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EDITORIAL POLICY

law&history is a fully refereed journal of original research and contribution to scholarship that is published twice a year. The Editors welcome submissions on any law and history-related topic but are particularly keen to publish material on Australia, New Zealand and the Pacific and expect to receive papers presented at the annual Australian and New Zealand Law and History Society Conference for consideration.

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Editorial submissions and other journal enquiries should be directed to the Editors:
catharine.coleborne@newcastle.edu.au
and sonali.walpola@anu.edu.au

Books for review should be sent to the Editors:

catharine.coleborne@newcastle.edu.au
and sonali.walpola@anu.edu.au

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Editorial

In November 2025, Australia marked the fiftieth anniversary of the highly controversial dismissal of Australia's twenty first Prime Minister, Gough Whitlam by the Governor-General, Sir John Kerr. This special issue of *law&history* is dedicated to reflection and analysis on this tumultuous event in Australia's constitutional, political and social history, as well as Whitlam's profound achievements as a social reformer. 'The Dismissal' and Whitlam's remarkable legacy in the human rights arena have been an object of intense national interest for scholars and commentators over the last 50 years. This sustained interest is evident in the enormous literature that has ensued, and in the establishment of the Whitlam Institute in Sydney. In 2025, we note that important analyses on the dismissal appeared at the National Library of Australia in Canberra, media outlets, and scholarly conferences.

Gough Whitlam on the campaign trail – pictured here with singer Little Pattie, who performed Whitlam's campaign song 'It's Time' in a TV commercial together with other artists. (Creative Commons - online).

Gough Whitlam led the Australian Labor Party to victory in December 1972, and this was itself momentous as it brought an end to 23 years of Coalition rule in Australia.[1] Whitlam had campaigned on a platform of

[1] National Museum of Australia, 'Whitlam Election' (Web Page, 2026) <https://www.nma.gov.au/defining-moments/resources/whitlam-election>.

sweeping reforms including universal healthcare, free tertiary education and the abolition of conscription—this promise of liberating social change and egalitarianism was encapsulated in Whitlam's 'It's Time' campaign, which featured a song with the same name, performed by an impressive lineup of Australian entertainers. On foreign policy, Whitlam declared that there was an 'opportunity to institute an era of peace and progress in our region' and 'an opportunity for sensible relations with China.' [2] Whitlam reimagined Australian identity, and Australia's place in the world, envisioning a future for Australia that involved closer, more productive relations with its geographical neighbours. As leader of the opposition, Whitlam led a diplomatic delegation to China in 1971, and then in office, he made the first official visit by an Australian Prime Minister to China, a historic milestone that would normalise diplomatic and trade relations between Australia and China for the next 50 years. [3]

In a short period, Whitlam's government made great progress in advancing human rights in Australia. Whitlam championed multiculturalism, women's rights[4] and Indigenous rights.[5] His government's transformative legislative achievement was the Racial Discrimination Act 1975, which makes it unlawful to discriminate against a person on the grounds of race, colour, national or ethnic origin, or immigration status. Notably, Whitlam pioneered government and institutional support for elevating the status of women, appointing Elizabeth Reid as the first women's advisor to government—in Australia, and the world.[6]

2 'It's Time' speech (1972) p.29. The speech is accessible at: <https://www.whitlam.org/collection>.

3 Stephen McDonell, 'Gough Whitlam: Former prime minister the father of Australia-China relations, Beijing says' (Web page, 2026) <https://www.abc.net.au/news/2014-10-22/whitlam-father-of-china-australia-relations-beijing/5832076>.

4 Whitlam Institute, 'Women's Rights' (Web Page, 2026) <https://www.whitlam.org/whitlam-legacy-womens-rights>.

5 Whitlam Institute, 'Aboriginal and Torres Strait Islander People' (Web Page, 2026) <https://www.whitlam.org/whitlam-legacy-aboriginal-and-torres-strait-islander-peoples>.

6 (n. 4).

Whitlam with Elizabeth Reid, Australia's first women's advisor. (Creative Commons - online).

Whitlam took office at a time of global economic upheaval, marked by escalating oil prices. Australia was directly affected. In an environment of high inflation and rising unemployment, the Whitlam government embarked on an ambitious spending program.[7] In the month prior to the dismissal, the leader of the opposition, Malcolm Fraser, announced that the opposition would block Whitlam's supply bills in the Senate. Governor General Kerr took the position that the inability of Whitlam's government to have its supply bills passed in the Senate justified him in invoking the Governor General's reserve powers to dismiss Whitlam as prime minister.[8] Kerr's actions were unprecedented. It was the first time that a Governor General had dismissed a Prime Minister. Whitlam had the clear support of a majority of members in the House of Representatives. Whether Kerr's actions in dismissing the Prime Minister were unconstitutional is a matter of intense legal and political debate.

Our Special Issue, 'Fifty Years On: The Dismissal and Whitlam's Legacy', contains four compelling articles by scholars whose collective expertise includes Australia's legal and constitutional history, Australian social, labour and political history, and women's rights. Helen Irving's reflective piece considers afresh the constitutional lessons from the dismissal and

[7] National Museum of Australia, 'Whitlam Dismissal' (Web Page, 2026) <https://www.nma.gov.au/defining-moments/resources/whitlam-dismissal>.

[8] Ibid.

suggests that the events of 1975 might have turned out differently if our Constitution made appropriate express provision for the office of the Prime Minister. James Watson and Frank Bongiorno's article titled 'The Dismissal from Below' considers the perspective of 'ordinary Australians' and examines 'its role in mobilising social movements, interest groups, and political protest'. Jenny Hocking, who successfully led the historic High Court challenge, resulting in the release of the 'Palace Letters' (the correspondence between Kerr and the Queen) shares her insights in a 'historical reappraisal' of the dismissal. Hocking forcefully observes that the dismissal was a 'planned and scripted conservative usurpation of power'. Finally, on Whitlam's positive legacy, Diane Kirkby offers her insight into the important legacies - not only of Whitlam's interventions into labour parity for women, but also how women's struggles for rights within the union movement propelled changes to legislation. This movement created a set of opportunities for the realisation of women's rights at work from 1975 onwards.

In keeping with this theme, we are also including the first contribution for a new section: exhibition review. Eli Branagh (Macquarie University) reviews a Whitlam Institute exhibition, 'Where to From Here? Visions for Australia', which was open to the public in Western Sydney between October 2025 and February 2026.

Finally, our Society and community was deeply saddened by the news that one of the founders of ANZLHS, Ian Duncanson, had passed away in 2025. We include an obituary for Ian by Diane Kirkby, 'Remembering Ian Duncanson', and thank Diane for her important contributions to our work and this current issue.

Thank you to our research assistant, Daniel Rowney (School of Law and Justice, University of Newcastle), for his work and support to produce this issue of the journal, and to Peter Prince, for his additional assistance with reviewing submissions and some copy editing. We hope you enjoy this new issue of the journal. We look forward to sharing research, exhibition reviews, book reviews and special sections and themes in the future.

Catharine Coleborne
University of Newcastle

Sonali Walpola
Australian National University

The Office of Prime Minister and the Confidence of the House: Reflections on the Dismissal, Constitutional Silences and Constitutional History

Helen Irving

The standard constitutional narrative

There is a 'standard' constitutional narrative of the Whitlam government's dismissal on 11 November 1975, Brendan Lim writes.[1] It focusses on the 'design flaws'[2] in the Constitution's provisions for the Senate and the Governor-General. The Constitution, so the narrative goes, lacked clear guidance for resolving the festering political conflicts that followed the election of the Whitlam government and led to the dismissal.

The main events of relevance to this narrative are these: In October 1975, the Senate, with a majority of non-government members, deferred the passage of the government's annual supply Bills, cutting off funds for regular government expenses. As money began to run out, a constitutional crisis loomed. The Governor-General, Sir John Kerr, stepped in, exercising what he understood to be the 'reserve powers' of his office – discretionary, unwritten executive powers to act without or contrary to government advice. Having covertly gained assurance from both the Chief Justice of Australia, Sir Garfield Barwick and Justice Anthony Mason, that what he proposed to do was constitutionally valid, Kerr dismissed the Prime Minister and the government. He then commissioned the leader of the Opposition, Malcolm Fraser, as caretaker Prime Minister. Fraser instructed his fellow party members in the Senate to pass the supply Bills. Kerr then assented to the Bills and issued the writs for a double-dissolution election. The election took place on 13 December 1975. The caretaker government won office with a record majority.

For the last 50 years, the constitutional validity of these actions has been a matter of profound disagreement and debate. This has generated an

[1] Brendan Lim, *Australia's Constitution After Whitlam* (Cambridge University Press 2017). Lim challenges this narrative, arguing (p. 37) that the 'real constitutional crisis [was] the conflict over legitimate techniques of constitutional change'.

[2] I will use the term 'silences' in place of 'design flaws', for reasons that will become evident.

extensive body of literature, much of it concerned with whether a repeat of the dismissal might be possible. The Constitution's framers, so the 'standard narrative' implies, should have anticipated these conflicts, given the tensions created by the Constitution's design as an instrument that merged UK parliamentary government under the Crown with US 'states rights' federalism. This 'Washminster'[3] model is highly unusual, and, at the time of its adoption, some thought it unworkable and doomed to fail.[4] Under the UK model, government is formed in the lower House and reflects the electoral choices of the nation's people; the upper House plays a secondary role. Under the US federal model, the upper House is formed by the representatives of the constituent states; it has co-equal powers with the lower House on the passage of legislation. Deadlocks on legislation therefore can, and do, occur. But governments must be able to control spending if they are to govern. At the same time, in a federal system, the states must be allowed some input into laws concerning money, or their interests may be frustrated by the national government. The constitutional solution is to provide for some limits on the Senate's powers over money Bills, but allow all other Bills to move through both chambers in the same manner.

We can readily dispose of the question whether the Constitution's framers anticipated deadlocks over money Bills, as occurred in 1975. The mechanism for resolving deadlocks between the Houses was one of the most complex and time-consuming subjects in the debates of the 1897-98 Federal Convention. Section 57 of the Constitution, adopted after days of exhausting debate in the Sydney session of the Convention, provided the solution. If the Senate 'rejects or fails to pass' 'any proposed law' more than once, with an interval of three months between rejections, then the Governor-General may dissolve both Houses simultaneously. Following a

[3] Elaine Thompson, 'The "Washminster" Mutation', in Patrick Weller and Dean Jaensch (eds), *Responsible Government in Australia* (1980).

[4] 'Either responsible government will kill federation, or federation will kill responsible government', John Hackett (Western Australian delegate) famously said at the first Constitutional Convention in 1891. National Australasian Convention, Sydney, *Debates,* p. 436. The threat was not treated as serious, and the framers of the Constitution forged on with the 'marriage' of these conflicting models. Although the Canadian constitution (*The British North America Act* 1867) merged parliamentary government and federalism, it did so in a significantly limited extent compared to Australia: it gave greater legislative powers to its House of Commons, and its Senators were (and remain) appointed by the Governor-General, rather than popularly elected.

'double dissolution' election, a joint sitting of the Houses may be held to debate and vote on the deadlocked Bills. There is no evidence that, regarding this procedure, the framers distinguished or exempted deadlocks over money Bills from deadlocks over other proposed laws. The Constitution's 'silence' on such a distinction underlines that the framers did not intend to exempt money Bills. They specified, in section 53, that the Senate could not initiate or amend such Bills, but could return them to the House of Representatives with requests for amendment. Nothing in this history suggests that the Senate was required to pass the government's supply Bills or that Senate requests for the House of Representatives to amend its Bills were subject to any limits of type or time.[5]

The other 'design flaw' identified in the 'standard narrative' is the non-codification of (or silence on) the Governor-General's reserve powers. It is less easily resolved from the perspective of history. Section 2 of the Constitution provides that the Governor-General is appointed by the Queen and is 'Her Majesty's representative in the Commonwealth'; he may exercise, 'but subject to this Constitution, such powers and functions of the Queen as Her Majesty may be pleased to assign to him.'[6] A range of such powers and functions can be found in the Constitution (timing of elections, appointment of government ministers, assent to Bills, and so on). Most of these are exercised 'in Council'; that is to say, on government advice. But

5 Britain's constitutional crisis which began in 1909 with the rejection by the House of Lords of the Asquith Liberal Government's 'Peoples Budget' and ended with the *Parliament Act 1911* which vetoed the rejection of money Bills by the House of Lords and permitted the Lords only to delay their passage by one month, has been mentioned by some as having captured a Westminster convention that an upper House cannot control money. But the Senate cannot be analogised in this fashion to the House of Lords. The Senate, a popularly elected house, was intended to be a counterweight to the House of Representatives; it was designed to secure the representation of the states, being one component of the federal bargain.

