be resolved, the case will continue to "plague us." It has already caused uproar in Federal and State Parliaments and raised questions about the conduct of the proceedings. Now Mr Ellicott's resignation seems likely to ensure that it will be even more strongly limelited. His successor faces unenviable decisions. At least his prompt appointment is welcome, given the sensitivity of the post.

MR ELLICOTT'S RESIGNATION

Mr Fraser's first Attorney-General, R. Ellicott, resigned yesterday describing himself as yet another victim of the loans affair. That is true.

In departing from office, however, Mr Ellicott, a prickly and principled man, indicted Prime Minister Fraser as a thoroughly cynical, morally flexible leader.

Mr Ellicott's account of the Fraser Government's involvement in the conspiracy proceedings that have been instituted against four former Labor Ministers, including Labor leader E. G. Whitlam and Justice Murphy of the High Court, thoroughly undermines the reputation of the Cabinet and the Prime Minister.

While Mr Ellicott approached the whole subject of the loans affair with a sense of righteousness which bordered, as Mr Whitlam said yesterday, on the obsessive his colleagues appear to have seen the episode merely as a convenient route to power and a weapon to beat Labor with as it chose.

Mr Ellicott sincerely believed that the Labor men had acted illegally. By his own account to Parliament yesterday he pursued his responsibility as he saw it to ascertain the truth of his beliefs.

Yet it was Mr Fraser and not the Attorney-General who had actually laid the charge of conspiracy against the Labor Government. As Mr Ellicott recalled in Parliament yesterday he had attacked the Labor Government over its

loan raising activities in July 1975 in the following fashion:

"Deceit, fabrication and falsity have all appeared in the events which flowed from the decision to seek overseas funds in this illegal and unconstitutional manner. I believe there is a strong prima facie case against the Government, a case that it has deceived the Governor-General, a case that it had produced a document which is false, a case that there is a deception."

He went on: "It is a case the Government has to answer. It is a prima facie case. The question that is asked constantly is: 'Where is the charge. The action was unconstitutional, unlawful and based on deception. That is the charge. There is a prima facie case'."

Mr Fraser endorsed the remarks. He said: "Facts now before the public raise the strong possibility that there was an illegal conspiracy to defraud and deceive."

Two years later, however, during which time the conspiracy case against the Labor men instigated by a private citizen, Mr Danny Sankey, had been continuing, proceedings reached a position where the Government of Mr Fraser was in a position to advance inquiries to a stage where evidence might have been forthcoming.

Two of the Labor men, Mr Whitlam and Mr Connor, gave Mr Ellicott permission to consult witnesses who had

previously refused to assist him in determining the material facts.

These included leading public servants such as Sir Frederick Wheeler of the Treasury, Sir Lenox Hewitt, previously the Permanent Head of the Department of Minerals and Energy, and Mr John Menadue, former Head of the Prime Ministers' Department.

When Mr Ellicott took this proposal to Cabinet it refused to agree to the course of action he proposed and ordered him to take over the case and to terminate it.

In other words, Cabinet decided that it was "politically" convenient to forget about the "criminal" acts that Mr Fraser had used as the reason for refusing Supply to the Whitlam Government.

Mr Ellicott was treated ignominiously no matter how you look at it. His claim that the Attorney-General should not be subject to the veto of Cabinet in criminal proceedings goes to the root of our whole legal system.

When Mr Ellicott resisted this Cabinet approach the Government adopted the alternative and even more cynical approach of agreeing to pay the costs of the Parliamentarians while refusing to provide legal aid to the private individual who had instituted the proceedings on the strength of the public statements of Mr Ellicott and Mr Fraser.

THE AUSTRALIAN FINANCIAL REVIEW WEDNESDAY, SEPTEMBER 7, 1977

In these circumstances the case would be left to wither on the vine. The private citizen, no matter how correct his cause and how deep his pocket, could not be expected to play the legal snakes and ladders that would be involved in such a case.

Not only was Mr Ellicott treated shabbily by his Cabinet colleagues—though perhaps one should place the whole blame on the shoulders of Mr Fraser, who imposes his will as a divine right in such matters—the strong suspicion must reside in his mind that he was played for a dupe.

At no stage did Mr Ellicott uncover sufficient evidence to sustain a case of conspiracy against any of the men before the court.

Given the immense powers that reside in the hands of the Attorney-General, given that he has access to the best legal talent in the land, given that his own Solicitor-General, the same Solicitor-General who advised the Whitlam Government, was prepared to give him evidence on the subject, it would seem strange that he could find no evidence of conspiracy that would stand up in court.

However, his own account of events suggests that he did pursue the task of investigation with diligence, only to be told in the end by his colleagues to kill the case.

No wonder he resigned.



BALMORAL CASTLE

PERSONAL AND
CONFIDENTIAL

27th August, 1977.

My dear John

The Queen has now returned to me your two letters of 10th and 18th August and has been most interested to read them.

I have already made some comments on your most helpful letter of 18th August and in that letter you also reported that the problem about the Queenbeyan proceedings which was the main subject of your letter of 10th August had been resolved in the Attorney's favour.

It will be very interesting to see how matters now proceed in this affair. I can well imagine how the majority of public servants and politicians would like to see the charges of criminal conspiracy "go away." But I suppose there are plenty others who would like to see it pursued to the bitter end.

The Queen sends you both her best wishes and is grateful for your continued expressions of loyalty and devotion.

*Yours ever
Marina*

His Excellency the Governor-General
of Australia.



BALMORAL CASTLE

PERSONAL AND
CONFIDENTIAL

25th August, 1977.

My dear John

First many sincere thanks to you and Lady Kerr for your kind congratulations on the great honour The Queen did me in promoting me to be a Knight Grand Cross of the Order of the Bath. You can imagine how much pleasure it gave me! I shall look forward to welcoming you both at Eton next year.

This letter is also to thank you for yours of 18th August which at the moment is with The Queen together with your previous letter, of which I do not have the date.

I know Her Majesty will be as interested as I was to read your very clear answer to my question about what your response might be to a request from Mr. Fraser for a dissolution at the end of this year.

You have, of course, preserved the cardinal principle which is, I think, better understood in Australia than it is in Britain that Prime Ministers "request" dissolutions and do not advise that they should be granted.

From reading the daily review of the news in Australia, produced by Australia House, I gather that Mr. Lynch's budget has been received with a great deal of criticism, on both economic and political grounds: but that is the way of politics!

You will be glad to learn that The Queen is now having a real rest after her unremitting labours of the last seven months and is in excellent health and spirits. I shall write to you again shortly when Her Majesty returns your two letters to me.

*Yours ever
Martin*

His Excellency the Governor-General of Australia.

Government House,
Canberra. 2600

1 September 1977

My dear Martin,

I write to inform The Queen that I returned to Australia from Manila on Monday.

May I thank Her Majesty for approving of my visit to the Philippines which was a most enjoyable experience. Those who received awards from the World Peace Through Law Center were Lord Wilberforce, who was in Manila and who was honoured for services to international law, the former Chief Justice of Japan, who after retirement returned to the Law School of Tokyo University to become Dean, and a French judge who is now a member of the Court of the E.E.C.

The Japanese former Chief Justice received the award as world scholar for his general academic career and the French judge the award as world jurist, an award given to judges. As you know from my previous letter my award was as world lawyer.

I was happy to find myself in such distinguished company but remain a little puzzled about how I came to be selected from what the World Peace Through Law refers to as "the world's million lawyers". There was no reference to the constitutional crisis in the presentation of my award.

I was the Guest of Honour at the banquet at which the awards were presented and had to make the main speech. However, as the Japanese judge spoke for twenty minutes instead of three, all of which was in unintelligible English, and as the French judge spoke for a similar period of time, despite a similar limitation, all of it in French, my task was to wake the audience up.

One interesting feature of the Manila Conference was that President Marcos in his address to the Conference accepted the opportunity to announce that he proposed to introduce certain relaxations into the system of martial law to extend an amnesty to a number of political prisoners and to abolish the curfew. It remains to be seen how much of this is window dressing but the impression exists that provided no outbreaks of violence take place the President will go some distance along the lines indicated.

In Australia the political position has changed to some extent. The latest public opinion poll shows that the Government parties have declined 2% to 41% although the Prime Minister's approval rating has increased 2% to 39%. Mr Whitlam's approval rating remains steady at 41%. The Labor Party has a rating in the current poll of 45%, and the figures are said to indicate that had an election been held in August the Labor Party would probably have won narrowly with about the same number of seats as in 1974. The poll was held after the Budget and the decline in Government support seems to have occurred after the Budget.

The Budget itself has been the subject of conflicting comment and does not appear to have had the success which was hoped for by the Government.

The uranium issue has broken out with demonstrations of force and violence including one quite nasty demonstration at the University of New South Wales when the Prime Minister attended a businessmen's dinner. The opinion polls appear to still indicate that there is a majority of people in favour of mining and exporting uranium and the Government may well believe that the uranium issue will help save it from defeat at the next elections. I attach a clipping of an article in today's "Age" by Claude Forell. As you will see he has taken up the notion of "what Sir Zelman Cowen has aptly termed the fragile consensus". I send this clipping because it is one exposition of the connections between the uranium issue and other issues. You will see from what I have said that Australian politics appears to be volatile and the question of the timing of the next election must remain extraordinarily difficult for the Government. I shall not canvass again all of the pros and cons. No further information is available to me about the Prime Minister's intentions and the truth of the matter probably is that he is keeping his options open for the time being.

Industrial relations, uranium, the Budget and the economy provide a mixture of problems which will control his judgement and will perhaps be to some extent sorted out during the next couple of months.

My wife and I have a busy schedule between now and December going the rounds in Australia and getting our personal affairs in order so that we can leave for Europe and London immediately after Sir Zelman takes over. May I thank you for the congratulations you included in your letter of 12 August and ask you to thank Her Majesty for what she said as mentioned in the same letter.

.../3

We were delighted that the visit to Northern Ireland was such a great success. I should be grateful if you would convey to The Queen the continued humble duty and loyalty which both my wife and I feel.

Yours ever

John

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

Danger: uranium is political dynamite

THE greatest danger to Australia of the official go-ahead for uranium mining may be one that is least discussed.

It is the damage the uranium controversy could inflict on what Sir Zelman Cowen has aptly termed the fragile consensus.

Consensus — a basic agreement on underlying principles and political processes — is what holds a democratic community together.

The alternative, when significant groups will not accept the essential rules and constraints, is conflict and coercion.

We have seen how religious bigotry, class hostility and racial antagonisms have shaken the phlegmatic British nation.

We have seen how the Vietnam war, racial hatreds and youth protest have created sharp schisms in American society.

Whether such conflicts spring from a deep-seated sense of injustice and frustration is beside the point I want to make.

This is that they have been accompanied by a growing resort to violence, forcing the State to react with violence.