6 Under rules of statutory interpretation, words importing the masculine gender should be read to include the feminine, unless the contrary is clearly intended. Although the framers would be astonished, if they returned in 2025, to find that a woman occupied the office of Governor-General, this rule can be presumed to apply. However, the idea that 'he' is a genuine universal has been subjected to feminist critique and shown to be false. See Sandra Petersson, 'Locating Inequality: The Evolving Discourse on Sexist Language' (1998) 32 *University of British Colombia Law Review* 55. Modern democratic constitutions have resisted using the masculine pronoun. See my *Gender and the Constitution: Equity and Agency in Comparative Constitutional Design* (Cambridge University Press 2008). In any future large-scale constitutional review in Australia, this issue will surely be considered.

those that are not set out in the Constitution remain imprecise, and their deployment is open to debate, including over whether they can or should be codified.

These, however, are not the only subjects on which the Constitution is silent, and on which the silence was a critical factor in 1975. There was a 'third man' in the crisis:[7] the Prime Minister. The Constitution is altogether silent on the Prime Minister. I will argue that some things might have turned out differently in 1975 (and a repeat of the events would be unlikely) had the framers filled this particular silence.[8]

Where was the Prime Minister?

A very great deal has been written about the action (or non-action) of Gough Whitlam on the day of his dismissal, and Whitlam's character has been subject to close analysis.[9] But, while the personal qualities of Prime Ministers are central elements in the histories of particular governments, it is the *office* of Prime Minister that provides the stage for their exercise. The Constitution says nothing about the appointment of the Prime Minister or the Prime Minister's powers. Indeed, the Prime Minister is not mentioned at all in the Constitution.[10]

It is unimaginable that any future large-scale review of the Constitution would fail to consider this silence. If it did say something to define the

7 Paul Kelly and Troy Bramston, *The Truth of the Palace Letters: Deceit, Ambush and Dismissal in 1975* (Melbourne University Publishing 2020).

8 In Stuart Macintyre and Sean Scalmer, *What if? Australian History as it Might Have Been* (Melbourne University Press 2006) a range of counterfactual alternative scenarios in Australia's History are set out, including my reflections in Chapter 3: 'What if Federation had failed in 1900?' on how the powers of the Senate might have been drawn differently if the Constitution had been written after Britain's constitutional crisis in 1909-1911. This includes the conclusion that the 1975 dismissal would not have happened.

9 The most recent account is Troy Bramston, *Gough Whitlam: The Vista of the New* (Harper Collins 2025).

10 The Constitution provides, in several provisions, for a Federal Executive Council to advise the Governor-General (expressed as 'in Council'). All Ministers are members: so, of course, the Prime Minister belongs. But, again, this is assumed, not stated.

Prime Minister, what would it say? *The Prime Minister is the political leader who holds the confidence of the lower House.* How else would we describe this office holder? Would the Constitution's framers have provided a different definition?

The Historical Account

The men who drafted the Constitution Bill at the federal Conventions of 1891 and 1897-98 were meticulous in their work. This required them to capture principles of (superior) constitutional law and political institutions in precise words, and with a close eye to the way these words should be understood by future generations. It was highly complex and exacting work, and the conditions in which they completed it made their task even more taxing. The final session of the 1897-98 Convention which ran from January to March 1898, was held in the Victorian Legislative Assembly. The weather was exceptionally hot, even for Melbourne at that time of the year. Bushfires were burning on the city's outskirts and the smell of smoke reached into the Assembly chambers. There was, of course, no air-conditioning and the men wore dark, heavy clothing. In these conditions, tempers began to fray and traces are found in the Convention Debates.[11] We can also imagine that a couple of drafting errors in the Constitution Bill that went uncorrected (but were to prove inconsequential) were the result of this discomfort, along with the pressure to conclude successfully. In the event, three years were to pass between the Convention's conclusion and the inauguration of the Commonwealth. There was time for amendments to be made to the Constitution's text and, indeed, some were. Unintended silences could be addressed. Nothing in this history suggests that reference to the Prime Minister was omitted either through exhaustion and oversight or, deliberately, out of concern that it might be misinterpreted in practice. The Constitution's framers did not avoid using the term in their debates. They discussed the constitutional terminology for Ministers of State[12] and

11 J.A. La Nauze, *The Making of the Australian Constitution* (Melbourne University Press 1972) p. 203.

12 Their main debate on such terminology was mild and undramatic; it was over the collective term to describe government ministers. Should they be called 'Ministers of State', or 'Responsible Ministers', a term that Samuel Griffith, then Premier of Queensland, objected would be akin to giving them a title, like saying they should be called 'Honourable.' The 1891 Convention settled on Griffith's alternative 'the

they entrenched the convention of 'responsible government' – that government members must be elected members of parliament – in what became section 64 of the Constitution.

Section 64 makes the principle clear by stating an exception. It allows for the temporary appointment as Ministers of State, of individuals who are not elected members of parliament. Appointed Ministers are given three months to acquire a seat in either House. Nothing is expressly said about whether this rule extends to the office of Prime Minister, but we can assume that it did, since any intention to exempt the Prime Minister would have been stated expressly. We can also assume that the logic of the convention that governments are formed in the House of Representatives means that the Prime Minister must be a member of the House, not a Senator. Indeed, these unwritten conventions and the express three months rule were tested and confirmed in practice decades later, albeit in circumstances the framers could scarcely have imagined.

In December 1967, Liberal Prime Minister Harold Holt disappeared, presumed drowned, while swimming in the sea. For political reasons (not relevant here) the Liberal Party bypassed their deputy leader, and replaced Holt as its leader with a Senator, John Gorton. Gorton was sworn-in as Prime Minister on 10 January 1968. He resigned from the Senate on 1 February, thus having been, for a short period, Prime Minister while a member of neither House. Holt's death had, of course, created a vacancy in the House of Representatives. Gorton stood as a candidate in the consequential by-election on 24 February and was elected well short of the three-month deadline. The convention that the Prime Minister must be a Member of the House of Representatives was followed without dispute.

We can be confident that the Constitution's framers would have approved of the way in which this event was resolved. They certainly took for granted that Australia's Prime Minister would be appointed in the same manner as Britain's. It was the manner they knew well, and which applied to the appointment of Premiers of the Australian colonies (who, before

Queen's Ministers of State for the Commonwealth', which was 'remarkable' and unusual, according to Quick and Garran, *The Annotated Constitution of the Commonwealth of Australia* (Angus & Robertson 1901) p. 709, but nothing would hang on this in practice.

federation were sometimes known as 'Prime Ministers'). All Premiers of the five participating colonies were members of the 1897-98 Convention, and some other members were former Premiers. With a single exception, all members of the Convention were current or former colonial politicians. They knew that, in Westminster, it was the Monarch's role to identify and summon (to 'kiss hands') the leader of the political party or coalition of parties most likely to command the confidence of the House of Commons following an election, or in the event of the Prime Minister's resignation or death, or otherwise if a Prime Minister had lost the confidence of the House. It would also have been assumed that the Governor-General, as the Queen's representative in Australia, would play this role in the appointment of Australia's Prime Ministers.

Had the Constitution's framers included a provision describing the Prime Minister (as suggested above), they may well have added a reference to the Governor-General, for example: 'The Prime Minister is the political leader who, to the satisfaction of the Governor-General, commands the confidence of the House of Representatives.' But how different would this have been, in practice (and conception) from the statement that the Prime Minister is the political leader who has (or holds, or commands) the confidence of the House? How much freedom would the Governor-General actually enjoy in this choice?

In their great, contemporaneous history of the Constitution, in which every provision is methodically scrutinised, John Quick and Robert Garran commented that the Crown's *appointment* of Prime Ministers 'must be distinguished from the *choice*' of Prime Minister:

> In actual practice the choice of the Crown is limited to the selection of the Prime Minister, and even in that choice its discretion is restricted; often it has no choice at all, since it *must choose one who is the official leader of the party commanding a majority in the National Chamber*. Even in this choice of a first minister, which has been termed the only personal act the King of England has to perform, that choice is practically influenced by the necessity for its being confirmed by the approbation of Parliament ...[13]

[13] Quick and Garran, *The Annotated Constitution of the Australian Commonwealth* (Angus & Robertson 1901), p 708. Emphasis added. They added that '[t]he tenure of office of ministers is said to be during the pleasure of the Governor-General, which

Quick was a leading Victorian delegate at the 1897-8 Convention and Garran was secretary to its drafting committee. Their work ('Quick and Garran') is still treated as authoritative and is frequently referenced by the High Court. Their statement can be assumed to be uncontroversial. Had the Constitution's framers chosen to include a provision in the Constitution giving effect to the convention that the Prime Minister is 'the official leader of the party commanding a majority in the National Chamber', it would have codified an unwritten British convention. The Constitution's framers were cautious with unwritten rules, but, as we have seen, they had shown themselves willing to venture into some codification, such as with the convention that members of government must be members of parliament.

Confidence of the House

What, then, does this tell us about the events of 1975? If a 'confidence provision' had been included in the Constitution, it would have been difficult for Governor-General Kerr to act as he did. I say 'difficult' rather than impossible, because Kerr showed himself to be capable of acting boldly and unilaterally, perhaps even recklessly. But neither Whitlam nor his government had lost the confidence of the House at any time during the drama of 1975. Indeed, a motion of confidence was passed on the day on which the supply Bills went up to the Senate and the Opposition Senators made clear their determination to withhold supply by deferring a vote on the Bills. Thereafter, multiple confidence motions were successfully moved in the House, including on 11 November, on its being informed of the government's dismissal. On the same day, a motion of censure against caretaker Prime Minister Fraser was passed. There could have been no doubt about who did and who did not command the confidence of the House. It is also possible, perhaps likely, that the advice obtained by the Governor-General from the Chief Justice would have been different, had there been a 'confidence' provision in the Constitution. In the rules of constitutional interpretation, unwritten or uncodified conventions do not prevail over express constitutional provisions. If the

signified that they will remain in power so long as they can carry on the Queen's Government.'

text of the Constitution had stated expressly that the Prime Minister was the political leader who held the confidence of the House, Chief Justice Barwick may well have advised the Governor-General accordingly.[14]

The 'confidence of the House' convention, however, is not without historical challenge, as Kerr knew well. In 1932, the Governor of New South Wales, Sir Philip Game, dismissed the NSW Labor Premier, Jack Lang, and his government. Kerr's account of his own actions draws heavily on this event.[15] Significantly, he notes that Lang still enjoyed the confidence of the NSW Legislative Assembly at the time of his dismissal. Kerr also notes that, in H.V. Evatt's writings on executive powers (which heavily influenced Kerr, for both doctrinal and personal reasons) Evatt, who favoured codification of the reserve powers, distinguished Game's act on the ground that it was a response to the Premier's unlawful conduct. This was to give Kerr, who did not favour codification, the means to reconcile his doctrinal disagreement with Evatt over codification, a reconciliation that Kerr, who otherwise followed Evatt devotedly, clearly wanted to achieve.

Again, in any future large-scale review of the Constitution, the question of what to do with a Prime Minister who continued to enjoy the confidence of the House even while acting, or persisted in acting, unlawfully or unconstitutionally, is also likely to arise. It is, *a fortiori*, likely to be prominent in any review in which the Constitution's silence on the Prime Minister is discussed. For unlawful or unconstitutional actions to be made the grounds for a general exception to the 'confidence of the House' rule would create multiple challenges, and these would have poured fuel on the fire in the events of 1975. How, and by whom, would such conduct on

14 Barwick, although a former Member of Parliament and Attorney-General, was not a judicial activist who might read the words with political consequences in mind (although it is hard to imagine how this might have been done). Justice Mason would prove to be more hermeneutically creative in his years as Chief Justice (1987-1995) than might have been predicted in 1975. But Kerr was a respecter of official hierarchy, and – I am guessing – would anyway have followed Barwick's advice over Mason's, had they differed. Kerr also 'idolised' Barwick, according to Troy Bramston, *Gough Whitlam: The Vista of the New* (Harper Collins 2025) p. 429. In any case, as Anne Twomey suggests, it is likely that sitting judges would, today, consider it unwise to advise on the reserve powers, knowing that this would draw them into political controversy: Twomey, 'Truth and fury, but not quite as unprecedented as it seems' (*The Australian* 8-9 November 2025).

15 Kerr, *Matters for Judgment: An Autobiography* (Macmillan 1978).

the part of a government be established? For the Governor-General to assume this role would be a dramatic breach of the Constitution's separation of powers. But this issue did not arise in 1975. Kerr had not concluded that the actions of Whitlam and or members of his government were unlawful.[16] Certainly, what Whitlam proposed to do in the event of supply being exhausted – including a scheme to obtain temporary bank loans to be repaid after supply was obtained – was controversial and may have been constitutionally questionable, but it was still distinguishable from Lang's real acts during the Great Depression of refusing to pay the state's debts, in open contempt of the Commonwealth's *Financial Agreement Enforcement Act 1932*. Kerr made no attempt to claim anything of this nature about Whitlam's conduct. He simply asserted, without qualification, that he, as Governor-General, was personally required to settle the crisis occasioned by the Senate's deferral on the supply Bills.

Reviews of the Constitution

Later large-scale reviews of the Constitution's workability have offered little guidance on these questions. The Constitutional Commission, appointed by the Hawke Labor government in 1985, comes closest to being helpful. Its final report in 1988 includes the recommendation that the office of Prime Minister should be expressly named in the Constitution. The provision would give the Governor-General the power to appoint a person to be known as Prime Minister, and 'to be head of the Government of the Commonwealth.'[17] It did not provide criteria for appointment, however, but recommended an additional provision giving the Governor-General the power to dismiss a Prime Minister who, having lost the confidence of the House, refused to resign. By implication this would define the Prime Minister as the Member who has the confidence of the House.

[16] Should a government, perhaps unaware that its acts might be unlawful (or considered unlawful) be issued a warning of consequences if it persisted in acting in such a way, as happened in 1932 when Governor Game warned Premier Lang that he would be dismissed if he continued to refuse to honour the state's loans? This question is also likely to arise.

[17] Final Report of the Constitutional Commission 1988, Vol. 1, p. 326.

The Republic Advisory Committee, appointed in 1993 by Labor Prime Minister Paul Keating, had the complicated job of considering the different roles and limitations on the powers of constitutional officers with alternative methods for choosing the republican head of state. It included references to 'the Prime Minister' throughout its report but did not expressly state a rule for choosing the person who would occupy the office. On whether the Governor-General's reserve powers should be codified (a matter that was inevitably haunted by the events of 1975) it considered a range of options. It ultimately decided not to recommend codification, but rather, to assume the (silent) transfer of the constitutional powers of the Governor-General to the future republican 'President.' In 1999, the *Constitution Alteration (Establishment of Republic) Bill* – the Bill that would have become an Act to amend the Constitution, had the referendum of that year succeeded with Australia's becoming a republic – included references to 'the Prime Minister', but it did not provide for the manner of his/her appointment or make reference to a 'confidence' test. It included provisions for dismissal of the 'President' by the Prime Minister, but only with regard to its method, not the grounds.

In discussions in which the question of confidence arises, 'confidence' is assumed to be established by counting the heads in the House: that is, the numbers voting for or against a confidence motion. This too should be considered in future reviews of the Constitution. In a House composed of minor party members and Independents alongside major party members (a scenario that has occurred in recent times in Australia and may become more frequent) it may be difficult to determine where 'confidence' lies. In minority government, it may take time (and skilful negotiations by the caretaker Prime Minister) to extract an undertaking from relevant non-government members not to vote against the government in a confidence motion or to obstruct supply Bills. This occurred in 2010, with the election of the minority government of Labor Prime Minister Julia Gillard. Two Independents took ten days to decide which party they would support along these lines. Just how long should a Governor-General (or equivalent head of state) be required to wait before exercising the power to appoint a Prime Minister? Should there be a time limit (number of days or weeks?) after which the head of state might be empowered to command the House to vote in a 'confidence' motion and, failing a resolution, to have the writs issued (without government advice) for a new election? And if the parliament was not sitting, might the head of state have the power to convene a sitting, to test where 'confidence' lay?

Complications of this nature created by the inclusion of a 'confidence' provision in the Constitution would be unavoidable. I suggest, nevertheless, that such a provision would have helped resolve the 1975 crisis and would make a future re-run unlikely. But how likely is it that a re-run might occur? So much of what happened in that year depended on the plans and actions of extraordinary men in an extraordinary historical moment. We should consider them before answering this question.

The Human Actors in 1975

In a *constitutional* narrative of 1975, the characters of the actors play little part, but it is hard (it is impossible!) to understand the events surrounding the dismissal without reflecting on the human side of the story. And the humans were so large and bold and contradictory! Anyone who reads Kerr's account of the events, which (revealingly) he styles 'an autobiography,' must surely agree that he makes his own character the dominant part of the story. He may not have anticipated, however, just how it would appear to the reader.

Kerr, it seems, was obsessed with the reserve powers. His obsession developed long before 1975; indeed, Kerr had been thinking about the reserve powers since he was a young man who encountered Evatt's writings on the subject, some four decades before his appointment as Governor-General. This was more than an intellectual matter. Kerr was already familiar with the person of Evatt, since 'a most significant event' had occurred 'which for many years afterwards influenced [his] life'.[18] In 1925, when Kerr was only ten or eleven years old, Evatt stood as a Labor candidate for an inner Sydney seat of the NSW Legislative Assembly. Kerr's working-class parents, Labor voting constituents, assisted the campaign in what were probably routine ways, such as handing out leaflets, manning polling booths and so on. Evatt was elected, but he soon fell out with NSW Labor Premier, Jack Lang (who, as we have seen, was later dismissed by the Governor in a deployment of vice-regal reserve powers). In 1927, Evatt stood as an independent candidate and, again, Kerr's parents assisted the campaign. Evatt then wrote what was probably a proforma letter of thanks to his supporters. Kerr's father kept the letter.

[18] Kerr, *Matters for Judgment,* p. 31.

By 1931 Evatt was a Justice of the High Court, and Kerr was a seventeen-year-old, a recent school leaver. In an extraordinary act of boldness, he looked up Evatt's address in middle-class north-shore Sydney and, with the letter in hand, literally knocked on the door. Evatt was not at home, but Evatt's wife suggested that the boy should ring him later at the High Court. And this he did, securing an appointment to meet in person. He introduced himself as a fellow 'Old Fortian' (a former student of Fort Street high school) and winner of a school essay prize funded by Evatt. He showed his father's letter and asked for career advice. Then, in what reads as nothing less than a fairy tale, Evatt seems to understand intuitively that Kerr's straitened financial circumstances would make it difficult for the boy to do what he hoped: study law. On the spot, Evatt offers him a personal 'scholarship', a yearly bursary of £50, to be paid by Evatt himself (as he subsequently did, for a time at least, in quarterly cheques). From this event onward, Evatt becomes, in Kerr's eyes, his friend, his mentor and virtual intellectual oracle. Evatt's thoughts on the reserve powers become a consistent issue for Kerr. Again and again, throughout *Matters for Judgment*, Kerr raises or touches on the question – under what circumstances might a monarch or the monarch's representative find it justified to exercise the reserve power to dismiss a government? The question preoccupies him. He begins, it seems, to see its answer as a fate that will fall to him to meet, as literally his destiny. How strange and wonderful it must have seemed when Whitlam's offer to serve as Governor-General came Kerr's way forty year later. He could answer his question to his own satisfaction. His destiny could be fulfilled.

There is something else in Kerr's 'autobiography' that is impossible to read without considering the part it must have played in the drama. In September 1974, just two months after his appointment, Kerr's wife of 36 years died. She had been seriously ill for some years, but - as Kerr tells the story – not so unwell as to affect their joint decision that he should accept Whitlam's offer. Her death was sudden. Kerr states this simply (he is not obliged to do more) but her death, according to some, was 'agonising'.[19] The effect of witnessing such a death cannot be minimised. Then, seven months later, just seven months before the dismissal, Kerr has remarried. Thus, throughout the whole period in which the constitutional crisis was starting to simmer, coming to the boil, and finally exploding, the Governor-General was witnessing the dramatic decline of his wife's health and her sudden death,

[19] Jack Waterford, 'Sir John Robert Kerr (1914-1991', *Obituaries Australia* <https://oa.anu.edu.au/obituary/kerr-sir-john-robert-23431>.

undertaking the practical demands and legal duties of widowhood, and then finding a second chance of marital happiness and intimate companionship,[20] all the while performing the duties of office. In this state of intense and possibly conflicting emotion, Kerr, already driven by a fantastical sense of destiny, may have been further emboldened ln his actions.

It is irresistible to conclude that, had a different man been in office, the events of 1975 must have turned out differently. And facing Kerr in this scenario, was another, very different man: Prime Minister Whitlam.[21] Whitlam, it is generally accepted, was a poor judge of the character of other men, but he held a virtually blind faith in the institutions of democracy and parliamentary government. These would not permit the dismissal of a Prime Minister who enjoyed the confidence of the lower House. Despite warnings from less idealistic (or less naïve) men,[22] Whitlam was unable to believe that the long-standing rules of constitutional parliamentary democracy – especially the rule that Governors-General took advice from Prime Ministers alone – would be broken. So deluded was Whitlam in his belief about Kerr's respect for these rules, that he could not even contemplate that breaking them might be on Kerr's mind. Nor could he imagine himself acting in a personal rather than institutional manner, simply refusing Kerr's order of dismissal, rejecting his authority. He did contemplate dismissing the Governor-General (which would have been within the rules) and approached the Palace, seeking to have his own office restored. He had left it too late. What might have happened, if he had dismissed Kerr first?

When a Governor-General is out of the country or indisposed and unable to perform his or her duties, the Constitution provides for an 'Administrator of the Commonwealth'. This Administrator will perform the duties *pro tem*, until the Governor-General returns or a new appointment is made. By convention it is the senior state Governor – the longest-serving Governor – who plays that role. In 1975, it was Sir Roden

20 Most accounts (but not Kerr's) of Anne, the second Lady Kerr, are very unflattering. Some come close to suggesting that her encouragement was an animating factor in Kerr's resolve to end the crisis in dismissal.

21 See James Walter, in *The Leader: A political biography of Gough Whitlam* (University of Queensland Press 1980).

22 Troy Bramston, *Whitlam* p. 434.

Cutler who had been NSW Governor since 1961. Cutler was known as a careful, conservative institutionalist. He had acted as Administrator on numerous previous occasions. Although the Administrator does not usually serve for lengthy periods, it is not implausible that Kerr might have been on extended leave, for example, following his remarriage in April 1975. We may be confident that Cutler, serving as Administrator of the Commonwealth in the last half of that year, would not have acted as Kerr did.[23]

Many alternative scenarios have been imagined for 11 November 1975. Margaret Whitlam is reported to have challenged her husband when he rang to inform her of his dismissal: why had he not torn up Kerr's letter; why had he not slapped Kerr in the face?[24] Paul Keating maintains that he would have had Kerr arrested (although without specifying what charge Kerr would have faced).[25] One thing alone can be concluded with certainty. All the alternative scenarios would have led to a similar outcome: a federal election and the defeat of the Whitlam government. Had the framers of the Constitution inserted a 'confidence of the House' provision and had this prevented Kerr from dismissing the Prime Minister, the election would likely have been held later than it was in 1975, but its outcome would not have been different. Everything in the political turmoil of the year suggests this: newspaper editorials and opinion polls repeatedly recorded overwhelming loss of support for the government.

Afterword

The dismissal is part of my own personal memory. Fifty years ago, I was in the final year of my BA in political science at the University of Melbourne. I recall sitting at the kitchen table in the shared student house in which I lived, listening to the radio.[26] There was a 'newsflash.'

[23] He is quoted as saying: 'In one sense I think [Kerr] welcomed the opportunity to be the political dictator of Australia', implying that he, Cutler, would not have done. *Sydney Morning Herald* 5 November 2005.

[24] Troy Bramston, 'The Day that Shocked the Nation', *The Australian* 8-9 November 2015.

[25] Keating is also reported as saying that he advised Gough Whitlam to put John Kerr 'under police arrest' during the dismissal saga (*Guardian* 11 November 2025).

In that solemn ABC radio voice (not quite as BBC as they had once been, although less Aussie than now, but *always* masculine)[27] the dismissal of Whitlam and his government was announced. I confess to being puzzled as well as outraged. Whitlam's election in December 1972 had been a thrilling experience, especially for those under twenty-three, who had known nothing but conservative Liberal Party government. Despite four years of studying politics, however, I knew almost nothing about the constitutional issues playing out. Most people whose opinions I listened to were certain that the dismissal was a dastardly act of the monarchy, desired by the Queen and staged by the Governor-General following instructions from the Palace. Others were convinced that it was the CIA pulling the strings.[28] Either way, the dismissal was represented as a *coup d'état* against the government whose radical, independent agenda threatened Britain's vested imperial and colonial interests, or America's defence policies and strategic military operations. Like most students of that era, I was inclined to believe in political conspiracies; even so, it seemed a stretch to imagine British and American forces manipulating the Senate through the Opposition leader who, doing their bidding, instructed his party's Senators to block supply, and drew the Governor-General into the plot, treating the deferral of the supply Bills as an opportunity to complete the 'coup' that was then followed by the voters' endorsement. Whitlam's

26 Shouldn't I have been studying for my final exams? More likely I was writing an essay, since the University of Melbourne's Politics Department, like many departments in the social sciences and humanities at the time, had an unofficial policy – a mark of the non-conformist era – of going along with the students' protests that exams were authoritarian, antiquated and demeaning ways of testing students' *true* knowledge, the latter being considered by the protestors to be untestable under exam conditions.