Australia has been relatively lucky, although Vietnam, conscription, racial discrimination, campus upheavals and the constitutional crisis of 1975 all threaten the national consensus.

Uranium threatens to become an even more provocative and divisive issue, with potentially damaging consequences for the Australian community.

In foreseeing this as perhaps the major hazard to Australia I am not dismissing the intrinsic dangers of uranium mining and nuclear development.

The Fox report saw the most daunting danger as that of nuclear proliferation, widening the terrible risk of nuclear aggression, terrorism or blackmail.

Leaving Australian uranium in the ground might marginally reduce the risk but it would not seriously retard nuclear development or prevent the possibility of misuse.

Conservationists seem to be most concerned about the disposal of nuclear wastes, but many scientists are convinced that these problems can be solved.

And in a recent report to the United Nations, the International Economic Energy Agency said nuclear energy presented a smaller safety risk than many alternatives accepted in modern societies.

Besides, nuclear wastes are not, as yet, Australia's direct responsibility. We are not embarking on



large-scale nuclear development; we are simply offering uranium for export and this does not necessarily mean that we have to dispose of our customer's wastes.

Uranium mining is likely to have a profoundly disruptive impact on the local Aboriginal population and environment; this will not greatly affect the rest of the nation and will be softened to some extent by safeguards and compensation.

The pros and cons will continue to be argued, but the Government rightly or wrongly, has made its decision. The question now is how much this decision will be accepted by the Australian people and how strongly it will be resisted by its opponents.

The Fraser Government, I'm sure, believes that uranium will help save it from defeat at the next elections and I suspect this calculation is correct.

The opinion polls suggest that most Australians now feel that the benefits of mining uranium outweigh the risks and that to export it under stringent conditions is more realistic than to leave it in the ground.

Not only does the Government appear to have majority opinion on its side but it has gained the immense political advantage of seeing the Labor movement internally divided by the issue and publicly out on a limb.

The cautious, critical realism of the Whitlams, Hawkes and Keatings has been swept aside by the emotional, moralistic righteousness of the Urens and the Left.

Labor's commitment to defer new uranium projects indefinitely and repudiate any new export contracts can be represented by the Liberal-NCP coalition as unreasonable, irresponsible and contrary to the national interest.

Uranium is also a diversion to the electorate and a distraction to the Opposition from the issue on which the Government is highly vulnerable — the contin-

uing recession and rising unemployment.

The Government has done little to encourage public debate about uranium. It would prefer confrontation, the more spectacular and violent the better.

There are enough groups and individuals ready to play into the Government's hands. Some are sincere conservationists and concerned citizens whose opposition to uranium is stronger than their respect for consensus.

Others are eager to seize on the uranium issue for their own sinister purposes, aimed ultimately at overthrowing the society they despise.

(The Left is not entirely united in its opposition to uranium. The pro-Moscow Socialist Party of Australia has been fairly muted on the issue, possibly because the Soviet Union is a potential uranium buyer.)

As with the Newport power station controversy in Victoria, the argument is likely to shift further and further from the merits of uranium mining to such questions as union dictatorship, law and order, and "who runs the country?"

The irony is that the Right-wing Fraser Government and Left-wing extremists have a common interest in provoking consensus-shattering confrontation over uranium, because each side believes it has much to gain.

This faces the Labor Party and the ACTU with a terrible dilemma and a grave responsibility, for it is within their power to defuse the issue and minimise the potential damage to Australian democracy and themselves.

They will have to pull their heads out of the sand and stop pretending that the exploitation of our uranium resources and the international development of nuclear energy can be reversed.

They will have to use their influence to bring Labor policy to a position more compatible with Australia's economic interests and more acceptable with majority public opinion, perhaps by insisting on slower development and stricter safeguards.

They will have to restrain or isolate the militant Left whose tactics are guaranteed to alienate most Australians, ensure the Fraser Government's political survival and invite harsh measures to protect the flow of uranium exports.

Unless Gough Whitlam and Bob Hawke can exert some real leadership, they and we shall all be headed for the wilderness of communal conflict and fractured consensus.

PERSONAL

Government House,
Canberra. 2600

18 August 1977

My dear Martin,

We have just heard that The Queen has conferred upon you the honour of Knight Grand Cross of the Order of the Bath. My wife and I send you our most sincere congratulations. It is a magnificent development at this stage of your service to The Queen. Early next year we should be able to find an occasion to add our personal congratulations to those in this letter.

With warmest personal good wishes

Yours ever

John

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

PERSONAL

PERSONAL AND CONFIDENTIAL

Government House,
Canberra. 2600

18 August 1977

My dear Martin,

In this letter, I should like to go immediately to yours of 3 August and to your request for "elucidation of one point". You wonder why I would "hesitate for a moment before giving Mr Fraser a dissolution should he ask for one at the end of this year". I have in my correspondence, I believe, indicated that if Mr Fraser asks for an election at the end of this year I should almost certainly feel compelled to grant it.

The object of my previous letters has really been to show that writers who had been dubious about the exercise of the reserve powers in relation to the November crisis have been hoping to make it difficult for me to grant an early election at the Prime Minister's request by getting me to exercise them again. They would like to see him suffering from a refusal of a dissolution which they believe he may want.

Such people hope to induce me to make it "one-all" by proving or trying to prove, before I go, a kind of political neutrality.

The Labor Party itself cannot argue in this way because they deny the existence, or at least their leader does, of all discretionary or reserve powers. So it is left to the journalists to try to make it hard for me to grant a dissolution. (See attached clipping - an article by Paul Kelly in the National Times of 15 - 20 August 1977).

In my letter of 14 July I sent a clipping from Professor Sawyer in which he talked about Sir Paul's views and mine. He clearly saw that we were really talking about quite a different sort of problem, in the field of dissolution, from what is involved in the present situation in Australia. The question of "workability" of the Parliament in relation to dissolution is an important one but it is different from the questions we now face.

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PERSONAL AND CONFIDENTIAL

I think I have made it clear in our correspondence that I would really have no difficulty at all in granting Mr Fraser a dissolution in December if he asks for it but I have put it in language which expresses the idea that it cannot be automatic however easy the answer may be in the end. This is important especially in Australian constitutional circumstances.

You say that the answer to your question probably lies in the Australian Constitution and in a sense this is true though basically the classic doctrines indicate what should be done.

I attach another article from yesterday's Canberra Times, by Professor Sawyer which spells out some of the complexities in our local constitutional situation. I have side-lined some paragraphs which help to make this point. You will, I am sure, not want a legal treatise from me on the points made by Professor Sawyer. All I need to say is that the factual and constitutional context is not yet entirely clear. If, however, the distribution position is established at the time Mr Fraser makes a request, should he do so, I have no doubt he will be entitled to what he wants. But even in this correspondence I feel that I should not indicate a concluded opinion, nor shall I reach one until all the circumstances as to redistribution are incontrovertible.

Certainly I shall not allow myself to be hemmed in by broad remarks of mine or Sir Paul's, not applicable to the actual problem which could arise, but intended, as Professor Sawyer recognised, to deal with an entirely different parliamentary situation.

Under the ordinary "Westminster" scheme Mr Fraser would be entitled to go to the people in December and I will certainly not stop him unless some special Australian problem prevents it, which seems unlikely.

The questions are (i) will everything be ready to make it possible for him to ask for an election and (ii) will he do it? As to (i) the answer is probably yes. As to (ii) the budget brought down yesterday has been interpreted by some as being an "election" Budget.

It has radically reformed taxation laws so as to reduce tax and to be attractive electorally but there are other elements, such as the inevitable increase in petrol prices resulting from a gradual upgrading of our own crude oil prices to world parity levels, which could run the other way. The Canberra Times today had an editorial about the Budget which was

.../3

headed "Ready-Made for a Poll" - though the small print was more equivoal.

The broad character of the Budget seems to be based on a "more of the same" policy. Unemployment is not directly tackled. Inflation is still the main enemy. Public expenditure is to be kept within the same sort of control and the emphasis is upon letting people have more say about how they will spend their own money. I shall not attempt a more subtle summary.

The tax concessions, which are quite radical both in producing a reduction in tax and in reforming the tax system, do not operate until 1 February. A question is - is this a carrot for a December election? In such an election such a policy would make it difficult for the Labor Party to write a more attractive policy speech. This tax reform and reduction is a commitment of the Government which will become law, in the Budget Session, and could be lost by a change of Government.

Or is it a carrot for a May election? Is it saying - if you like this, and want to keep it, vote for us in May? We shall see.

The problem about the Queanbeyan proceedings seems to have resolved itself in the Attorney's favour. The proceedings will not be taken over by him but the defendant's costs will be paid. We shall also see how this develops.

Please assure Her Majesty that my wife and I look forward to our arrival in London in retirement and of our continued deep loyalty and humble duty which we hope to reaffirm personally next year.

With warmest regards

Yours ever

John

P.S. I am still unaware of the Prime Minister's actual intentions as to a December election.

JRK

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

SIR JOHN KERR'S OPTIONS

By PAUL
KELLY

ANY early general election this year must spark another row over the actions of the Governor-General, Sir John Kerr.

The background to an early election controversy is already well established, resting on two main factors.

They are: first, Sir John's past public statements that a Governor-General cannot grant an early election just for the political convenience of the Prime Minister and, second, the recent reports that Sir John is interested in a Government consultancy when he retires.

Sir John told the Indian Law Institute on February 28, 1975: "Sometimes the situation arises in which a Prime Minister may seek to have Parliament dissolved before its constitutional term has expired.

"It is, of course, not sufficient for him to seek a dissolution of Parliament simply because he would like to have an election long before it is due...

"The essential question is whether the Governor-General can be satisfied that Parliament has in fact become unworkable."

There has to be a House of Representatives election before February 1979 and a Senate election before July 1, 1978.

Although the most likely time for an election is still next year, there are people in the Government encouraging speculation about an early election.

Any House of Represent-

tatives poll this year would require Sir John to grant Malcolm Fraser a dissolution "because he would like to have an election long before it is due" — obviously for political gain — the circumstances in which Sir John has said a dissolution cannot be given.

Sir John may or may not now hold this view. If he has changed his mind, he is stuck with his previous speech. He would also be stuck with the fact that he has already used the Vice-Regal powers once, to sack a Government; a far more severe act than refusing a dissolution.

Malcolm Fraser is supremely confident that he can hold the election whenever he chooses.

Sir John has already announced his retirement from the post, effective in December. While this might make him reluctant to become involved in another controversy, it could always encourage him, on the grounds that he had nothing to lose.

There is speculation that senior ministers recently debated among themselves a suggestion that Sir John might take up a legal consultancy with the Government after retirement.

This is an extraordinary proposal.

It could compromise the Governor-General, whose powers over the Government

are immense and who regularly assents to executive and legislative decisions.

In short, Malcolm Fraser may find himself seeking a dissolution from a Governor-General about whom it has been suggested the Government might offer a consultancy on retirement.