27 Actually, it turned out, not *always*. The first woman, Margaret Throsby, to read ABC national radio news, was appointed in - when else! - 1975, although I hadn't heard her voice, and didn't know of this particular milestone in gender equality until now.

28 John Menadue, Head of the Department of Prime Minister and Cabinet at the time of the dismissal, maintains that the United States effectively manufactured a 'coup' against the Whitlam government because of its threat to America's strategic interests in the region, prominently its opposition to renewing the lease on the Australian-based US defence facility, Pine Gap: <https://johnmenadue.com/post/2025/11/the-dismissal-the-role-of-cia-mi6-and-austral-americans/>. This still does not explain how the Governor-General and the Opposition leader and the Senators were persuaded to act as they did (and without Whitlam gaining knowledge of the plot).

social democratic program had certainly been breathtaking in its scope and pace, but how much of a threat could it have been?

Looking back over these 50 years, we are reminded that many of Whitlam's initiatives have survived, including during substantial periods of non-Labor government. They have become part of Australia's social democratic identity: universal health care; supporting mothers' (now parents') pensions; race discrimination laws; early native title laws; no-fault divorce; an Australian national anthem, and much more. They were radical in their time, but nothing involved the socialist nationalisation of private industry or the expropriation of personal or corporate wealth.

As my research interests shifted from British political history (the subject of my PhD) to Australia's constitutional history, and ultimately constitutional law, I would learn that many of Whitlam's initiatives involved a creative reading of the Constitution, extending the Commonwealth's power into areas previously thought to be the preserve of the states.[29] But, despite some 'states' rights' protests, none involved attempts to usurp or bypass the Constitution. Among other legal steps, appeals from the High Court to the Privy Council were ended, but, again, this was done via the constitutional means that had always been available to Australian governments, activating a provision that had been written into the Constitution by its Australian framers.[30]

The more I considered the history of the Constitution's framing, the less persuaded I became that the events of 1975 involved a clash between monarchist loyalties and republican aspirations. Kerr claimed that he acted without reference to the Queen, a literal, but disingenuous claim, as we know now from the evidence in the 'Palace Letters' that were made available in 2020.[31] But even if Kerr had been in direct, personal

[29] In particular, through the section 96 mechanism of Commonwealth grants to the states on 'such terms and conditions as the Parliament thinks fit.'

[30] Section 74 provides that the Parliament may make laws limiting the matters in which … [special] leave may be asked' of the Queen to grant appeals from the High Court to the Privy Council. It does add that such proposed laws 'shall be reserved by the Governor-General for Her Majesty's pleasure', but 'Her pleasure' was never denied. Importantly, no appeal was permitted to the Privy Council from the High Court in ('inter se') matters - that is, federal versus state powers - unless the High Court certified that such a matter might be determined by the Privy Council.

[31] Kerr, as it turned out, was in frequent communication with the Queen on the matter of his powers. Jenny Hocking, *The Palace Letters: The Queen, the*

communication with the Queen, there was nothing to suggest that either the Queen, her staff, legal advisers or the British government had conspired to somehow create the conditions for the dismissal.

Hocking, who reads the Letters differently, writes:

> The tensions [the Letters] reflect between responsible parliamentary government and an unarticulated residual power of the Crown, are at the heart of both Australia as a constitutional monarchy, and the dismissal. They can never be fully resolved until we complete the post-colonial project of national autonomy, as an Australian republic, with an Australian head of state, and in control of our own history.[32]

In my research into the making of Australia's Constitution, I found myself increasingly surprised (and gratified) at how important the idea of Australian 'national autonomy' was to the Constitution's framers. Certainly, they wanted to remain (culturally and racially) 'British' and this involved expressions of loyalty to the Queen or King, but the generation of Australian-born men and women that, by the 1890s, had become the demographic majority, saw themselves as distinctively Australian at the same time. They expressed this in their art, sport, and literature, as well as their political and constitutional aspirations. At key times in the Federation story, Australian political leaders stood up to or against Britain's attempts to interfere with Australia's wishes and decisions, rightly convinced that they knew better than the British what Australia required. In virtually every dispute with Britain over legal powers or constitutional provisions, Australia prevailed. But there were relatively few disputes. Even in the pre-Federation days, Britain rarely attempted to control Australia's political choices. Once the Commonwealth Constitution was adopted, Australia was effectively fully sovereign in domestic matters, and not far off being sovereign in foreign relations and international law. Many of Australia's political institutions and practices were borrowed from Britain, but they were reshaped and recontextualised in Australia. The Senate, for example, was nothing like the House of Lords, and (being

Governor-General, and the Plot to Dismiss Gough Whitlam (Scribe 2020). See also *Hocking v The Director-General of the National Archives of Australia* [2020] HCA 19.

32 Hocking, *The Palace Letters*, p.180.

directly elected) it was not even essentially like the US Senate at that time. It was the *Australian* Senate – that distinctive, powerful upper House – that precipitated the dismissal. The tension in the daring 'marriage' of responsible government and federalism (which is deplored in the 'standard narrative' as a fundamental 'design flaw') was a creation of the Constitution's Australian framers. The dismissal crisis, as Kelly and Bramston write, was a 'homegrown' project.[33] Despite the view that Kerr acted in the interest of the monarchy, he acted as an *Australian,* making up the rules and breaking British convention, as he saw fit. By 1975, Australians, as the Constitution's framers had anticipated, had long been 'in control of our own history'. There are many good reasons for the Constitution to be amended to no longer include references to the British monarchy, but what such amendments will do is make the Constitution reflect what is already the case: Australia is now a democratic 'republic' in every meaningful respect.

The reserve powers conundrum is not about the monarchy, or the 'unarticulated residual power of the Crown'. It is about whether an Australian democracy needs or wants a non-political, non-partisan office situated above parliamentary government: to represent the nation; to perform ritual duties such as swearing-in new Ministers of State and opening new sessions of parliament, acting on executive advice. It is about whether the duties of such an officer should include identifying the Member of Parliament who, following an election will command the confidence of the House of Representatives, and 'inviting' him or her to form government. It is about whether such an office should extend to taking action (*without* advice) in emergencies when it is unclear who else should act, or if a government is acting unconstitutionally. These are not questions about the powers of Kings or Queens. They are questions about the fundamental challenges and limits to democratic government. There are no simple answers, but the questions must be considered when, sometime in the future, Australians decide to amend their Constitution to make the words and practice correspond. There was nothing to stop Australians from doing so in 1975 if they had wanted to, and everything to gain from reflecting on what happened in that year when things went off the rails for a time, and then went back on again.

33 Paul Kelly and Troy Bramston, *The Truth of the Palace Letters: Deceit, Ambush and Dismissal in 1975* (Melbourne University Publishing 2020).

University of Sydney

Email: Helen.Irving@sydney.edu.au.

The Dismissal from Below

James Watson and Frank Bongiorno

1976 was a bumper year for seminars and books on constitutional reform in Australia. In July the newly formed Australia's Constitutional and Citizens' Initiative Association (ACACIA) held a public forum at Canberra's Albert Hall, where legal scholar Colin Howard, former Prime Minister John Gorton and former Attorney-General Kep Enderby discussed changing the constitution to 'carry the Australian political structure safely into the 21st century'.[1] In August Sir Richard Eggleston and Edward St. John welcomed legal scholars from across the country to the University of New South Wales to think through 'the real problems that are inherent in our Constitution'.[2] And in September the republican group Citizens for Democracy, led by writers Donald and Myfanwy Horne and Frank Hardy, held a public meeting on 'the need for a democratic constitution' at Sydney Town Hall.[3] Meanwhile new books on the Australian Constitution and Governor-General were rapidly published (and reprinted) to meet public demand), including David Solomon's *Elect the Governor-General!*, Richard Hall and John Ironmonger's *The Makers and the Breakers: the Governor-General and the Senate vs the Constitution*, and even Christopher Forsyth's speculative novel *The Governor-General*, in which a future Labor government is dismissed by a rogue Governor-General.

The reason for this increased interest in the Australian Constitution requires little explanation. The dismissal of the Whitlam Government on 11 November 1975 sparked an intense concern among Australians about the health of their political institutions, and particularly about the powers of the Senate and the reserve powers of the Governor-General, and this concern flashed into countless discussions across Australia. Legal scholars, historians, and public intellectuals were prominent in shaping

1 Chris McEwan, 'Welcoming Speech', in ACACIA, *Constitutional Reform Public Forum, 1976*, ACACIA, Canberra, 1977, 2.

2 J.S. Lockhart, 'Foreword', in Sir Richard Eggleston and Edward St. John (eds.), *Constitutional Seminar*, New South Wales University Press, Kensington, 1977, 2.

3 Myfanwy Gollan, 'Preface', in Gollan (ed.), *Kerr and the Consequences: The Sydney Town Hall Meeting, 20 September, 1976*, Widescope, Camberwell, 1977, 7.

this discourse at a public level, but it reached down to the more private sphere of letters, diary entries and living room conversations, as 'ordinary Australians' debated the constitutionality of Kerr's actions and the future of parliamentary democracy in Australia.

There has been no other period in Australian history when ordinary citizens grappled more closely with their constitutional arrangements. For several years afterwards, it was easy to make the case to large numbers of people that their constitution mattered, that it was more than just an arcane remnant of another era, disconnected from the real life of the nation. Perhaps that engagement helped pave the way for the three amendments they were willing to approve when offered the opportunity by the Fraser Government in May 1977. (They rejected a fourth, on simultaneous elections, which achieved a vote of over sixty-two per cent but majorities in three, and not the requisite four, states.) Those that passed remain three of only eight constitutional amendments approved since federation. But just one of them – the requirement that casual Senate vacancies be filled by a member of the same party – related directly to the dismissal. Overall, if it were hoped that the events of 1975 might provide momentum for constitutional change – and many did nurture such ambitions – the results must have been considered deeply disappointing. There have been no constitutional amendments since.

The historian Manning Clark provides an example of how this often intense debate unfolded. In January 1976 Clark wrote in an essay for the *Australian* that the 1975 election 'may go down in history as that day which converted the radicals from the ballot box to industrial action, from parliamentary to direct action'.[4] He received hundreds of letters from readers in response, who quarrelled with Clark's suggestion. One of those was David, a sixteen-year-old boy from Somerset, Tasmania, who described himself to Clark as a 'minor official of the Tasmanian A.L.P, a matriculation student, a vehement anticonservative and a lover of history'. He hoped to run for parliament one day, but the events of the dismissal and the election, as well as Clark's writing about the limits of parliamentary democracy, 'have meant that I have had to do some soul searching … although I still believe that Parliament is the place where I can best fight conservatism'. David wrote to Clark to ask him three questions:

4 Manning Clark, 'The Whitlam Years', *Australian*, 7 January 1976, 7.

1. Do you think it is realistic to entertain thoughts of radical reform or of scrapping the constitution?

2. Do you think that a transition from parliamentary to direct action, the ultimate [goal] of which is revolution, should be made or allowed to happen? [and]

3. Do you view the recent events as the last straw as far as perseverance with the Westminster system by radicals and reformists is concerned, or do you view it in the context of the 19th century British reformist experience, as one more setback on the road to eventual victory?[5]

These were heady questions for a sixteen-year-old boy from a small town in Tasmania to be asking, but these were, in fact, the types of questions some Australians were asking about their country after the 1975 election.

Do Australians ask similar questions today? Despite the annual acts of remembrance each 11 November, with news stories, online articles, and the occasional media documentary, it seems many Australians no longer want to think about the troubling issues posed by the dismissal. Come election day, Australians are more likely to celebrate the 'democracy sausage', or to compare favourably the moderate length of the queues at their polling booths to those in the United States, than to call for changes to their political institutions and constitution. This complacency would surprise the generations of 1975, who fought for a version of Australian democracy they believed to be fragile and under threat. Many considered that vested interests had mobilised against 'the people', the media played dirty, a chief justice had betrayed his claim to neutrality, opposition parties had thrown aside propriety, and a representative of the Queen, a relic of colonialism (to draw on a Whitlamism), had sacked a democratically elected government using powers most considered had fallen into disuse. Since 1975 there have been no significant reforms to protect Australian democracy from another vice-regal dismissal. That Australia has not faced a crisis as significant or intractable in that half century might not be a sign of the strength of the country's democratic institutions, but more likely a mix of good fortune and collective memory of the public unrest of late 1975, which threatened

5 David Clements to Clark, undated, National Library of Australia (NLA) MS 7550/180, Papers of Manning Clark, manuscripts.

to destabilise political and civic life in Australia.

Our research seeks to recapture the dismissal as an event that engaged the emotions and commitments of 'ordinary Australians' – on both sides of the controversy – and to explore its role in mobilising social movements, interest groups, and political protest (and affirmation).[6] Its aim is to recover the dismissal, and the anti-Kerr protests that extended through to 1977, less as a unique constitutional event than as an emblematic and supremely important example of the wider popular politics of that time. It was an era of social protest, political mobilisation, and industrial militancy, yet most accounts of the dismissal focus their attention on a few key actors – notably Gough Whitlam, Malcolm Fraser and John Kerr.[7] We need to recover the history of the dismissal, however, as part of a more expansive sense of the possibilities of democratic citizenship in the 1970s and see in the course of the protest movement of 1975-77 a harbinger of the disarming of much of this radical hope in the later 1970s, 1980s and beyond.

A Gathering Crisis

When the Liberal-National Country Party (L-NCP) Coalition deferred supply on Thursday 16 October 1975, they broke a convention of parliamentary politics that many Australians felt was central to the health of their democracy. Few Australians would have believed that a government with a democratically elected majority in the lower house should be blocked by the Senate from governing, despite some precedents. The Cain Labor Government in Victoria had lost office in 1947 when the upper house, the Legislative Council, blocked supply. The Labor Party then forced its way back into government in 1952 by denying supply to the

6 Frank Bongiorno and James Watson, *The Dismissal from Below*, Whitlam Institute, Sydney, 2025.

7 A recent exception, although mainly based on research undertaken in 1997, is Phil Griffiths, *Strike Fraser Out!: How workers rose up to defend the Whitlam government, October-November 1975*, Solidarity, Strawberry Hills, 2025.

Country Party while in opposition.[8] A similar episode had occurred in 1948 when the Tasmanian Legislative Council forced an election by refusing supply to Robert Cosgrove's Labor government, but Labor won the resultant contest.[9] In 1970 Whitlam himself had defended voting against a budget in both the House of Representatives and the Senate in an effort to 'destroy the Government' (a quote that was often used against Whitlam by Kerr and his supporters after 1975).[10] But it is one thing to talk in such terms in the heat of parliamentary debate and in the absence of a Senate majority, and it is another to actually do it. In 1974 the federal Coalition, then led by Billy Snedden, announced that it would be blocking supply unless Whitlam called an election. Whitlam responded by advising the Governor-General, Paul Hasluck, to dissolve both chambers and hold an election. Labor was returned with a reduced majority in the House of Representatives. The numbers in the Senate were a dead heat, thereby still denying the government control.

The unions responded immediately to the Coalition's decision to block supply in mid-October 1975. The massive, powerful and militant Amalgamated Metal Workers' Union (AMWU), with its 186,000 members, held 'spontaneous strikes' in New South Wales, Victoria and South Australia, calling on the Australian Council of Trade Unions (ACTU) to convene a conference to draw up a plan for rolling national strikes. Sydney members of the Waterside Workers' Federation (WWF) announced a 24-hour stoppage for the Friday; 1000 of them marched from the union rooms to the rally addressed by Whitlam and Hawke in Hyde Park. Melbourne and Port Kembla waterside workers also walked off the job, while their counterparts in Fremantle, Port Adelaide and Hobart attended rallies.[11] The Melbourne WWF branch executive condemned the deferral of supply and demanded its reversal to allow the Government 'to get on with the business of Governing without pressure from agents of Multi-Nationals'. In supporting the Whitlam Government's 'stand against the conspiracy

8 Raymond Wright, *A People's Counsel: A History of the Parliament of Victoria 1856-1990*, Oxford University Press, South Melbourne, 1991, 182-84, 188-90.

9 W.A. Townsley, 'The Government of Tasmania', in S.R. Davis (ed.), *The Government of the Australian States*, Longmans, London, 1960, pp. 528-9.

10 John Kerr, *Matters for Judgement: An Autobiography*, Macmillan, South Melbourne, 1978, 320-1.

11 *Maritime Worker*, Vol. 59, No. 14, 4 November 1975, 1.

of big business, oil companies and newspapers', it called for a referendum to abolish the Senate, 'believing houses of review exist to perpetrate injustice on the working class'. The branch showed its 'determination to reject this grab for power by Fraser, Anthony' and their 'motley crew' by marching to the City Square to listen to Whitlam address a rally.[12]

Outside Parliament House in Canberra on the Thursday, while the Budget bills were still being considered by the Senate, there was a rally organised by local unions. Former Liberal Prime Minister John Gorton, intending to run as an independent for the new ACT Senate seat, along with ACTU and Australian Labor Party (ALP) President Bob Hawke, addressed a crowd estimated at 2500 said to be made up of 'public service demonstrators'. Hawke declared that if the Opposition refused to pass the Budget, 'the Australian trade union movement may very well think about withholding supplies from them'. Was that a threat of a general strike? Probably not, given the rally had specifically considered, and then rejected, a motion for such action.[13] Still, Doug Anthony, the NCP Leader, accused Hawke of 'incitement to lawlessness' and Tony Street, a Liberal frontbencher, judged that Hawke's remarks revealed a conflict between his roles as ALP and ACTU president. Moreover, he was trying to prevent people exercising their rights at the ballot box as well as intimidating elected parliamentarians. 'What the Parliament has done is legal. What Mr Hawke is proposing is not', Street concluded.[14]

On Friday 17 October, the day after the blocking of supply, Fraser addressed a lunchtime rally in Hobart's Franklin Square, telling his audience of about 4000 that the Coalition parties 'will not yield'. Fraser had heavy police protection – he had already been subjected to death threats – but that did not prevent some low-level violence at a rally that the Hobart *Mercury* described as 'only marginally pro-Fraser'. There were regular chants of 'We want Gough' from the crowd and a group thought to be mainly students turned up dressed as undertakers carrying a

12 Waterside Workers' Federation (Melbourne Branch), Executive Minutes, 20 October 1975, Noel Butlin Archives Centre, Australian National University (NBAC) M35/22-23, WWF (Melbourne) Collection.

13 Paul Kelly, 'Unions threaten national strike to support Labor', *Australian*, 17 October 1975, 1; 'Opposition moves attacked at rally', *Canberra Times*, 17 October 1975, 1.

14 'Hawke "trying to incite anarchy"', *Canberra Times*, 17 October 1975, 11.

cardboard coffin marked 'Constitution. Democracy. J.M. Fraser and Co. Funeral Directors'. Although the demonstration had begun in a good-natured atmosphere, a 'scuffle' broke out between pro-Labor protesters and Liberal Senator John Marriott and other Liberal supporters, when the latter tried to tear down some of the anti-Fraser placards. Fraser might not have helped by claiming that some of the protesters were being 'paid taxpayers' money to bludge on the country'. But there was just a single arrest –a student for assaulting a police officer – and what was more significant than the rally itself were the soothing noises Fraser made at a subsequent press conference about the gathering crisis. He thought it would be over quickly – although he could not explain how, except that the Governor-General might act in some unspecified way – and he said that his party 'would take whatever action is necessary and available to us to see that no individual under the present circumstances is hurt' – although he gave no indication of what that action might be. If all of this seemed disingenuous, that is because it was. Fraser fully appreciated how quickly public opinion could turn against the Coalition if, as a result of supply running out, government services and salaries dried up.[15] Opinion polling did indeed reveal a majority opposed the Coalition's course of action and there was a surge of support to Labor and Whitlam.[16]

The other problem Fraser faced – one greatly underestimated by historians – was the potential for major social disorder, mass industrial action and political violence. The *Australian* professed to be relieved – in its editorial of 18 October, 'Cooling down the unions' – by Whitlam having opposed industrial action in response to the supply crisis and by signs that unions were offering moral and financial support rather than flexing their industrial muscle. It also welcomed Hawke's clarification that he had not, at the rally, intended to promote a national strike: he 'was simply painting a picture'.[17] The growing habit of departure from convention, however, was worrying some observers and participants. Fraser himself took the precaution of reaching out to the unions, saying he believed he would be able to get along with them, and promising that wage indexation (the

15 'Governor-General will act soon, says Fraser', *Australian*, 18 October 1975, 1; Wayne Crawford, 'Hostile Rally Greets Fraser', *Mercury*, 18 October 1975, 1; 'Move by Kerr Tipped', *Mercury*, 18 October 1975.

16 Paul Kelly, *The Unmaking of Gough*, Angus & Robertson Publishers, Sydney, 1976, 283; Griffiths, *Strike Fraser Out!*, 21-22.

17 'Cooling down the unions', *Australian*, 18 October 1975, 2.

limitation of wage increases to the inflation rate) would be accompanied by tax indexation.[18] All the same, no one appears to have imagined the unions would be a pushover. At the beginning of October, with blocking supply on the Opposition's informal agenda but not yet a reality, in an open letter widely quoted in the press, Steele Hall, a former South Australian premier now representing the breakaway Liberal Movement, warned Fraser he would fail to build a 'popular base' for his leadership if the community 'contained the bitter and growing discontent of Labor supporters who believed the ballot box had lost its democratic function'.[19] Sir John Kerr, writing shortly after the first rallies and strikes following the blocking of supply in mid-October, told the Queen's private secretary: 'As the money runs out many problems will arise and the reaction of the trade unions has to be considered. There are threats of protest strikes and industrial "war".'[20] Ian Macphee, a leading Victorian Liberal moderate, wrote a fortnight later along similar lines: if the Coalition won an election 'stemming from the present crisis we will have the outright hostility of nearly 50 per cent of the electorate'. Macphee worried especially about the unions which 'would feel justified in destroying our government as they believe the Senate destroyed their government'. The confrontation that would involve, he said, was 'frightening to contemplate'.[21] Such views were common within the Victorian division of the Liberal Party, in contrast with greater hawkishness elsewhere, especially Queensland, Tasmania and Western Australia.[22]

Nonetheless, the rallies and protests held in the immediate wake of the blocking of supply were mainly orderly and peaceful. The Opposition went along with its plans for a big rally at the Sidney Myer Music Bowl in Melbourne on Sunday 19 October. Before 12,000 smartly dressed men and women, Fraser again predicted Kerr would act 'quite soon' to end the crisis.[23] The atmosphere was relaxed and middle-class – not even the loud

18 'Fraser woos the unions', *Australian*, 21 October 1975, 1.

19 Steele Hall to Malcolm Fraser, 1 October 1975, Malcolm Fraser Papers, University of Melbourne Archives (UMA) 106/20.

20 Kerr to Charteris, 17 October 1975, NAA: AA1984/609, Part 2.

21 Ian Macphee to Malcolm Fraser, 2 November 1975, Fraser Papers, UMA, 106/20.

22 Kelly, *The Unmaking of Gough*, 257-8; Griffiths, *Strike Fraser Out!*, 25-26.

23 'Fraser says Kerr must sack Whitlam', *Australian*, 20 October 1975, 1.

whistles of a few long-haired Labor supporters in the crowd could throw off the afternoon's entertainment: a young woman dressed entirely in white singing pro-Liberal Party folk songs.[24]

Meanwhile, Whitlam and his ministers, as well as Hawke, began holding rallies around the country. Whitlam and Hawke spoke to an estimated 15,000 in Melbourne City Square. Other rallies occurred in Adelaide (7000) and Hobart (2000).[25] Another union rally, this time from the maritime and building trades, was held outside Parliament House in Canberra –followed by a Coalition rally on the same site, at which Fraser, speaking from the back of a truck amid a sea of blue balloons, claimed to be for an election on behalf of those 'who want Mr Whitlam to get the hell out of Canberra'. Whitlam interrupted proceedings by appearing at the main entrance to Parliament House, made victory salutes to the crowd and 'received ringing cheers without speaking at all'.[26] It was splendid theatre.

The Dismissal and its aftermath

Many Australians would later remember where they were when they first heard the story that the government had been dismissed, usually reporting a sense of shock or disbelief. Some simply could not believe what they had been told by friends or heard over the radio. When the news did sink in, some were relieved and others were angered, but anyone with even a basic appreciation of the country's political culture understood they were witness to something unique and significant. 'It all felt absolutely momentous, and distinctly personal, like a body blow or a call from the family doctor with very bad news', recalled Marg O'Donnell, a Brisbane feminist, social worker and mother of two young children.[27] 'When I first heard that – of the dismissal, I refused to believe it. And then I cried

24 Stephen Wilks, interviewed by James Watson, 20 June 2025.

25 'PM and Hawke hit the campaign trail', *Australian*, 20 October 1975, 1; *Australian*, 21 October 1975, 1.

26 'Victory salutes – for Fraser and Whitlam', *Australian*, 22 October 1975, 1.