Mr Fraser, no great admirer of Sir John's, will almost certainly bury this idea. But it will further ensure that the very granting of any early election becomes highly contentious.

None of this offers any joy for the Labor Party.

It would be totally untenable for Labor to argue that Sir John should use his powers to deny any election. Moreover, any revival of controversy surrounding Sir John is only likely to hurt the party while Gough Whitlam stays leader.

Some legal posers for PM over early election

BEYOND THE LINE | By GEOFFREY SAWER

ONCE again, there is talk of an October-November general election for the Reps, which can and almost certainly would be accompanied by a half-election for the Senate.

The speculation appears to be based mainly on the element of electioneering evident in the recent sustained union bashing, and on a view that the Budget cannot or at least will not reduce unemployment; economists, including some who are not obviously partisan, think unemployment may well get worse next year.

Chairman Mal's advisers may think that a slogan in November such as "Let us finish the job" will be more persuasive than the same slogan six months or a year after, and that a slogan "We've beaten the depression" isn't likely to be credible at any time between now and 1979.

The union-bashing talk can be explained on other grounds than election fever; it has come mainly from the Country Party, and may be due to the attempts of various leaders and factions in that party to assert themselves against both internal rivals and the Libs.

Redistribution

However, there is one bit of hard news which at least makes the early election talk a bit more credible than similar talk seemed to me some weeks ago. This is the news that the Electoral Commissioners have been making very rapid progress in bringing out their recommendations for redistribution of Reps constituencies, so that it is now possible, though not certain, that the redistribution can be brought into effect in time for a November election.

The main surviving difficulties so far as the commissioners are concerned arise in NSW and Victoria, since those States are losing seats

and this inevitably produces masses of objections from all parties to any scheme which the commissioners put forward.

In the past half-century, the chief obstacle to adoption of redistribution proposals has not been at the stage of hearings before Commissioners; it has been obstruction in Parliament, where either House can disallow the commissioners' proposals in respect of any State. At the present time, it is possible that an alliance of Liberal and Labor members would put the redistribution proposals through pretty smartly, against Country Party and perhaps some "Country-Lib" opposition.

The Country members would regard it as an unholy alliance against them. Their principal complaint, however, is not the detail of the proposed redistributions but the circumstance that they have been carried out on a 10 per cent variation from the quota introduced by the Whitlam Government, instead of the 20 per cent variation which previously applied and which enabled the Country Party to retain rural constituencies with electoral populations much smaller than those of the largest urban divisions.

It is equally possible that having failed to persuade the Libs to amend the 10 per cent variation provision, the farmers will accept the redistribution lest worse befall them.

That worse is the possibility of an election "at large", i.e. with the whole of a State as a single electorate.

Some time ago I discussed in this column the rather intricate provisions of the Constitution, S.29, and of the Representation Amendment and Commonwealth Electoral Amendment Acts of this year which create the "election at large" possibility. I mentioned the apparent view of the Fraser Government that an election at large could not in fact be carried out, because the Acts just mentioned don't specify the method by which such an election would be conducted.

I also mentioned the possibility that the Government is wrong on

this point, because there is an arguable case for the view that in the absence of any statutory scheme for carrying out an election at large, the Commonwealth Chief Electoral Officer must be regarded as having implied power to devise a suitable scheme himself.

If this argument depended only on the provisions of the Constitution and the High Court's decision in the McKinlay electoral case of 1975, it might be more doubtful. In addition, however, Parliament seems to have expressed in the amending Representation and Electoral Acts of 1977 — Sections 9 and 11 respectively — a very firm rule for at least the next election after those Acts were passed — that is, the election we are now considering.

Illegal

The rule is that whether this election is an "ordinary" general election towards the end of an ordinary three-year term of the House of Representatives, or is an abnormal "snap" election much earlier than that three-year term (as an election in October-November would be), either it must be on redistributed boundaries or it must be an "election at large".

An attempt to hold an election in October-November on existing boundaries, the ones which applied at the 1975 election, would be in a most positive sense illegal.

Which brings us to the Governor-General. I have expressed and adhere to the view that the G-G is most unlikely to refuse Mr Fraser a dissolution merely because it would be a year earlier than "normal".

The precedents and "conventions" on this matter overwhelmingly support the right of a Prime Minister with a large majority to obtain such a dissolution for the sort of reasons which Mr Fraser can advance at this stage of the Parliament.

But the Governor-General might well raise questions if the result of a dissolution this year would be an election flatly in breach of general

constitutional requirements and of two Acts of Parliament.

If there's anything reasonably clear about this whole business of the "reserve powers", it is that they can be exercised so as to prevent the occurrence of some large scale governmental illegality for which there is no readily available remedy in the ordinary courts.

On present practice, it would be difficult to obtain a judicial remedy to prevent the dissolution of Parliament and consequential general election, because of the time factors involved; dissolutions are always proclaimed on the day they are carried out, and it may then be difficult to obtain orders from the High Court, and impossible to obtain amending legislation, which a High Court decision might necessitate, in time to affect the consequential election.

Faced with this legal jungle, a G-G might well refuse a dissolution until the redistribution now under way is completed and in force.

If he did so and published his reasons, Mr Fraser would — remembering November 1975 — be hard put to it to justify resigning in dudgeon, or accelerating the accession of Sir Zelman Cowen, or procuring the appointment of someone who accepts the "extreme Whig" view of the G-G's functions.

It seems likely that whatever other factors apply, there will be no dissolution until the redistribution is in force.

Government House,
Canberra. 2600.

10 August 1977

My dear Martin

I write first to express the most sincere hope that The Queen's visit to Northern Ireland will not confront her, her family and others with any distressing experiences. Our papers are full of stories but one knows that great care, effort and bravery is involved in handling such a situation. We shall be anxious until it is over and great in our admiration, as always, of Her Majesty.

There are a few points.

First a rather awkward problem presented itself late last week. The Prime Minister rang me to tell me of a possible crisis. It has to do with the prosecution of Mr Whitlam and three other former Cabinet Ministers for criminal conspiracy in relation to the loans affair of 1974-5 in the Queenbeyan Magistrate's Court - the private prosecution I have previously mentioned.

During the loans crisis in 1975 a considerable number of documents which might normally have been the subject of Crown privilege were tabled in Parliament by the Whitlam Government and thus became public. Later when the private prosecution was launched the prosecutor sought to tender those documents in support of his case. He sought also to call officials to give oral evidence.

The Crown claimed privilege for everything except the documents which had been published, taking the view that it would not be right to claim privilege for documents that anyone could read and had been widely publicised in the press. Just before the Prime Minister left for the United Kingdom for the Jubilee celebrations, Cabinet decided to reverse its previous decision that it would not claim privilege for the documents. This would have involved a public reversal of the stand on the documents taken up till then by the Crown in court. The Attorney-General threatened to resign on the issue but a crisis was then avoided by an agreement to have Cabinet reconsider the matter after the return of everyone from overseas.

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Later Mr Whitlam, Dr Cairns and Mr Connor asked that the Attorney-General take over the proceedings obviously with a view to terminating them on the ground of lack of evidence and substance in the case. This the Attorney-General was not prepared to do without thorough investigation which would have involved conferences with all the officials involved in advising Ministers prior to the Executive Council decision on the Arab Loan made on 13 December 1974. He felt that he could not decide to take a private prosecution out of the hands of the prosecutor without such an investigation.

The Attorney by taking this stand ran head on into the principle that Governments are not entitled to be given knowledge about the deliberations of and advice given to their predecessors in Government. The Attorney argued that this principle must give way to the investigation of a possible crime. Last week he was rebuffed on this request for the right to interview officials by a decision of Cabinet supported by the Prime Minister.

He threatened to resign again especially as he believed, apparently, that if Crown privilege were to be claimed on the documents and he were to be directed to take the case over and if he were not permitted to interview officials this would inevitably produce a situation in which lack of evidence would force a withdrawal of the prosecution. He took the view that Cabinet was intruding into his quasi-judicial area.

It is often difficult for Cabinet Ministers to concede that the Attorney is in a different position from them. The principle of collective responsibility of Cabinet applies of course to all political matters but the Attorney-General takes the view that decisions made or to be made in the administration of the criminal law cannot be politically determined or controlled.

In a nutshell it seems that Cabinet wishes to protect Crown privilege to the limit, subject to decisions of the Courts; protect the principle about advice to previous governments being sacrosanct; and probably to get rid of the prosecution. The Attorney objects to his own discretions in relation to the criminal law being made the subject of direction.

Then another development occurred. Mr Justice Murphy the fourth Minister involved in the Executive Council Loans Meeting wrote in the last few days to the Attorney strongly objecting to him taking over the prosecution thus taking a different fundamental position from the other three defendants. This may enable both parties in the Cabinet dispute to resolve the matter by leaving the prosecution in private hands. If this happens the prosecutor may still object to privilege being allowed and the Crown, if the Attorney accepts Cabinet's decision on privilege, will claim privilege. The Courts will decide.

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The Attorney could then, I believe, stay in office without problems of conscience on constitutional grounds. It is probably for the Government rather than the Attorney to decide whether privilege should be claimed. Whatever the Magistrate decides can go on appeal. It is the other points, rather than on the claim of privilege, on which the Attorney at this stage feels strongly - namely (1) a direction which could be given that he must take over the prosecution, (2) that he should do so without investigating what happened by conferring with officials and (3) that in the absence of evidence he should withdraw the prosecution when he has not been able properly to investigate the facts.

If the Attorney takes over under direction, or some new Attorney does so, the evidence would not be presented in the first place. The Crown would not have to claim privilege or submit the evidence, whatever it is, to the Court. It could simply decide itself that the material was privileged and therefore not to submit it, in which event there would be no evidence and no privilege point to be decided by the Courts.

The public servants and most politicians would I think like to be rid of the whole matter of a charge of criminal conspiracy against four former Cabinet members arising out of an Executive Council Meeting, but the Attorney does not agree that he can be directed to close the prosecution down without investigation.

One question is whether he will in the last resort, if Cabinet stands firm, resign or be forced to go.

I incline to the view, at the moment, that the crisis will pass and the prosecution will remain in private hands.

One element in its resolution is I suppose the impact of the whole matter of a resignation, at this time, on election strategy. It still seems possible that I may be asked for a December election and evidence before them of such a split may not be helpful to the Government.

Another Minister, Mr Sinclair, is in some trouble with the press for alleging that British shop steward immigrants have imported the "British disease" into Australia. He has run into serious criticism for "racism" but this will not, I think, build up to a serious problem. He is Deputy Leader of the National Party under Mr Anthony. The British High Commissioner has been drawn into the discussion.

Things are in other respects quiet and we await the return of the Parliament and the Budget.

PERSONAL AND CONFIDENTIAL

4.

Please assure Her Majesty of our loyalty and
humble good wishes for her visit to Northern Ireland
and in all other respects.