27 Marg O'Donnell, 'The Dismissal and Me', in Sybil Nolan, ed., *The Dismissal: Where were you on November 11, 1975?*, Melbourne University Press, Carlton, 2005, 110.

for two days', recalled Lennore, who was a schoolgirl in western Sydney at the time.[28]

That such emotion led to so little violence likely had more to do with the entrenched commitment of the overwhelming majority of Australians to a peaceful civic order, than it did to the efforts of this or that calming political or industrial leader. David Greason, a schoolboy at the time and later a 'teenage fascist', recalled the following few days at his school were 'ugly', but ugliness of this kind is relative:

Kids weren't talking to each other, teachers – Liberal and Labor – had stickers ripped off the backs of their cars, everyone was talking dictatorship. Then everything quietened down again, like it does after a heatwave.[29]

From about two o'clock, the news had begun to filter through Parliament House in Canberra and was soon being reported on the radio. This was how novelist Elizabeth Harrower heard the news when she returned from a picnic by the Murrumbidgee River with friends, including fellow-novelist Christina Stead. Writing to a friend in the immediate aftermath, she remembered that, on hearing the radio reports, she 'stepped back like somebody in a terrible film, going backwards and saying "No, no, no"'.[30] John Button, elected a Labor Senator just the year before, recalled that 'Canberra briefly lost its provincial air and seemed like the neurotic epicentre of the universe'.[31] The historian Humphrey McQueen had spent the morning at home writing and listening to Gustav Mahler symphonies, before heading to the National Library to read the newspapers after lunch. He only became aware of the dismissal when he overheard a staff member refuse to hand materials to a researcher, telling them 'I won't help you if you supported that traitor [i.e. Fraser]'.[32] A young journalist, Niki Savva,

28 Lennore, interviewed by Saskia Roberts, 14 March 2023.

29 David Greason, *I Was a Teenage Fascist*, McPhee Gribble, Ringwood, 1994, 30.

30 Elizabeth Harrower, quoted in Susan Wyndham, *Elizabeth Harrower: The Woman in the Watch Tower*, NewSouth Publishing, Sydney, 2025, 194.

31 John Button, 'Out of a Blue Sky', in Nolan (ed.), *The Dismissal*, 17.

32 Humphrey McQueen, interviewed by Watson, 29 July 2025.

described the scenes in Canberra after Fraser's parliamentary announcement as 'memorable, awesome and frightening'.[33]

Demonstrators began assembling outside Parliament House – a few thousand by late afternoon, including Harrower, Stead, and McQueen – with smaller numbers going to Government House at Yarralumla where they lowered the flag to half-mast. The Canberra protests were peaceful on the whole although demonstrators yelled '*Sieg Heil'* to Coalition politicians and invited those watching from the upper balcony of Parliament House to jump.[34] When Fraser walked down the building's famous steps to visit Government House for the second time that day, he was loudly jeered and some protesters did their best to punch him. Harrower described the Coalition leaders as 'laugh[ing] like Nazis'.[35] Angry crowds also surged around Fraser's car on his return.

While Australia's stock exchanges 'went berserk' with relief at news of the dismissal and 'launched into the biggest buying spree' since the mining bubble of 1970, the events of 11 November raised the spectre of serious civil violence for the first time since the Depression of the 1930s.[36] An afternoon pro-Whitlam protest in Melbourne at Liberal Party headquarters 'erupted into one of the most violent demonstrations ever seen in the city' as protesters clambered over police cars and 'kicks and punches were freely given'. Police were 'led from the taunting crowd bleeding from head wounds and with their shirts torn'. A police wagon drove through the melee, knocking down protesters and police, while a horse repeatedly used to charge through the protesters was 'battered with sticks and stones'. Glaziers refused to fix the broken windows of the party offices. 'Each time they are asked to repair them, they just can't quite seem to bring themselves to do it,' a helpful Furnishing Trades Society Secretary explained. In Sydney, about 2000 marched, mainly students, with scuffles but no arrests and there were also smaller protests in Adelaide and Brisbane on the

33 Niki Savva, 'Is there a Prime Minister here?', *Australian*, 12 November 1975, 8.

34 *Mercury*, 12 November 1975, 2.

35 Harrower, quoted in Wyndham, *Elizabeth Harrower,* 194.

36 Peter Day, 'Sacking sparks a boom in shares', *Australian*, 12 November 1975, 1.

11th.[37] The small numbers in Brisbane – just 80 outside Liberal Party headquarters – might have been fortunate for John Moore, its Queensland President, who provocatively stood outside, nonchalantly drinking champagne. The demonstrators, mainly women with children and Indigenous people, eventually forced Moore to beat a hasty retreat into the office after he cheekily started handing out Liberal Party stickers.[38]

On 12 November, there were further street protests, with some low-level violence. More than a thousand maritime workers marched on the Sydney Stock Exchange, where demonstrators bearing placards knocked police aside as they surged into the foyer in the hope of a further advance on to the trading floor. The would-be revolutionaries exposed their lack of familiarity with the building, however, by taking a wrong turn. About 2000 unionists marched seven abreast down Queen Street in Brisbane to Liberal Party headquarters – but there was no sign of any champagne-swilling Liberals on this occasion. A rally in Brisbane's King George Square of somewhere between 3000 and 5000 Whitlam supporters – many of them striking unionists – erupted into wild brawls with the small coterie of Liberals present. Speakers condemned Kerr the traitor, Fraser the fascist and Queensland premier Joh Bjelke-Petersen, 'that mad Dane'. A thousand marchers maintained a sit-down that blocked traffic in Melbourne, where students in the City Square melodramatically renamed the country 'The Democratic Republic of Australia' and adopted the Eureka banner, the Victorian symbol of independence since the 1850s, as their new national flag.

All these protests were modest in scale and while there were expressions of concern from political, industrial and church leaders about the potential for violence, there was little, in truth, that should have worried them much. On Friday 14 November, nearly 50,000 took to the streets in support of Labor – in Melbourne (25,000), Brisbane (12,000) and Adelaide (10,000) – with about 1000 marching for the Liberals in Hobart. Only in Melbourne was there disorder, and even that was on a modest scale: despite the pleas of former Treasurer Frank Crean, State Labor Leader Clyde Holding and AMWU secretary John Halfpenny, about 5000 people

37 'Protesters in fierce brawls with police', *Australian*, 12 November 1975, 1; *Herald* (Melbourne), 12 November 1975, 1.

38 'State Lib leader greets demonstration calmly', *Australian*, 12 November 1975, 9.

refused to disperse once the march was complete. A window of the exclusive Melbourne Club, to which Fraser belonged, was a casualty while other demonstrators unsuccessfully tried to storm the Stock Exchange and clashed with forty police waiting for them.[39]

Overall, street protest in the wake of the dismissal was peaceful, and on a modest scale, with crowds being far smaller, for instance, than the Vietnam Moratorium marches of 1970-71. The largest and most violent protests tended to occur in Melbourne. The reasons for the difference in scale and vigour between the cities are not entirely clear, although Melbourne's reputation for sharper ideological conflict and larger protests than other Australian cities was long-standing and deeply rooted in a culture of radicalism stretching back to the gold rushes of the 1850s. A likely explanation for the difference between the scale of anti-Vietnam war and anti-dismissal protests was the strictly limited leadership provided by the labour movement in 1975, and the relatively passive role of the organisations of the left such as the Communist Party of Australia (CPA). As we shall see below, in the wake of the dismissal, trade union and Labor Party leaders eschewed mass mobilisation in favour of fundraising, with Bob Hawke playing a significant part in crafting this response. One reason may well have been that the party needed the money to fight an election it had not expected, and which was its second contest in less than eighteen months. As would emerge a few months later, party officials were sufficiently desperate to turn to the Iraqi Ba'ath Party for assistance, so it should hardly be surprising if they prioritised fundraising over industrial action. Another reason for this approach is possibly the fear union leaders had of losing control of a large and, in the 1970s, at times unruly beast: the Australian trade union movement.

Unions and the General Strike

At a time when about fifty-five per cent of workers belonged to trade unions, by far the greatest potential for social disorder came from the possibility of mass industrial action. The decade of the 1970s saw significant labour movement militancy, not all of it under the control of union officials. Ideas of industrial democracy gained a significant foothold

[39] '50,000 take to streets in massive city rallies', *Australian*, 15 November 1975, 1.

in many industries and contributed to shopfloor militancy.[40] The rising cost of living, combined with still reasonably favourable labour market conditions – notwithstanding increases in unemployment as the long boom ended – stimulated industrial action, both official and unofficial. General accounts of the dismissal mainly ignore the strikes that did occur and greatly underestimate the potential for mass industrial action. As we have seen, strikes occurred with commencement of the supply crisis in October, and there would be more following the dismissal itself. There has also been insufficient attention given to the genuine fear that unions would make the country ungovernable for the Coalition, and to the strategic use of such a threat by Labor figures to underline the danger of the course taken by Fraser and Kerr.[41]

Hawke and ACTU Vice-Presidents, Cliff Dolan and Jim Roulston, flew to Canberra on the afternoon of 11 November for consultations, and Hawke was conspicuous on the steps of Parliament House as bewildered Labor politicians sought to make sense of what had happened and to rally support. The Commonwealth Labor Advisory Committee, chaired by Hawke and including the federal parliamentary leaders and officers of the party, ACTU leaders, and representatives of the public service unions, met at John Curtin House in Canberra for several hours in the wake of the day's drama. Whitlam attended. It passed a resolution that expressed a 'total dedication and determination to have the Whitlam Labor Government re-elected'. The Committee issued a call 'to the Australian people to help resist the efforts of the Liberal and Country Parties to overrule the democratic decision of the Australian people to elect a Labor Government twice in the last three years'. Critically, there would be no support for a general strike. Rather, the committee urged trade unions 'could best support the cause of the elected Labor Government by contributing a day's pay for democracy'.[42] Hawke, doubling as President of the ALP and the

40 Sam Oldham, *Without Bosses: Radical Australian Trade Unionism in the 1970s*, Interventions, Melbourne, 2020.

41 See, for example, 'Bloodshed may follow Kerr's action – Scholes', *Australian*, 12 November 1975, 9; 'Dunstan warns of anarchy', *Australian*, 17 November 1975, 1; 'Fraser will spark battle with unions, warns McClelland', *Australian*, 22 November 1975, 4.

42 'Resolution passed at CLAC meeting – November 11, 1975, NBAC, N147/213, ACTU Collection.

ACTU, resisted calls for a general strike and preached calm.[43] 'What has happened today could unleash forces in this country the like of which we have never seen. We are on the edge of something quite terrible, and therefore it is important that the Australian people should respond to leadership'.[44]

Left-wing unions were most put out by the unseemly haste of party and union leaders' rejection of a mass strike, and their dismay has been echoed by commentators from the radical socialist left.[45] Radical unionists laid the blame squarely at the feet of Bob Hawke although he was not the only significant figure calling for calm. The Melbourne branch of the WWF disagreed with Hawke's 'reaction to the fascist onslaught on Australian democratic government', urging him that 'industrial strength must be organised to move Fraser now'.[46] The Federal Council of the Builders Labourers Federation donated $20,000 to the ALP's election fund but also found 'words hard to describe your gutless and cowardly statements regarding the current drive to fascism by Fraser. You have only strengthened current view that you are in the hands of the multinationals'.[47] The South Australian branch of the Australian Building and Construction Workers' Federation wanted 'an immediate general strike to demonstrate our disgust and complete opposition to the fascist moves of Fraser, the Governor-General and the multi-nationals'. It also called for 'abolition of the colonial positions of Governor-General and State Governors, the expropriation without compensation of the multi-nationals and resolve[d] to establish Australia as a truly Independent Republic, ruled by the working class, free of Imperialist domination'.[48]

43 Tom Griffiths, 'Strike Fraser Out' Years of Rage: Social Conflicts in the Fraser Era, Interventions, Melbourne, 2023; O'Lincoln, *Years of Rage*, 44-48.

44 Bob Hawke, quoted in Jim Hagan, *The History of the ACTU*, Longman Cheshire, Melbourne, 1981, 424.

45 Griffiths, *Strike Fraser Out!*, passim.

46 Telegram, WWF (Melbourne Branch) to Hawke, 12 November, Bob Hawke Prime Ministerial Library, Adelaide University (BHPML), Series RH0101, Bob: Constitutional crisis - October, November-December 1975.

47 Telegram, BLF (Federal Council), 12 November 1975, BHPML, Series RH0101, Bob: Constitutional crisis - October, November-December 1975.

48 R.G. Owens to J.E. Shannon, 14 November 1975, NBAC, N147/11, ACTU Collection.

The Australian Railways Union rejected the 'passive role of ACTU … and calls for immediate and positive leadership'.[49] Several unions wanted a twenty-four-hour stoppage, others forty-eight, but many expressed their support for Hawke's position, which had received subsequent endorsement by the ACTU Executive.