Yours ever,

John

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

PERSONAL AND CONFIDENTIAL



BUCKINGHAM PALACE

PERSONAL AND CONFIDENTIAL

3rd August, 1977

My dear Tom

Thank you very much indeed for your letter of 28th July which I have laid before The Queen and which Her Majesty was very pleased to receive.

Her Majesty was most interested to read what you had to say about the uranium issue which is clearly an extremely hot potato for the Government to handle. It compares with the problem which is going to face the Government here over exorbitant demands for rises in pay by various Unions: this is still likely to come to a head with us in October. I do not think however that it will tempt the British Government to ask for a dissolution and go to the country.

I naturally hope that you will not be faced with another constitutional crisis during the last months of your time at Government House.

In this regard I should be most grateful to you for elucidation of one point. The present British Government is, relatively, about the same way through its constitutional period of office as is the Australian Government. If Mr. Callaghan were to ask The Queen for a dissolution at any time from now on, I do not think that Her Majesty would hesitate for a moment before giving it to him. The point about which I am unclear is why you should have any hesitation in giving Mr. Fraser a dissolution should he ask you for one at the end of this year. I am of course not sufficiently familiar with the Australian constitution wherein no doubt the answer to my question lies, but I should be most grateful for enlightenment.

Sir Paul Hasluck called on me the day before yesterday at the end of his visit to the United Kingdom. He seems to have had a most agreeable time and, I think, goes back to Australia much refreshed by his visit to the United Kingdom.

Yours ve

Martin

His Excellency
the Governor-General of Australia.



BUCKINGHAM PALACE

PERSONAL AND
CONFIDENTIAL

25th July, 1977.

My dear Bob

Many thanks for your letter of 19th July. The Queen was as pleased as I was to learn that you are feeling free and happy about the future now that the news of your resignation is in the open.

It is also good news that the Australian Government will provide you with an element of "infrastructure" (I believe this is the proper "jargon" word) when you are in London. I am also glad that there are other positive developments in respect of your future.

Thank you for sending the various newspaper reports and editorials dealing with your resignation. I am glad that you are happy with the way the news was taken.

You will, of course, let me know when you expect to arrive in London, but I can understand that developments over the next election will leave this in doubt for some time yet.

The Queen thanks you for your message and sends you both her good wishes.

*Yours ever
Martin*

His Excellency the Governor-General
of Australia.



BUCKINGHAM PALACE

21st July, 1977

My dear John

Thank you very much for your letter of 14th July and its enclosures which I have laid before The Queen and which Her Majesty has read with interest and also with full understanding of what your feelings must have been on the day on which you signed the letter.

I can only express the hope that once your decision was made public, you will both have experienced some sense of relief and that you will receive the credit that I believe is your due for the honourable course you have taken. That is certainly the hope of your many friends in this house.

I was of course extremely interested to read Sir Zelman Cowen's updated chapter from the book "Australia and the Monarchy". There will undoubtedly be comment when it is published, but it seems to me to be well reasoned and well balanced and his views, as you say, "produce no need for concern".

Incidentally it is interesting that no commentator as far as I know forecast that Sir Zelman would be appointed to succeed you. That was a well kept secret!

I naturally hope you will not be faced with a difficult constitutional decision at the end of the year of a request for a dissolution. As Lord Balfour said "No constitution can subsist on a diet of dissolution" and obviously irresponsible requests should be resisted if not necessarily refused.

From a practical point of view, I think Geoffrey Sawyer puts his finger on the political problem in his second but last paragraph! A Governor-General; or a Sovereign; who refuses a dissolution has to weigh the political consequences of his action with great care as the unfortunate Byng learnt to his cost in Canada.

I was not surprised to read in your letter that it is false to suggest that you intend to publish anything this year, as this was what you made clear to me in HMY BRITANIA at Fremantle. I should naturally be most interested to learn what plans, if any, you have for publication of your memoirs at any time.

The Queen sends you both her best wishes.

*Your own
Martin*

His Excellency the Governor-General of Australia.

PERSONAL AND CONFIDENTIAL

Government House,
Canberra. 2600.

28 July 1977

My dear Markin,

The uranium issue is probably going to become very important by September/October. The Prime Minister has made a big thing of this in America and Europe and the energy policy of the President of the United States, together with European desire to have access to Australian uranium has led the Prime Minister, as I understand the position, to want an early resolution of our uranium mining policy. The National (former Country) Party under Mr Anthony appears to want an early decision to mine and export. A decision will probably be made in August or September.

The Labor Party has hardened its policy on uranium. Before the Perth Conference of the Party its policy was to agree to the export of uranium under contracts made before 1972. At Perth it decided to reverse this policy and to oppose all exports for two years - the two year "moratorium". If the Government decides, with safeguards, to mine and export, in stages, from our uranium store, this would create a clash of policies. We have, in the Alligator River area of the Northern Territory, what is probably the biggest single store of uranium in the world. If we could mine and export from this and other reserves, without internal troubles, this would probably have a big positive influence on our economy during the next, say, ten years.

The Government has appointed a special Minister to handle our trade relations with the E.E.C. He is Mr Howard, the former Minister for Business and Consumer Affairs, who has been replaced by Mr Fife to leave him free for his new task which will, if we decide to mine and export uranium, involve bargaining to obtain other trade with the E.E.C. in return for uranium. The decision to mine and export is a difficult one to make and to carry out. There are a number of reasons for this.

Public opinion, as registered by the Gallup polls seems to be in favour of such a policy but support has been falling from month to month. The pressures upon the Government to settle the policy during the next couple of months are very strong and they are by no means all external. Companies operating here in the uranium field and many other persons and institutions of influence

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2.

want to get an early decision. Mining and export, in our unemployment situation, would be a job-creating exercise and some unions are in favour of such a policy but the militant unions are against it.

The Federal Conference of the A.C.T.U. which will take place in September has to decide its policy and the question is - will the A.C.T.U. follow the hard line policy against mining and exporting adopted by the Labor Party? It is not certain that it will, because of the "jobs" issue, but it may. Mr Hawke is thought to be likely to pursue a policy of compromise.

If the A.C.T.U. comes down with a policy along the same lines as the A.L.P. there almost certainly will be a serious confrontation between the unions and the Government. Even if it does not, the same situation could result from a firm dissident policy by the militant unions.

The uranium issue, as an issue likely to strain the "fragile consensus" (to use a phrase of my distinguished successor-to-be, the Governor-General designate) in the country is a serious one. It could well come to a head by October, both as a result of Government and A.L.P./Union clashing policies, with the A.L.P. deeply involved.

This would be bad enough if it did not involve questions about when the next election should be held, but it does. There are strong elements of the opinion that the Government should accept the likely confrontation on this issue as providing a good context within which to fight a very early election.

Turning to the election issue the only real options open to the Government are an election for both Houses simultaneously in May 1978 or during December this year. The best prospects for a Government victory, with losses of seats, is thought by many on the conservative side to be an election for both Houses this year - or so the gossip runs.

This depends in part on how hard the Budget will be, but in any event many of the conservative forces believe, as far as I can gather, that a December election will be best for them. Inflation may in December be down to some extent and unemployment, though bad, will undoubtedly be much worse by next May. The economy as a whole will not be in good shape, on the contrary, by then.

An early December election in an atmosphere of industrial confrontation produced by the uranium issue is thought by some to be the best option open to the Government. The A.L.P., on the other hand, would probably prefer an election for both Houses in May rather than this December.

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PERSONAL AND CONFIDENTIAL

What I have so far said is based upon impressions gained from various sources, including my interpretation of the informed press.

I was told by those interested in the "Kerr" security issue well before The Queen's visit that the "Kerr" issue, as a serious cause of street demonstrations, would be dead before she came and that that visit would produce no real security risks but that the next big "demonstration" problem would be that about uranium later this year. I was also told that it could approach proportions nearer in magnitude to the Vietnam issue because of its potential mass appeal.

The position could be that both some conservatives and left-wing unions could want confrontation, the former for supposed electoral advantage, the latter for the usual reasons - weakening the economy and breaking down further "the fragile consensus".

Polls appear to show that amongst voters the unions and political union action are not popular. The uranium argument is explosive because all kinds of people, otherwise non-political or political on different issues, e.g. aboriginal issues, general environmental issues, republicanism, and so on, can be joined up with those who are simply worried and frightened about nuclear matters and made into a large force. Furthermore the issue could become a running sore and be with us for years. The big question is whether the people will ultimately line up for jobs and a strengthened economy or for idealistic moral disapproval.

It could therefore be that all of this could bring about a request for an election for both Houses in December by which time the redistribution problems would probably be solved.

I do not know how this will all fall out but, if such an election is asked for and granted, it will have to be by me and, in a confrontation atmosphere, it will be alleged that in fact I always exercise my discretion, the existence of which is denied by the same people who would want me to refuse an election, in favour of the conservative interests, a decision, if in favour of an election, could well revive controversies associated with myself. The basic issues will be much more important but a "Kerr" frill to them could be added.

If a decision about such an election has to be faced up to, I hope and believe it will not arise until after His Royal Highness The Prince of Wales has been and gone.

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PERSONAL AND CONFIDENTIAL

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In a speech yesterday the Prime Minister in a pointed way appeared to indicate that an early election is unlikely but this could have been only a tactical kind of remark to put people off their guard. He had not revealed to me his real intentions, if he has formed any.

Please assure Her Majesty of the continued loyalty and humble duty of my wife and myself.

*Yours ever,
John.*

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

PERSONAL AND CONFIDENTIAL

P.S. Also an article from the
National Times of Sunday
on "Why Fraser Failed
Nothing with his Choice
of G.G." - The author is a
sensible fellow. J.H.K.



25th July 1977

My Dear Martin,

I have not a typist readily to hand
in Sydney at the moment. My wife is anxious to
send a letter of deep appreciation, gratitude and
loyalty to the Queen and, to catch tonight's bag, I
have to ask you to excuse a short hand-
written note. Her letter which she wanted to
address to Her Majesty is enclosed. Please deal
with it in whatever way proper Palace practice
dictates.

I do two other things, only, in this

letter -

(1) I send you another paper of Sir Zelman
Cowan's - a lessoned one I believe.
Delivered last year. Its last chapter
(2½ pages) touches upon our great
crisis

(2) An editorial from today's Financial
Review about the "coming" (?)
election.

More voluminous reporting - especially on
uranium - later
John

WHY FRASER SOLVED NOTHING WITH HIS CHOICE OF G-G

NATIONAL TIMES
JULY 25-30, 1977

SOMEONE who did not like generals once commented unkindly that armies were always well prepared to fight the last war. When I learned of Mr Fraser's choice of Governor-General, I had a similar feeling about politicians.

If the published conjectures have some force to them, then the reasoning behind the Cowen appointment went like this. The standing of the Governor-Generalship was in some danger because of the events at the end of 1975 in which Sir John Kerr was involved. His resignation would help to soothe those who still harboured grudges about November 1975, but Kerr's successor would have to be above party politics in order for that happy state to continue. So that ruled out former Liberal politicians.

Sir John Kerr's former occupation ruled out judges. And perhaps the absence of distinguished generals, admirals and air vice-marshals (it being a long time since we had a war hero) ruled them out;

By DON AITKIN*

maybe it was thought that the military had the wrong associations — the coup in Pakistan occurred almost simultaneously.

Who was left, after all these preclusions? Well, Bob Hawke, and vice-chancellors. Vice-chancellors sound all right: they are usually pretty distinguished academics, and in non-Labor States, they often get to be Sirs. If they survive their gruelling job, they are good health bets (one English vice-chancellor described his job as "being King John, with a lot of rebellious barons who are constantly trying to make you sign Magna Carta" — the barons were the professors).

Sir Zelman has been vice-chancellor of two universities; the students of his first campus, New England, christened him "Big Z," not without affection. He is also a noted constitutional lawyer, who is on record as saying that the powers of the Governor-General ought to be codified. He

is not known to be a partisan of any political party. What more could you ask, you ask.

Well, he would be a good choice if the Prime Minister's analysis of the situation (if it was as outlined above) were a good one. Alas, I think it is fundamentally wrong. What is more, it is possible that Mr Fraser has been so preoccupied with one aspect of the Kerr Governor-Generalship that he has forgotten some much more important ones, those on which Mr Whitlam would be happy to enlighten him.

First, the situation. It is beyond question that very many Australians were disgruntled in November 1975, and that they held the Governor-General responsible for the whole business. The resignation of Sir John Kerr will have cheered them no end. They would regain their grundle completely, however, only through the abrupt and miraculous departure of the Fraser Government. The question of who should replace Sir John Kerr would be for them quite a subordinate issue, and of no real importance.

There are no statistics I can bring forward to support this view. But equally there is no evidence that I am aware of that suggests that Australians have ever taken a deep interest in the office of Governor-General, or in the person who fills it.

Even the animus against Sir John Kerr after the sacking of the Whitlam Government is weak evidence: a very great deal of it, it seems to me, was partisan in origin, and uninformed. He had been put in by a Labor Government, and had ratted on his mates: or he had allowed an election at a bad time for the party.

The sophisticated argument of political scientists and lawyers — that Sir John, by involving the office in the most basic political question of who should rule, was undermining the status of the office — has not been taken up by the people. Their discussion has been mostly at the level of goodies and baddies.

If this analysis is correct, then Mr Fraser could have spared himself a lot of mental sweat: if Sir John Kerr resigned before the end of his term, Australian politics would have dropped a degree or two in temperature — and that's all one could reasonably hope for. The choice of his successor could have proceeded without an eye cocked for imaginary storms.

After all, what does a government want from a

Governor-General? A good public front, amenability to the wishes of the Government, and no fusses — that's about the end of it. And where are you most likely to find those qualities? First answer: among former politicians of your own party, especially those who never made the top job. Second answer: among senior military, naval and air officers, who are used to taking orders from politicians and not blenching publicly.

And who is the last person you would want? Well, first, someone who is energetic and ambitious. Second, someone who has no first-hand experience of national politics in government and Parliament (and will not, as a result, know the ropes, know how politicians behave). Third, someone who has built an independent career, and learned in it to trust his own judgment.

Sir John Kerr answered that description. So too does Zelman Cowen. And what makes his appointment so puzzling, given all Labor's agonies after the event about the Kerr appointment, is that Mr Fraser's easy times have gone. His parliamentary situation could become as precarious, at least in the Senate, as Mr Whitlam's was in 1975. He would not enjoy at all having to govern with the consent of Senator Chipp and his mates, assuming that they are there in sufficient number.

And it is in such situations, as we have seen, that the mood and character of a Governor-General become extremely important. If I were Mr Fraser in such a position I would go for someone like Sir Alexander Downer, an impeccable Liberal from the Menzies era, or unknown Admiral Sir Thing.

The first would know the game, and be predictable, while the second, however anxious he became about what was happening, would never try his hand at a little constitutional interpretation. But a clever, resourceful and independent constitutional lawyer . . . never!

I don't want to be misunderstood. Sir Zelman Cowen's qualifications for the job are not in question. In fact, since the universities seem in some danger of falling on evil days, his appointment is one up for us. But I hope, for the Governor-General-designate's sake, that he has an uneventful term of office.

*Dr Aitkin is professor of politics at Macquarie University, Sydney.

LOOK, SIR JOHN, FRASER'S GONE KITE FLYING

THE AUSTRALIAN FINANCIAL REVIEW

MONDAY, JULY 25, 1977

Flying kites is an old political ploy. But it can also be a dangerous one.

Prime Minister Fraser's office is now paying the price in political embarrassment over the incident of Justice Fox's cables back to the Prime Minister from his world tour.

After several newspapers had carried reports that the head of the Ranger inquiry had adopted a more pro-uranium mining and export stance in his messages to Mr Fraser than he and his fellow commissioners had in their report, Justice Fox let it be known that he was horrified that such a twist had been given to his words.

Reports at the weekend have sourced these original reports back to Mr Fraser's office. This will no doubt provide the anti-uranium lobby with some ammunition.

Unperturbed, the Prime Minister's office is at it again, this time flying the kite that a general election is likely later this year, possibly in October.

Mr Fraser must hold a half Senate election before the middle of next year and a House of Representatives election before early 1979.

The Prime Minister obviously does not want a half Senate election by itself (look what happened to the Liberals when Harold Holt did this in 1967) but

has failed in his attempt to amend the Constitution to make simultaneous elections compulsory, thus averting a half Senate by mid next year.

So if Mr Fraser is to have a simultaneous election (and it seems generally agreed that this is the wisest course for him) it must be held some time before next June.

The Prime Minister's election quandary is complicated by the redistribution question. The result of two High Court cases in recent years means that NSW loses two seats, Victoria one and South Australia one, while Queensland gains one seat.

If the Prime Minister plumps for an election on the old boundaries there is a distinct possibility that it will successfully be challenged in the courts.

Mr Fraser could, of course, push through legislation enabling elections at large (that is, on Statewide boundaries) in the four States whose representation is to change, but this is cumbersome and is considered unlikely.

The alternative is to await the current redistribution, which will implement the court decisions.

The mechanics of a redistribution are such that it is almost impossible for any election to be held by October. The

earliest date thought likely for an election on new boundaries is November, and late November at that.

A November-December general election would obviously be attractive to Mr Fraser. November is the year's seasonal unemployment low. School leavers do not flood on to the unemployment rolls until mid December.

While the ALP is keen to fight the next election on unemployment and the economy, Mr Fraser is not.

A November-December election would be the best opportunity for Mr Fraser to "hide" the unemployment issue while concentrating on his own favourite election topic, uranium.

But a November election involves some delicate problems for Mr Fraser, and these are obviously behind the current kite-flying exercise.

First, the Liberal Party is apparently not keen on the idea, and, second, Mr Fraser will have to ask Sir John Kerr's permission.

Mr Fraser can point to precedents when other Governors-General have granted a Prime Minister an early House of Representatives election (Sir Robert Menzies got one in 1963) but there is always the possibility that Sir John could say no.

Sir John takes a far more expansive view of the powers of the Governor-General and may not feel at all inclined to grant an early election to a Prime Minister who enjoys large majorities in both Chambers.

Another factor gnawing away at the Prime Minister is that the Liberal Party is trying to talk him out of any poll at all this year.

Certainly the party would not like a half Senate election and feels that the best time for a simultaneous Senate and House election would be next May.

There would then be a new G-G and the March quarter CPI, if it follows its usual pattern, should be low, thus giving the Government credit for inflation control and room perhaps even to expand the deficit.

But unemployment will be very high next April-May, and, coupled with the seasonal tax squeeze on liquidity, this could play right into the Opposition's hands.

The inspired leaks now being reported by some newspapers direct from the Prime Minister's office suggest that the Liberal Party should start to look to a slogan for an early election, and that Sir John Kerr should brush up on his constitutional expertise.

Government House,
Canberra. 2600

19 July 1977

This is a short letter to say that my wife and I, the news having now been announced, are feeling free and happy about the future. We intend to live in London for a period not yet decided upon. I shall there be provided with an office suite, a secretary and transport. This is done in Australia for Australian Governors-General living in this country. It will be done for me in London. It is not meant to be a precedent for the future for others, whose situation may be different, but it is accepted that, having regard to the present circumstances and my desire to spend the early part of my retirement from the Governor-Generalship in London, this justifies giving me there the conditions which I would have in Australia.

There are some other developments which are, I believe, certain for the future. They run along the diplomatic lines I have already discussed with you but they will not take place for the time being, and I shall in a later letter be able to give you more reasons why this is so. As you can well understand from my earlier letters we are in some doubt about the way in which the plans for the next election will emerge and this could have an effect on my own plans.

I was very happy about the way in which the press received the announcement of my resignation and the intended appointment of Sir Zelman Cowen. I enclose a copy of the editorial from the "Sydney Morning Herald" of 15 July as well as editorials from the "Financial Review" and "The Age". I also send you a copy of an article from last Sunday's "National Times". These do not, of course, give you a full picture of the reaction of the press of Australia but for what they are worth I let you have them. There are many other things that I could mention but I am writing at the last minute to catch today's bag.

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Thank you very much for your most recent letter to me. It was in answer to my letter of 5 July. The correspondence is locked away in the safe and if I am to get this note off to you I have to do it immediately without checking back on our previous correspondence.

I look forward to spending some time in London with my wife. We shall get some accommodation there and she will be able to commute between London and Paris when she feels like it.

Please assure Her Majesty of our continued humble duty and loyalty which, of course, we hope to be able to extend to her personally at some convenient time after our arrival in London.

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

A HARD ACT TO FOLLOW AT YARRALUMLA

THE AUSTRALIAN
FINANCIAL REVIEW
FRIDAY, JULY 15, 1977

Sir John Kerr's successor as Governor-General, Sir Zelman Cowen, is going to be fairly quickly exposed to the heat of the political kitchen.

He is going to be asked to do something which will involve him in a question of constitutional delicacy and at the same time raise questions about the non-partisan nature of the office.

Prime Minister Fraser wants an early general election, one timed to coincide with the half Senate election.

Such an election can be held only if approved by the Governor-General.

If Mr Fraser does not get his early general election then he faces the near certainty of losing control of the Senate in a half Senate election. While nothing is absolutely predictable in politics the method of election to the Senate, recent past history and the existence of a quite sophisticated market research system within Australia mean that one can talk with much more assurance about the outcome of a half Senate election than just about any other election held in the country.

Rival public opinion polls have indicated that the breakaway Don Chipp and his new party have captured sufficient support to ensure that at a half Senate election they would pick up the

fifth seat in enough States to give them the balance of power in the Senate.

Empirical election experience tells us that if there were to be a full general election the Chipp party would be dramatically reduced, probably annihilated.