Unionists walked off the job on the afternoon of 11 November to attend hastily organised rallies, and hundreds of thousands went on strike in the days that followed. Seamen walked out, tying up ships in the country's ports. E.V. Elliott, veteran Federal Secretary of the Seamen's Union and a communist, detected echoes of Hitler and Mussolini in Kerr's actions, reporting that many of his 5000 members walked off the job on 11 November, with some crews collecting as much as $1000 for the struggle ahead. Many of those at sea radioed in their objections to Kerr's actions. On the 12th, hundreds of members of the union as well as some kindred maritime unions crowded into Sydney's Trades Hall. They pledged support for the re-election of Labor and at least a day's pay and continuing political activity. The meeting then formed into a march that took the seamen through Sydney's streets to Chifley Square. They returned to their ships on the 13th.[50] Meanwhile, waterside workers began a twenty-four-hour strike at midnight as the 11th turned into the 12th of November. Other workers – such as those in the metal trades and railway workshops of Sydney and Newcastle, and about 2000 workers at the Newcastle State Dockyard - spontaneously walked off the job soon after the news of the dismissal reached them. But several large unions stood behind the ACTU's support for the ballot box over strike action. The leaders of the Australian Workers' Union, the Federated Ironworkers' Union, and the Australian Postal and Telecommunications Union – all right-leaning – either opposed striking or said that any action needed to await further consultation between the political and industrial wings of the labour movement. The federal president of the Council of Australian Government Employee Organisations, Ken Turbet, called on federal public servants to refrain from strike action. Its position that 'government are our employers, not political adversaries or friends, who should be served loyally and impartially' received the fullest commendation of one of its large constituent unions, the Administrative and Clerical Officers Association ACOA, which insisted on the political

49 Telegram, Australian Railways Union to Hawke, 12 November 1975, BHPML, Series RH0101, Bob: Constitutional crisis - October, November-December 1975.

50 E.V. Elliott, 'On Course!', *Seamen's Journal*, Vol. 30, No. 10, November 1975, 250.

neutrality of public servants despite some pressure from the rank and file.[51] Certainly, if public servants had walked out, they could well have disrupted arrangements for both the transition to caretaker government from 11 November and the 13 December election.[52] Meanwhile, another group of public employees, Australian Broadcasting Commission staff, held a four-hour stoppage on 14 November to protest against the management's handling of reports on the crisis.[53]

The emphasis on unions' fundraising emerged quickly, even where there was also strike action, such as by the WWF. Unions announced fundraising drives among their members and approved large donations to the ALP for the campaign, or in the case of the Teachers' Federation, to highlight the differences between the parties on education.[54] It is important not to see these actions through a later knowledge of their ultimate fruitlessness given the magnitude of Labor's defeat on 13 December, because that was not how matters appeared to many observers at the time. The Whitlam Government's position had been improving in the polls and in the aftermath of the dismissal pollster Gary Morgan predicted a close result. Meanwhile, it was the maritime unions – seamen and waterside workers – who provided the strongest counterpoint to the emphasis on overturning the dismissal at the ballot-box. They remained on strike for several days, while a walkout of Queensland and Victorian meat workers closed many abattoirs.[55] The massive AMWU required its members in metropolitan areas to walk off the job for at least four hours on Friday 14 November, a day of nationwide protest.[56] In Melbourne, the AMWU and

51 'Keep working, urges PS union', *Australian*, 14 November 1975, 4; *ACOA Journal*, December 1975, 3.

52 John Hurst, 'Strikers defy Hawke call for restraint', *Australian*, 12 November 1975, 1, 8; 'Nation-wide strike call despite Hawke appeal', *Australian*, 12 November 1975, 9.

53 'Stopwork at ABC', *Australian*, 14 November 1975, 1.

54 'Unions heed call for Labor funds', *Australian*,13 November 1975, 1.

55 'Unions heed call for Labor funds', *Australian*, 13 November 1975, 1; 'Plea for calm from church, union leaders' and 'Election will be close and clean – pollster', *Australian*, 13 November 1975, 4.

56 AMWU, *Newsletter*, No. 22, Vol. 75, 12 November 1975, 1.

other left-wing unions called out about 400,000 workers that day, contributing to the strong attendance at Defend Democracy rallies.[57]

There were continuing isolated calls for a national strike but even the left-wing unions appear to have realised the time for any such action had passed, if indeed it ever existed. On 25 November Pat Clancy, Federal Secretary of the Building Workers Industrial Union and a member of the Soviet-line Socialist Party of Australia, placed before the ACTU executive a call for a national strike during the election campaign as a last-resort response to 'provocation' from the political right.[58] But Hawke had already won the debate over a general strike. That victory would have consequences for Australian politics well beyond the election of 13 December 1975.

Election Campaign

The Labor Party had been in a weak position to run a federal election in the months before the dismissal. The poor performance of the Whitlam Government during that year – the scandals, the economic decay – alienated some long-standing ALP members and supporters, alongside the less committed. But the dismissal saw an influx of new party members and volunteers from those outraged by the actions of Fraser, Kerr and Sir Garfield Barwick (Chief Justice of the High Court, who had advised Kerr). The AMWU Commonwealth Council reported to the rump of Labor parliamentarians who survived the 1975 rout that '[t]here were more willing workers and volunteers than ever before. Enthusiasm among A.L.P. members and supporters grew daily from the first blocking of supply'.[59] The secretary of the Armidale ALP branch reported to the party head office in Sydney during the campaign that she was receiving a deluge of membership applications. Fifteen had already joined and there were more than thirty other requests with 'no doubt more to come. I feel it is important to issue these people with tickets immediately, so that their

57 '400,000 unionists expected to stop traffic', *Australian*, 14 November 1975, 3.

58 Victor Caruso, 'National strike call in reply to provocation', *Australian*, 15 November 1975, 4.

59 AMWU, Commonwealth Council to ALP Parliamentary Members, 20 January 1976, BHPML, Series RH009: ALP Correspondence - 1976 January - March 3rd.

involvement with the ALP will last into next year.'[60] There was perhaps recognition here that 'maintaining your rage', as Whitlam had urged, was easier said than done. But the Sydney ALP Left activist Peter Baldwin considered that the positive effects reverberated for 'several years' after the dismissal when 'it was extremely easy … to recruit people into the Labor Party because as well as being able to mobilise people against the corrupt local machine you also had a ready willingness on people's part to get in'.[61]

The 1975 election campaign really began when a bomb blew out Keith Macfarlane's right eye. He was a clerk in Queensland Premier Joh Bjelke-Petersen's Brisbane mailroom. On 19 November, just as the day was starting, he called over Garry Kross to look at something – a white envelope addressed to the Premier and marked 'press release kit'. Inside were white wires. Kross put the envelope down and there was 'a flash and a whoosh' that blew a hole in the desk and cut up his face and hand. 900 public servants evacuated the building and the two were taken away to Royal Brisbane Hospital. Another envelope had been sent to Fraser the same day – an x-ray machine caught the bomb before anyone could be hurt.[62] Two days later, a third was sent to Kerr's office.[63]

The letter bombs were rare instances of serious physical violence – indeed, by any reasonable definition, they were acts of terrorism, and the campaign was full of doomsday rhetoric about the future of Australian democracy. At Melbourne's Festival Hall, in his opening campaign speech on 24 November, Whitlam told the crowd of 8000: 'Men and women of Australia, the whole future of Australian democracy is in your hands'. 'Is Australia to continue to be a parliamentary democracy? Are we to have governments by the people, through the People's House? Are elected governments to govern?', he continued. The crowd lapped it up with

60 Carmel Kelly to Cahill, [received 20 November 1975], ML MSS 5095/39, Item 1503, State Library of New South Wales (SLNSW), ALP (Armidale Branch) Correspondence.

61 Tony Harris, *Basket Weavers and True Believers: Making and Unmaking the Labor Left in Leichhardt Municipality 1970-1991*, Left Bank Publishing, Newtown, 2007, 57.

62 'Terror politics', *Australian*, 20 November 1975, 1; 'Fraser bomb detected after attempt on Premier', *Courier-Mail*, 20 November 1975, 1; 'Letter bombs: two injured', *Canberra Times*, 20 November 1975, 1.

63 'Postal bomber tries to kill Governor-General', *Australian*, 22 November 1975, 1.

'deafening' applause and cheering, while carrying placards that read 'Horror, not shame, Whitlam, not Fraser'.[64] It was easy for true believers to believe that was this the most important election of their lives, and that a glorious, vindicating triumph would be handed to the ALP on 13 December.

Earlier that day, Whitlam had given a similarly dramatic speech to a much larger crowd of some 30,000 people at The Domain, the site for politics and protest in Sydney since before Federation. 'The greatest thing we have to fear about [the Coalition] is what we already know about them', he declared. Eureka banners provided the only shade for 'the armies of the afternoon': a *Herald* reporter's term for the lunchtime office workers, trade unionists, families, students, and 'young lovers' who attended. On a hot summer's day, they came dressed in shorts and t-shirts, business suits and school uniforms, thongs and barefoot, and brought with them briefcases, beer coolers and 'Shame, Fraser, Shame' badges. They sang songs and chanted chants and only went quiet when asked to sing the national anthem, *Advance Australia Fair* – itself only recently adopted as the result of a Whitlam Government initiative. At the end, Whitlam was presented with $50,000 in donations to the ALP: $35,000 from the AMWU, $5,000 from the Printing and Kindred Industries Union (PKIU) and $10,000 in cash collected from the crowd.[65]

Fraser had a slow start to his electoral campaign, being confined to bed after catching the flu, but he officially launched it at Dallas Brooks Hall in Melbourne on 27 November.[66] With a weak voice and pale pallor, he told the crowd of 2000 – all of them checked by security guards and x-ray machines after the letter bomb attacks – that 'Australia does not need socialism'. Outside, several hundred tried to make their voices heard with 'We want Gough' and 'We want Fraser' chants.[67] It was a low-key start to

64 'Labor's policy statement', *Australian*, 25 November 1975, 11.; 'Whitlam calls for fair go, right to govern', *Australian*, 25 November 1975, 1.

65 'Whitlam calls for fair go, right to govern', *Australian*, 25 November 1975, 1; Peter Bowers, 'Fear is poll weapon for both sides', *Sydney Morning Herald*, 25 November 1975, 9; James Cummingham, 'Labor basks in sunshine', *Sydney Morning Herald*, 25 November 1975, 9.

66 'Fraser plus flu equals PM minus patience', *Australian*, 26 November 1975, 5.

67 'Fraser pledges business boost', *Canberra Times*, 28 November 1975, 1.

the Coalition's campaign: everything, in any case, would seem like anti-climax on the Coalition side after the stunning events of 11 November.

Much of Labor's support came from unions, which quickly mobilised their members to donate, attend rallies, sing songs, create banners and distribute leaflets. In South Australia AMWU members held forty-two lunchtime meetings to organise their support for Labor.[68] Teachers' unions in New South Wales, Victoria, Queensland and Western Australia broke their traditional non-party alliance policy to support Labor and asked members to donate to the campaign.[69] The WWF held an informal competition to see which branch could donate the most (Fremantle won with $30,000, Sydney coming in second at $12,000).[70] Seamen on the *Esso Gippsland* used their arts and crafts skills to create a giant banner running down one side of the ship that read 'Lynch Fraser Vote Labor'.[71] The near double entendre did not obscure the violence of the slogan.

Throughout the election, News Limited papers threw their support behind Fraser and the Coalition. This was a complete turnaround from the 1972 election, when Murdoch had supported Whitlam and the ALP. News Limited Managing Director Rupert Murdoch signalled his intentions in June 1975 by appointing London's Bruce Rothwell as the paper's new editor-in-chief, introducing a much more right-wing voice to its editorials.[72] Day after day, for weeks on end, the *Australian* depicted Whitlam as a corrupt demagogue and his supporters as violent radicals. Whitlam's opening campaign speech, for example, was 'an impressive mixture

68 Vic Cleland, 'Report on federal election campaign – November/December, 1975', circa December 1975, in AMWU State Council Minutes 1975, NBAC Z741/SA28, AMWU SA.

69 Queensland Teachers Union, 'News Flash – Crisis Harms Education: Teachers Unions Speak', press release, 24 November 1975, NBAC Z566/17 Queensland Teachers Union, QTU Executive Minutes, 17/11/75-12/02/76.

70 'Record WWF donations', *Maritime Worker* 59, no. 15, 25 November 1975, 1.

71 *Seamen's Journal* 30, no. 11, December 1975, 297.

72 Bridget Griffen-Foley, *Party Games: Australian Politicians and the Media from War to Dismissal*, Text Publishing, Melbourne, 2003, 217.

of clever demagoguery and shrewd editing'.[73] Trade union leaders, meanwhile, were abandoning the '[p]eaceful path to [the] ballot box' and 'vow[ing] to declare war on the caretaker Prime Minister, Mr Fraser'.[74]

Labor supporters working at News Limited papers – many of them printers, typesetters, and graphic artists – were conflicted about their work. Were they implicated in the production of these editorials? Initially, the PKIU, the printers' union, followed the ACTU's recommendations: they held stop-work meetings to educate members about the dismissal and donated to the ALP, and otherwise refrained from more significant industrial action.[75] But a television interview by Murdoch on 4 December, in which he asserted that all News Limited employees were committed to ending the Whitlam Government, was the final straw. On 6 December, News Limited printers at the *Sunday Telegraph* and the *Sunday Mirror* stopped work, leaving the papers to be printed by staff.[76] In a press statement, PKIU Acting Secretary Jim Duthie 'condemned the large section of the Australian Press which in its ruthless endeavour to destroy the re-election prospects of the democratically-elected Government of Australia had extended its bias beyond the legitimate exercise of editorial comment'.[77] Two days later, 109 Australian Journalists Association members at the *Daily Telegraph*, the *Daily Mirror* and the *Australian* in Sydney, Melbourne and Canberra joined them by striking for forty-eight hours. The WWF's Fremantle branch also placed a ban on members handling newsprint for the *Sunday Times*, controlled by Murdoch.[78] The following day, on 9 December, the *Australian* published a letter from the PKIU addressed to Murdoch, which was a condition of their return to work. In the letter they drew Murdoch's and readers' attention to the fact that the

73 'The Whitlam rhetoric', *Australian*, 25 November 1975, 10.