In terms of election timing the best possible period for Mr Fraser to go to the polls is late November-early December.

Strong seasonal factors favour the party in power at that time. It is in climatic terms the time of rising expectations. The weather is warming up, Christmas and holidays are around the corner.

The favourable features of the August Budget — assuming there are any, and it is within the power of the Government of the day to plant them — are still fresh in the mind.

The industrial tempo is running at its highest level of the year in preparation for the December-January shut-down. Farmers are getting their first advance wheat cheques. The December Consumer Price Index figure, usually the highest of the year, has not been released.

And most importantly of all the figures for registered unemployed are going to be the lowest they will be for another six months.

But a general election in November

cuts short the term of the House of Representatives by a full year. Even a May general election could be construed as giving a decided advantage to Mr Fraser.

In legal constitutional terms there is nothing to stop the Governor-General from giving the Prime Minister an early election if he asks for it.

In terms of political considerations about constitutional propriety the Governor-General faces a dilemma. The Senate is a State House and the States have, through the medium of a recent referendum, demonstrated that they are not wedded to the idea of simultaneous elections of the House and the Senate.

The referendum in fact showed a high public awareness in the small States of the virtues of holding the elections separately.

Whatever the new Governor-General may eventually decide he can hardly not consider the opinion expressed by the voters in the small States. As Sir John Kerr decided, Australia still is a federation, in which the States House has to be taken seriously.

Recently when Mr Fraser was asked if he thought Sir John Kerr would in fact give him a general election ahead of time if he asked, the Prime Minister replied, "There are precedents."

In fact these precedents, such as they are, cover different circumstances.

First, there was not the expressed opinion of the small States against simultaneous elections.

Second, the particular conditions of proportional representation and the existence of a significant minority force, such as the Chipp party, did not exist.

The exception was the early election of 1963, which has of course created the situation in which House and Senate elections are out of phase.

At least one previous Governor-General has expressed reservations about the way in which that election was called. Undeniably it was done to suit the convenience of Sir Robert Menzies.

In those days this aroused little comment.

Circumstances, notably November 11, 1975, have focused attention on the role and powers of the Governor-General.

No longer is he merely regarded as the servant of the elected government.

He is seen as a political power within his own right, with limited but important powers.

The new Governor-General will need the wisdom of Solomon and the reputation required for Caesar's wife if he is to maintain respect for an office which is already under attack from one side of Australian politics.

Sir John Kerr

SIR JOHN KERR'S impending retirement from the Governor-Generalship is announced almost exactly three years after he was sworn in on July 11, 1974. For 20 months of that time — from November 11, 1975, when he dismissed the Whitlam Government — he has been one of the most controversial figures in Australia's political history and certainly our most controversial Governor-General. Beset, first by the 1975 political and constitutional crisis, and since then by the controversy excited by his action in resolving that crisis, he has shown himself to be not only an eminent Australian but also a great one.

In the crisis, as the sworn servant and guardian of the Constitution, he did not flinch from his duty, in an unprecedented situation, regardless of the effect on his personal popularity and on lifelong friendships with Labor Party members, regardless of lifelong sympathies with causes of social reform espoused by Labor. No doubt he felt bound by his oath to act as he did; he could do no less. Even so, what he did demanded clarity of judgment, integrity and courage of a high order.

His reward, to be expected, has been persistent questioning of that judgment — a debate between lawyers, historians and political scientists, criticising or defending his action. He would not have it otherwise, and has said so. But he has also been subjected to gross vilification, ostracism, and, from a tiny but well-organised, very ugly faction, threats and shows of physical violence. The dignity with which he has continued to discharge his duties despite this campaign is of a piece with his courage. His exposition of high democratic principle, despite the vulgarities of the extremists, is of a piece with his integrity. "It is good," he said recently, that the function of the Governor-Generalship "should be thoroughly examined and all possible views canvassed." And, on another occasion: "Everybody is entitled to his point of view even if the only method available for expressing it is abusive language."

Controversy

It is Australia's loss that controversy should have so dominated the larger part of his period in office. He brought to this office remarkable qualities of intellect and character, lifelong involvement in public issues, a compulsive interest in sociological questions, pragmatic commonsense in discussing both, determination that his Governor-Generalship should be stimulative as well as symbolic. In that determination he had the support, and he held the interest, of a majority of Australians. It is wrong to suppose that he ceased to be heeded or to have influence after November 11, 1975 — as wrong as supposing that the persecution Sir John and Lady Kerr endured had the approval of more than a minority of those who disagreed with his action. Nevertheless, the emotions aroused on November 11, 1975, did limit the scope of his abilities. In the history books his name will be linked indissolubly with that date.

The heat of partisan dispute no less than the complexity of abstract, scholarly debate has tended from the beginning to blur, even obscure, the salient features of the 1975 crisis as it presented itself to him. The crisis was not of his making. It was the blocking of Supply by the Opposition majority in the Senate. That decision was a delayed response to a year's events which (as the December election confirmed) had created widespread uneasiness about the competence and trustworthiness of the Government. Those events began with the 1974 secret Executive Council meeting (to which Sir

John Kerr was not invited) which authorised an unprecedented \$4,000 million overseas loan for purposes which, it later became clear, in no way could be described as "temporary," the only constitutional justification for the bypassing of the Loan Council.

There followed, after six months of mounting inflation and unemployment, the revelations of "the Khemlani affair" which resulted in the departure from senior Cabinet positions of Dr Cairns and Mr Connor. In their wake came the Opposition decision to force the Government to the polls by withholding Supply. The Senate's right to withhold Supply had never been questioned; some years earlier it had been invoked by the Labor Opposition under Mr Whitlam. The pertinent question here concerns the political propriety of the action. That is an issue for the present Government parties to defend, not Sir John.

The consequences of the Opposition action concerned him closely. Precedent and convention (followed by Mr Whitlam in similar circumstances only the previous year) say that the Prime Minister of a Government which is unable to command Supply from Parliament should advise either the appointment of a successor likely to have parliamentary support or the calling of an election. Mr Whitlam did neither. He committed the Government to a policy of "toughing it out," resorting meanwhile to legally questionable borrowing expedients. He made no secret of his conviction that the Governor-General would do nothing without his advice. In this situation — a Government attempting to govern without Parliament — Sir John decided that he had no choice constitutionally except to dismiss it and send the issue (basically, of confidence) to the electorate for judgment.

The verdict

This was the action which Mr Whitlam described as a "coup." That wild and silly slander itself gives some indication of the kind of Prime Minister the Governor-General was dealing with. The validity of the decision has been both questioned and endorsed on many grounds, legal and political, with eminent authorities pitted against each other; the issue is unlikely ever to be settled to the satisfaction of all. There is, for instance, the question not whether Sir John exercised his residual power properly but whether he should not have deferred it. Sir John chose November 11, the day when failed negotiations between the Government and the Opposition confirmed the deadlock. There were strong practical reasons for that date: if an election was inevitable, little time remained before Christmas for setting the machinery in motion.

His judgment was overwhelmingly upheld by the electorate a month later. There, in the situation facing him, with its threat to orderly government, and in the subsequent verdict of the electorate, is the refutation of the partisan criticisms instigated from the beginning by Mr Whitlam ("maintain the rage"). It was not Sir John who "robbed" Labor of power; in the only analysis that matters it was the people, in a democratic election.

The choice of Sir John's successor cannot have been easy. The indispensable criteria of eligibility, apart from distinction, are obvious enough. Given the existing controversy, the next appointment had to be seen to owe nothing to political considerations or associations. Sir Zelman Cowen plainly meets these requirements. More positively: as one of Australia's most eminent academic lawyers, internationally honoured, as a most distinguished educationist, as a man with wide, liberal interests and convictions, and as a celebrity, nationally known, with a proven "common touch" on the air and on the campus he has a rare combination of attractive qualities and qualifications. All should wish him well.

Friday, July 15, 1977

SIR JOHN KERR, the most controversial of Governors-General, has chosen his own time of going. He leaves behind a serious Constitutional dilemma, a Vice-Regal post whose complexion has changed for ever and a nation less united than on his appointment. Cause has yet to be properly sorted from effect in the debate that has grown around the events of his tenure. History and the future of Australia demand a closer examination of facts surrounding the dismissal of the Whitlam Government in November, 1975, and Sir John will undoubtedly continue to play an important role in their discussion.

He came well qualified to the Governor-Generalcy in 1974, stepping down as Chief Justice of New South Wales but bringing with him a breadth of community and international interests along with wide legal and military experience. Sir John's humble beginnings appealed to the Labor Party which appointed him as did his involvement in industrial relations. He had been a brilliant student, a

youthful colonel on Blamey's staff in New Guinea, first principal of the School of Pacific Studies, a Federal judge, member of the Trade Practices Tribunal and in charge of several Federal committees of inquiry. His private interests spanned the development of Papua New Guinea, the theatre and cultural freedom.

On his appointment, Sir John made what has become a deeply ironic remark about the office of Governor-General: "It provides the opportunity to play a non-controversial part, but an important one, in the nation's affairs". Less than two years after his appointment, Australia was deep in a Constitutional crisis of previously unimagined proportions and Sir John was set to play a role as controversial as any public figure had done since Federation.

"The Age" has not disputed the Constitutional authority of the Senate to block the Budget or the power of Sir John Kerr to dismiss his Ministers. It has always challenged the improper use of those powers by the Senate and the manner in which Sir John forced an

Kerr leaves the dilemma

election. Both actions have set dangerous precedents for the future of representative government in Australia and no solutions are in sight. In the end, Sir John faced a no-win situation with courage but insufficient foresight. Nothing has happened to prevent a repetition of the events of 1975 and — given the difficulties of changing the Constitution — it is not likely that anything will change in the short to medium term, if it ever does.

The right decision

Sir John has now chosen to cut short his term. It is the right decision. Indeed, it can be argued — as this newspaper has in the past — that Sir John might have better served his own interests, those of his office, and the country had he chosen to step down immediately after the election of December, 1975. An early departure would certainly have helped to clear the charged atmosphere and given Sir John the opportunity he has needed to fully explain his actions. But he chose to linger and that decision

contributed to the souring of political life in Australia. For 18 months now the Vice-Regal office, far from being a symbol of national unity, has been a cause of national division.

But that is history now. Having decided that the level of protest has abated sufficiently to permit a dignified exit, Sir John has decided to clear the way for a new tenant at Yarralumla. His successor, Sir Zelman Cowen, inherits a bitter legacy and the unresolved Constitutional issues. The Prime Minister, Mr. Fraser, made a brave choice in Sir Zelman, a man who by temperament is unlikely to shrink from a challenge. The Governor-General-elect will be acutely sensible to his task as a healer of wounds but he is not used to evading a frank exchange or speaking his mind where necessary.

By his choice, Mr. Fraser has certainly avoided the charge that he has put a tame, dull, or compliant man into what has become one of the most sensitive posts in the country.

Sir Zelman has a formidable reputation as an academic lawyer and university administrator: his interests are wide. The appointment is an interesting one and probably a good one. Sir Zelman will be the most closely watched new occupant of the Vice-Regal post ever. There is no doubt that the institution itself has sustained some damage in the political turbulence that has blown around it for so long. It will be difficult to set aside the conscientiously held fears of those who believe that the Governor-General controls too potent an arsenal of political weapons.

In normal times Sir Zelman bears watching for the very best reasons. His style is pleasant, his manner easy, arguments finely based and presentation precise. The best Governors-General have always felt the need to play as vital a role as possible in the affairs of the nation while preserving their political detachment and guarding the necessary proprieties. Sir Zelman has plenty of scope for his talents and a formidable task. We wish him well.



EXIT KERR, ENTER COWEN — THE INSIDE STORY



Special reports on the inner meaning of Sir John's departure and Sir Zelman's arrival, by Suzanne Blake, Greg Chamberlin, Andrew Clark, John Edwards, John Jost, Paul Kelly, and Max Suich.

PRIME MINISTER Malcolm Fraser was told by Sir John Kerr around late 1976 that the Governor-General was almost certain to retire within a year.

Sir John notified the Queen of his intentions during her Australian visit last March. He was particularly anxious to remain at Yarralumla during that visit, as a symbol of his determination to withstand the bitter criticism resulting from his sacking of the Whitlam Government.

There are many reasons for Sir John's decision to retire after just more than three years as Governor-General — far short of the 10-year period he told Gough Whitlam he wanted.

One is the sheer necessity to find security from the vilification and constant harassment he has received since November 11, 1975. Sir John's health has always been dubious and this pressure would have had an impact on a far more resilient man.

There is also his publicly expressed desire to tell his side of the sacking story — to vindicate himself.

While he remained Governor-General, Sir John was bound by the conventions of that office to remain silent. But throughout 1976 he has prepared his book, which could be a political bombshell when released. (For the essentially political reasons why Sir John inevitably had to leave, see the article on page 5.)

As he has done in facing other major decisions in his life, Sir John has carefully tested the possible reaction to his retirement by dropping oblique hints to close friends during the past few months. On the financial side, he will retire with a handsome pension, guaranteed to him by Mr Whitlam when he agreed to take on the job.

From the time of the Queen's visit in March, Malcolm Fraser began to look in earnest for a replacement. The requirements were a man who was apolitical, whose appointment would not provoke criticism from the 40 per cent of Australians deeply hostile to Sir John; and at the same time, a man with sufficient status to ensure that despite Sir John's action the office would not be downgraded in the eyes of politicians.

This ruled out Liberal Party stooges, most businessmen and retired servicemen. Prince Charles was also ruled out a long time ago, contrary to newspaper stories.

Sir Zelman Cowen's name was on the Prime Minister's list from the start. His experience in education, international affairs and the law meant he had contacts with a number of political figures including the Deputy Country Party Leader, Ian Sinclair, with whom he served on the council of the University of New England.

Mr Fraser had Sir Zelman to dinner at the Lodge about April when his future appointment was discussed. Mr Fraser put his name to the Queen for approval during his recent visit to London for the Commonwealth Heads of Government meeting.

Although Mr Fraser sought Sir John's advice on a successor it is understood that while Sir John endorses his successor, he did not suggest him.

It is certain that Mr Fraser gave long, and considerable thought to the choice of Sir Zelman Cowen, and came to the conclusion that he is both publicly presentable and constitutionally reliable.

Beyond that he does not appear to be certain.

He can assume his view will be well heard, and he is quite prepared to tell his intimates that the Governor-General can be sacked after a five-minute telephone call to Buckingham Palace.

But the very need to find a presentable face for the Governor-General's job, makes Sir Zelman a figure of some uncertainty, even to Mr Fraser, on the more complex constitutional issues.

Sir Zelman told The National Times he first met Mr Fraser in the latter 1960s. "He was Minister for Education, and I was at New England University. I knew him, but not very well. In the last year or so I've seen him —

he had dinner with the university vice-chancellors within the last year, I think, but time gets away so quickly. Then I didn't talk to him until a few weeks ago in relation to this."

THE REAL SIR ZELMAN

Though there are differences between the two men, any investigation into the careers of Sir John Kerr and his successor as Governor-General, Sir Zelman Cowen, reveal striking similarities.

The biggest, and perhaps most relevant difference, is their approach to power. Both are ambitious men, both have, in their own ways, sought power.

Sir John's life reveals a person fascinated with and involved in the manipulation of power behind the scenes; Sir Zelman is more reluctant to pull the strings of power, although he has throughout cultivated men of power on both sides of the political fence.

Similarities are many. They are lawyers, have played

with the idea of entering Parliament — with the unstated condition that, like Bob Hawke, they should be immediately elevated to the front bench.

They are fascinated with foreign policy and have a range of impressive American contacts augmented by their work during World War II.

Neither are snobs, but both are status-conscious, and concerned with public recognition. Both are good mixers, brilliant in conversation. The low-points in their lives came when they were subjected to hostile, often violent demonstrations. Both belonged to the Association for Cultural Freedom, which at one time received backing from the CIA.

Whether Sir Zelman would, like Sir John, sack the Prime Minister in the same circumstances as those in late 1975 is impossible to say. Evidence the National Times has collected from his published comments, written works, and private discussions with colleagues and friends indicates that he believes the Governor-General possesses the reserve powers to dismiss a Prime Minister.

However, there are important qualifications. Cowen believes the reserve powers should be codified — in

... sound constitutional practice for a Governor-General to assent to the actions proposed by his Ministers ...'

other words, it must be specified under what circumstances, and in what way, they can be used.

His temperament and conscientious approach contrast with the pragmatic approach taken by Sir John Kerr to the issue. He may, for example, have warned the Prime Minister of the action he was contemplating instead of surprising him.

Sir Zelman revealed a poor memory of important matters in his replies to questions put to him during two interviews with the National Times after his Friday press conference about his attitude to the Whitlam sacking and his role as adviser to the Queensland Government during its bitter constitutional disputes with the Whitlam Labor Government.

Sir Zelman said that he saw the Sir William Queale Memorial lecture which Sir Paul Hasluck delivered in 1972, as outlining an independent role for the Governor-General.

"It isn't fresh in my memory, but I know about it. Sir Paul sent me a copy of it. He used to send me various things and I was most grateful for this. However, I want to read it again and then I would comment on it later," he said.

When asked if he had read Sir John Kerr's speech, reaffirming this independent role which was delivered in New Delhi in 1974, Sir Zelman said: "No, I never read that speech. It was quoted to me today, but not the full text. I may have read it, but I don't recall. It may have slipped my mind."

It is possible that in his normal five-year term Sir Zelman might have a similar situation to Sir John Kerr if the Fraser Government loses control of the Senate, a re-

sult that could easily emerge within the space of two Senate elections.

Sir Zelman said that "purely as an independent lawyer," he had given opinions on constitutional matters to the Queensland Government. But he had not given direct advice to the Queensland Premier, Mr Bjelke-Petersen, and insisted that he was not an important influence on the Queensland Government.

He was not asked for advice on the Gair affair. "Very probably," however, he was involved in legal disputes between the former Federal Labor Government and the Queensland Government.

Using language strikingly similar to that of Sir John Kerr, he said: "These were constitutional issues relating to a variety of matters under the Constitution and the cases came for opinion in the usual way."

"You've got to remember that I do a lot of things. I wouldn't say I don't remember for any other reason than that I would not remember precisely. To go back into the inventory of opinions, they've never ever had a political context in the sense that I've been involved otherwise than as a lawyer."

The best source for Sir Zelman's views on the crucial question of the relationship between the Governor-General and the elected Government are contained in his biography of Sir Isaac Isaacs, who was appointed Governor-General by the Scullin Labor Government during the depression.

The Scullin Government, like the Whitlam Administration, faced a hostile Senate. Under the Transport Workers Act, the Governor-General, sitting in Executive Council — in substance the executive government — had power to make regulations concerning waterside workers employed on interstate trade. The Senate, acting under the Acts Interpretation Act, disallowed the regulations. After the Senate adjourned the Cabinet advised Isaacs to issue a fresh regulation under the Transport Workers Act. The Senate then appealed to Sir Isaac not to approve the regulations.

Sir Isaac said in his reply to the Senate that "it cannot be doubted that normally by Constitutional practice, confirmed, and perhaps strengthened, by the pronouncement of the Imperial Conference of 1926, I am bound to act upon the advice of my Ministers . . ."

"If, as you request me to do, I should reject their advice, supported as it is by the considered opinion of the House of Representatives, and should act upon the equally considered contrary opinion of the Senate, my conduct would, I fear, even on ordinary constitutional grounds, amount to an open personal preference of one house against the other — in other words, an act of partisanship."

Sir Zelman commented: "It was therefore sound constitutional practice for a Governor-General to assent to the action proposed by his ministers, leaving questions of legality to be determined by the courts."

On the question of the Governor-General's role in foreign policy Sir John Kerr said in his New Delhi speech: "The Governor-Generalship is a developing institution in Australia and it is coming more and more to symbolise Australia's independent identity abroad and the nation's unity and legitimate political system at home. This is done more and more on the basis of knowledge and understanding by the Governor-General, of policies and principles."

However, Sir Zelman told The National Times: "The Governor-General receives diplomats and receives their accreditations and he mixes with them in a social way. By talking with these people one would become well aware of foreign relations. But foreign relations are for the government of the day, and not for the Governor-General as head of State. Now you have that clear — foreign relations are for the government of the day, and not for the Governor-General."

Sir Zelman, who during the second World War, was a member of General MacArthur's staff, said he had a pretty good knowledge of the United States. "I have a close association with the United States. I have been there often, and have worked there."

He is chairman of the Utah Foundation which was set up by Utah Development Corporation to help fund the arts in Australia.

The chairman of UDC, Mr Tim Winterer, said last week that Sir Zelman was appointed as founding chairman of the Utah Foundation as he was a respected figure in the community.

"We thought Sir Zelman was the man who could point the Foundation in the right direction, and he certainly has." The Board of Governors of Utah Foundation, includes Mr Winterer, former Liberal Senator Dame Annabelle Rankin, former leader of Queensland Trades Union Council, Sir Jack Egerton, and the Mayor of Mackay, Mr L. B. Abbott.

Sir Zelman has avoided party political associations. But he is willing to speak out on prison reform, capital

punishment, privacy and constitutional reform. But he sidesteps partisan issues.

In 1975 a former student, now a barrister at the Melbourne Bar and an endorsed Labor candidate for the Senate, Gareth Evans, sought Cowen's signature on a letter protesting against the actions of the Senate.

But Sir Zelman did not sign and was, apparently, careful never to give a broad hint of his views.

He is believed to have told associates in Queensland that he wanted to avoid the 1975 controversy because, as vice-Chancellor of Queensland University, he would have future contacts with the new Liberal Government over university funding.

Sir Zelman, like Sir John Kerr, was a brilliant student. He was dux at Scotch College, Melbourne; topped Melbourne University Law School; topped his Oxford course and was appointed a fellow and tutor while still a student at Oriel College, Oxford. He held the Law Chair and was Dean of the Law Faculty in Melbourne by the time he was 31. He was also visiting professor of law at Harvard.

He has (like Sir John Kerr had until November 11, 1975) an enormous and disparate range of friends. Closest were the late architect Robin Boyd, the late Labor Senator Sam Cohen and Sir Brian Hone (former headmaster at Cranbrook and Melbourne Grammar). He had innumerable lines into Melbourne society and friends from both sides of politics in America and Britain.

Apart from his own money, his wife Anna (nee Witter) has a fortune from her family's retail outlets. They have a close marriage. Zelman Cowen disavowed the life of a brilliant Oxford Don, choosing to return to Melbourne in 1950 because monastic Oxford dinners, occurring several times a week, kept him and Anna apart.

Zelman Cowen built up the Melbourne Law School in prestige, and, through contacts abroad, steered a whole generation of Melbourne University academics into foreign graduate schools.

Once Cowen was discussing with a colleague what to do with a girl undergraduate who had passed all other law subjects but ailed his specialty, Australian Constitution Law.

Cowen: "We'll have to oral her again."

Colleague: "What will you ask her, she knows nothing."

Cowen: "I shall ask her if there is a section 92 in the Constitution."

Colleague: "What if she says no?"

Cowen: "I shall reason with her."

His lectures were laced with anecdotes about the great. He loved to titillate and entertain, feeling that sophisticated anecdotes lent style to speeches and lectures. As a biographer of Sir Isaac Isaacs, he enhanced the reputation of a man he admired, perhaps privately worshipped, with anecdotes.

He once recalled at a law school lecture, how Sir Isaac, a member of the first Federal Parliament, glanced at an Opposition member who incurred his displeasure and who called at him: "The Honorable Member looks as though he could eat me."

To which Sir Isaac replied, according to Cowen: "Sir, you forget my religion."

According to Melbourne sources, Zelman Cowen detested his job as Vice-Chancellor at New England. He suffered from the isolation and was glad to go to



'... Sir Zelman could find himself in the same position as Sir John ... with the same certainty of ignominy ...'

Queensland University although the place was not really to his liking.

"He had a dreadful time in Queensland, too," said a Melbourne friend, "The violence, the force used by students, wounded a deep commitment to what he understood to be freedom of speech. He felt students were trampling on the principle of rational debate and argument enshrined in the university system. It was no secret among his friends that the confrontation with the students made him seriously, physically sick."

A Queensland academic, who refused to be quoted, said: "There was nothing nasty about this — it was just his style. He was a man who had to be consulted about everything. If he saw something in the paper concerning the university he would quite often ring the academic concerned at eight o'clock in the morning and ask why he wasn't consulted."

"When the members of our department decided who they would like as their new head, Sir Zelman called us all over and discussed it with us for about five hours. He wanted to know all our reasons for taking the view we did."

The student violence, said one colleague who has known him for 20 years, "destroyed his carefully nurtured image of a university as a repository of dignity and learning. He felt it had been invaded by a rabble."

One of the most disturbing incidents for him was the heckling by students of the former Governor-General, Sir Paul Hasluck, when he came to speak at the university.

Before going to Queensland, Zelman Cowen's support of American and Australian military involvement in Vietnam blemished his carefully-cultivated small liberal image, one he still maintains. His reaction to the student troubles at Queensland tarnished this image further.

A former Melbourne colleague recalls: "He came to believe capital punishment was necessary in unusual cases, such as terrorism. He felt the execution of terrorists would prevent their backers from kidnapping hostages to force the release of those who had been captured."

It is not hard to find contradictions in what Sir Zelman's friends and so-called friends say about him. He was a very public person. He liked the speaker's podium, in which he has a tendency to talk at length, just as he liked to sit in the outer at the Melbourne football because he could meet and talk with people. Because he was gregarious, he was the sort of person who no doubt presented quite a few faces to quite a few people, leaving most of them with the impression that they knew the "real" man.

For this reason there are many in Melbourne who are convinced that Sir Zelman Cowen never closed off the option of becoming a Federal parliamentarian and minister. But this was not to be achieved by the conventional, party-work route.

These people feel that Zelman Cowen would have tried to achieve such a position by a "lateral" approach — first, a senior appointment, later a seat in Parliament followed by the ministry. Those who successfully follow this route are rare. A recent arrival is Bob Ellicott, the Federal Attorney-General.

The governor generalship is a post which Sir Zelman thought would suit him.

He and Sir Paul Hasluck struck up a regular correspondence during Sir Paul's period in office. They were both interested in the style associated with the job — Cowen used to bemoan to friends the passing of style in public life which he believed had an essential importance.

He remarked to a friend either late in the 60s or early in the 70s that being governor-general would suit him "down to the ground." The almost universal view among his Melbourne friends, and it should be emphasised that some of them say they do not know the Queensland Zelman Cowen, is that he will be a traditionalist as head of state: that he would never "do a Kerr."

Professor Colin Howard, academic constitutionalist, a former colleague of Sir Zelman's, feels he'll be no stooge governor-general.

"I would not expect him to grant an election on trivial grounds. Like Kerr, Cowan has a great interest in not being a lap dog to Fraser especially at the outset of his term when this danger must be at its greatest."

Howard says he believes Cowen's interest in the Governor General's job has been made more acute because the job, especially now, is of great importance and controversy.

"Cowan's not a snob. He is a naturally public man. He'll enjoy the job for harmless, personal reasons. The great thing is that whereas most public figures are boring he is not.

"It should be remembered, too, his pride in being

Jewish. He was Isaac Isaac's biographer. Like Isaacs, he is a constitutional lawyer. He sees himself, perhaps, following in a great tradition. This would be an intimate, personal factor in his acceptance of this job."

One of Sir Zelman's former colleagues in New England, Professor Russel Ward, said: "I think he'll bring back dignity and impartiality to an office tarnished by its present incumbent."

WHY SIR JOHN HAD TO LEAVE

SIR JOHN KERR'S exit settles only one of the many uncertainties which became apparent during his term. We now know that a governor-general blackballed by a major political party ultimately becomes as great an embarrassment to his friends as he is an object of ridicule to his enemies. Sir John's departure confirms that his office depends on consensus.

That consensus had vanished, and that is why Sir John inevitably had to go, but the circumstances which gave rise to the continuing uncertainty about the powers and role of the Governor-General can easily recur, no matter who is in office.

There were always several motives in the opposition to Sir John, and only one is satisfied with his departure. Those Labor people, particularly his personal friends who had welcomed him to the job, felt betrayed by him on November 11, and their passion will be extinguished when he goes. But that was never a large group, and even within it that motive was not predominant.

A second strand of opposition, the liberal nationalists like Donald Horne who seized the opportunity to make the point that a constitutional system which still depends on an uncertain vice-regal power is one we ought to change, will be as strongly opposed to Sir John's successor as to him because they are fundamentally seeking changes to the office and not the office holder. So far as they are concerned, nothing has changed.

A third strand of opposition, the strand that is most concerned with the prospects of political change in Australia, also remains unsatisfied. Those people like Professor Geoffrey Sawer who identify the real problem as that of the collapse of the convention that the Senate did not reject money bills, a collapse which occurred in April, 1974, before Sir John was appointed, have seen only reverses. The referendum on simultaneous elections, which would have been a marginal but useful check against the Senate getting too far out of line with the House of Representatives, has been defeated — a loss which effectively suspends the impetus towards more radical constitutional change.

During Sir John's term, his office was demonstrated to be nakedly political. The pageantry collapsed, the numbing vice-regal platitudes about Australia's destiny ceased to matter, and the function of the Governor-General as an arbitrator of the last resort in intractable disputes between the major parties was revealed.

The Governor-General is now correctly seen as a third force in Australian politics, not because Sir John imposed himself on the Constitution but because the Constitution was shown to have no means of reconciling differences between the Houses of Parliament without the compliance of one party or the intervention of the Governor-General.

Both parties and the media now recognise the importance of the Governor-General's political leanings. The Prime Minister has appointed another mildly conservative lawyer, another Sir John, as the new Governor-General, and the fact that Sir Zelman Cowen, still a relatively young man, has chosen to accept the office confirms that he does not see it as the ceremonial retirement it once was.

Immediately the appointment was known, journalists all over the country ransacked their libraries to document Sir Zelman's views, as though he was leading a new political party.

This has happened not because Kerr sacked Whitlam on November 11. It didn't matter what decision Kerr made, the political function of the job would have been just as plain. Had Sir John publicly called on the Senate to pass the Supply Bill, for example, it would have been just as profound a political act, and cost him as many enemies. They would have been more restrained enemies, more polite but no less deadly.

Given the weakness in the Constitution, revealed first when Bill Snedden broke the convention and refused Supply in April, 1974, and confirmed when Malcolm Fraser refused it again 18 months later, there was no way a governor-general could preserve the unanimity on which the whole shaky edifice rested.

And as a political appointment to a political job,

Sir Zelman need not expect his term to last any longer than that of the Government which appointed him.

A new face, or even a clear statement by Sir Zelman of the powers he believes he has and the way in which he intends to use them, will not alter the underlying political reality.

And with the convention on money bills already twice broken, both times with the Prime Minister's concurrence, Sir Zelman could find himself in the same position as Sir John, with no rules, no consensus, and certainty of ignominy whatever decision he makes.

* * *

Sir John Kerr has always been concerned about his place in history, which he hopes his book will ensure, and an intense, though secretive, struggle is being waged among Australian publishers to secure the rights to publish that literary property.

Few publishers contacted by The National Times last week were prepared to discuss on the record the nature of their discussions with Yarralumla, but at least four companies are understood to have held negotiations, or are still negotiating. These are Macmillan, Nelson, Cassell, and Penguin.

Unlike those in the US, Australian publishers do not give big advances, but at least two senior executives agreed that Sir John Kerr would get an all-time record — probably more than \$50,000. (This seems a paltry figure when compared to the record US\$1.9 million paid to Australian writer Colleen McCullough for her novel, *The Thorn Birds*.)

Mr Bob Sessions, publisher of Thomas Nelson, said he had written to Sir John Kerr asking to publish his memoirs, and including a list of Nelson's recent titles. Nelsons is using its Sydney agent, Beatrice David, to negotiate with Yarralumla because of her long-time association with Sir John's wife, Anne (formerly married to Judge Robson, of NSW bench).

Mr Sessions said the amount of the advance would depend on how much Sir John was prepared to tell. "A hardcover issue could sell up to 20,000, and a paperback a further 40,000, but it would depend on how long interest in the subject lasted."

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