74 'Peaceful path to ballot box' *Australian*, 13 November 1975, 10.

75 PKIU Acting Secretary Jim Duthie to branch secretaries, 13 November 1975, NBAC N69/458, PKIU, Constitutional Crisis.

76 Duthie to branch secretaries, 8 December 1975, NBAC N69/458, PKIU, Constitutional Crisis.

77 Duthie, press statement, 8 December 1975, NBAC N69/458, PKIU, Constitutional Crisis.

78 'Journalists on strike', *Canberra Times*, 9 December 1975, 7.

majority of News Limited printers were 'actively and financially supporting the return of the properly elected (twice) Labor Government'.[79]

The election result – a massive L-NCP majority in the House and Senate – was a crushing blow for Labor supporters. The swing against the party (7.4 per cent) was the largest since 1943.[80] At least at the main Liberal celebration at Melbourne's Southern Cross Hotel, with Fraser present, the festivities were restrained. 'There was no whoopeeing in the corridors', reported Lenore Nicklin. The only bottle of champagne she saw was brought to the event by a campaign worker, who instructed the barman to open it 'not with a bang, but an erotic wheeze'.[81] Many Labor supporters felt betrayed, powerless and depressed. Some withdrew into their homes, listening to records on repeat for weeks.[82]

Guido Barrachi, whose career in radical politics stretched back to World War I and its aftermath as a founding member of the CPA, had come out of retirement as an activist to hand out election material for Labor, wandering the hot streets of Penrith with a sign around his neck. Lugging his heavy sack of paper on a hot Penrith summer's day proved too much. Barrachi collapsed and died that night, just as the political analysts were calling a victory for Fraser and the Coalition.[83]

Conclusion

We know now that Australian democracy was not destroyed by Whitlam's dismissal. And we know that the coming of the Fraser Government did not

79 Harry Kensell and Athol Cairn, 'Printers give their views on editorials', *Australian*, 9 December 1975, 5.

80 Malcolm Mackerras, 'Uniform Swing: Analysis of the 1975 Election', *Politics*, Vol. 11, no. 1, May 1976, 41, 43.

81 Lenore Nicklin, 'Quiet jubilation at the Liberal Party's HQ', *Sydney Morning Herald*, 15 December 1975, 9.

82 McQueen, interviewed by Watson, 29 July 2025.

83 Wallace Crouch, 'Legend of the Left', *Sydney Morning Herald*, 1 January 1976, 7. See also Jeff Sparrow, *Communism: A Love Story*, Melbourne University Press, Carlton, 2007, 293.

represent a fascist take-over of the country, as predicted by some elements of the left. It turned out to be a rather moderate government in many ways, one that continued much of Whitlam's policy direction and found itself assailed by the same economic problems. Many of its solutions were anticipated in Labor's own rightward shift in economic policy during 1975.

Time has been generous to both Whitlam's and Fraser's respective legacies. As he became older, Whitlam became ever more venerable, more associated with the great transformation in Australian life he helped bring about and less with the profligacy and chaos of his government's demise. The government's legislative record, achieved in just three years, was remarkable and enviable by later standards. And for Fraser, his soft leaning towards the left, his disassociation from the Liberal Party under John Howard, and his reconciliation with Whitlam, banished any old ideas of him as a fascist left over from 1975. Kerr has come to carry most of the weight of the affair. By displacing responsibility for the dismissal from Fraser to Kerr, as so many critics of the dismissal (including Whitlam) did, it became easier to see the crisis as more the handiwork of a man of poor character and judgement (and possibly a drunkard) than the product of a flawed democracy.

If democracy seemed in a perilous state to the protestors of 1975, the particular matters that concerned them are still features of the system. The powers of the Senate remain the same. The reserve powers of the governor-general have not been clarified. Some Australian political leaders are ready to abuse unwritten norms and conventions (such as a prime minister secretly signing himself up to five ministries). Moreover, despite entrenchment of public discourse celebrating the robustness of Australian democracy, new protest laws and the much more restrictive environment that has emerged for union industrial action since the 1990s would make the demonstrations of 1975 impossible to replicate today. If today's industrial laws had existed in 1975, the courts would have been too busy issuing fines and injunctions to carry out any other business.

The people of Australia were not minor players during the dismissal, mere extras in a play acted out by Whitlam, Fraser, Kerr, Barwick and Hawke. Rather, ordinary citizens were a bulwark, if ineffective in the end, against the abuse of democratic and parliamentary conventions. They channelled their power through strikes, rallies, and public meetings to tell the country's political elites: first, that budget Bills should not be blocked by an Opposition; and second, that the dismissal of a democratically elected

government was unacceptable. Under today's protest laws, which heavily regulate protests (and even go as far as to ban them, as was the case in New South Wales after the Bondi massacre), such collective action would be much harder to sustain. Democracy in Australia, as a result, is in an even more vulnerable position today than it was in 1975. If a prime minister were to be dismissed again in 2026, who would be there to say no?

Australian National University

University of Canberra

Email:

James.Watson3@anu.edu.au

Frank.Bongiorno@canberra.edu.au

‘The decisions I had to make were to protect the Crown and the Monarchy’: A historical reappraisal of the vice-regal dismissal of the Whitlam government[1]

Jenny Hocking

In November 2025 we marked 50 years since the dismissal of the Whitlam government by the Governor-General, Sir John Kerr, one of the most controversial and tumultuous episodes in our political history. In Whitlam’s place, Kerr appointed the leader of the liberal party Malcolm Fraser, whose party had lost the previous two elections - and who had neither a majority in, nor the confidence of, the House of Representatives.

In the decades since, the eponymous ‘Dismissal’ has become a cultural moment as well as a political one, with the obligatory ‘merch’ at the Old Parliament House bookshop: ‘Well may we say’ tea towels, ‘It’s Time’ mugs, Dismissal socks and even a Sir John Kerr ruler, a reminder perhaps of his eager re-animation of the ‘divine right of Kings’.

The 3 years of the Whitlam government would be some of the most dramatic and eventful in our history. From the elation of the 1972 election, the vast reform agenda, the unrelenting political obstruction and Whitlam’s historic second electoral victory at the May 1974 double dissolution, it ended just as historically on 11 November 1975 when the Governor-General dismissed Whitlam and his entire ministry - without warning - and appointed the leader of the opposition as Prime Minister. It remains the most contentious, deceptive and unsupportable action ever taken by a Governor-General.

Thousands of words have been expended on the Dismissal over the last 50 years, with every new revelation showing us how little we really knew at the time. This anniversary, however, brought something new to this fractious history, with Prime Minister Anthony Albanese’s recognition of the Dismissal as ‘a calculated plot’, an unconscionable deception of an elected government and prime minister, ‘a partisan political ambush

[1] This is an edited version of a Keynote Address delivered at the Australian Society for the Study of Labour History Biennial Conference ‘*The Spirit of 1975: Transformations in Australian Labour History’ Victorian Trades Hall, Carlton, 26 November 2025.* That Address in turn drew on my previous work including: Jenny Hocking and Matt Harvey ‘The Double Dismissal’ The Whitlam Institute 50th anniversary legacy paper. Whitlam Institute within University of Western Sydney. October 2025 and ‘Critical Archival Encounters and the Evolving historiography of the dismissal

hatched by conservative forces which sacrificed conventions and institutions in the pursuit of power'.

Former Attorney-General Mark Dreyfus and veteran ABC journalist Kerry O'Brien went further, both proclaiming the dismissal a 'coup'. 'It took me a long time to come to precisely this view,' O'Brien said, 'but I think when you put all of those pieces of the mosaic together, *it was a coup*'. As Dreyfus also noted, 'subsequent revelations have cast a shadow over the High Court and the Palace.'[2]

The significance of this acknowledgement of the Dismissal as a planned and scripted conservative usurpation of power cannot be overstated. With it, the language of the Dismissal has changed irrevocably. The prime minister's blunt assessment now stands as the foundational context within which Kerr's unprecedented action must be understood - as one of intrigue, collusion, and deception that began with the election of the Whitlam government itself. After 50 years this is a pivotal step in the tortuous journey towards unravelling the hidden history of the dismissal of the Whitlam government.

The Dismissal ended the brief second term of the Whitlam labor government, without doubt the most reforming government in Australian history. In its short tenure the government had introduced a remarkable range of reforms – ending Australia's military engagement in the Vietnam war, releasing draft resisters from prison, ending conscription, free tertiary education, the end of the white Australia policy, Medibank, legal aid, no-fault divorce, consumer protection, needs based schools funding, Indigenous land rights, supporting mothers benefit, equal pay for women, recognising the People's Republic of China, the *Racial Discrimination Act*, multiculturalism, abolition of the death penalty – just to name a few.

Of equal significance were the electoral reforms: lowering the voting age to 18 years, implementing one vote, one value, and introducing Senate representation for the ACT and the Northern Territory. Internationally the Whitlam government was no less significant, taking France to the International Court of Justice over nuclear testing in the Pacific, signing the UN International Covenant on Civil and Political Rights among

of the Whitlam government' *Australian Journal of Politics and History* vol. 2 2024, some of which is reproduced here.

2 The Hon Mark Dreyfus KC 'Labor and the Constitution' Australian National University *2025 Geoffrey Sawer Memorial Lecture* 20 November 2025.

numerous others, an independent foreign policy stance, ending the British Honours system and the British royal anthem as our own, and introducing Australian Honours, and an Australian national anthem.[3]

They remain, in Whitlam's words, 'like all great Labor legislation – permanent landmarks in our history'.[4]

The Dismissal was an unprecedented use of the contentious 'reserve powers' – the residual discretionary powers of the Crown, untethered from popular will or electoral process – which had not been used in England for nearly 200 years. With the infusion of the sentiments of responsible government through the parliament as the embodiment of the popular will, the notion of the Crown's discretionary reserve powers was anachronistic, antithetical to democratic governance and widely seen legally as having fallen into *desuetude* or disuse. In dismissing Whitlam, Kerr had breathed new life into these presumed obsolete reserve powers of the Crown. Mungo MacCallum termed it 'the reassertion of the divine right of Kings'.[5]

One of the reasons for the continuing fascination in and disputation about the Dismissal is that so many of the details, and even some of the basic facts about what happened, were hidden to us at the time and are still emerging today. It should hardly be surprising then, that here we are 50 years later still reflecting on that extraordinary episode.

The Dismissal unleashed a bitter, divisive, and prolonged controversy - and always with the lingering sense there was more to be found. Add to this the difficulty in analysing an event planned and executed in secrecy, for which there was no contemporary precedent on which to model a critique, and which had been considered only in the abstract, and the disciplinary difficulties are immediately apparent.

3 See the extensive review of these initiatives in Michael Kirby 'Whitlam as Internationalist: A Centenary Reflection' *Melbourne University Law Review* Vol 39, 2016. p. 850-894.

4 Gough Whitlam 'Speech by the Prime Minister to the federal conference of the health and research employees' association of Australia' PM *Transcripts.* 3 March 1975.

5 Mungo MacCallum 'The Dismissal: an uncorrected throwback to tyranny' *ABC The Drum* on-line 3 September 2012.

Humphrey McQueen, recognising the factual imprecision and analytical confusion surrounding the Dismissal, described this as the 'bewildered scholarly response to Kerr's dismissal of Whitlam'. In a blistering critique just months after the Dismissal entitled 'None dare call it conspiracy', McQueen wrote:

> It is not surprising that, confronted by Kerr's action, mainstream academics have produced nothing more than a jumble of anecdote, psephology, placital niceties and personal prejudice, since these are the stuff of political science.[6]

In the 50 years since, the 'bewildered scholarly response' has finally caught up with McQueen's theoretical acuity. In that time, the Dismissal historiography has gone through significant points of fracture, each reflecting the impact of major archival revelations and consequent historical reappraisal.

For decades commentators have shied away from recognising Kerr's actions as a 'calculated plot' in the Prime Minister's words, much less a coup, preferring to see it as an essentially contingent response of a reluctant Governor-General, forced to make a difficult decision 'on my own part' when Supply was blocked in the Senate by the opposition coalition.

Central to this apparently settled Dismissal history was that Kerr acted alone, that Malcolm Fraser did not know and, most insistently, that the Queen and the Palace in general were not involved. It was repeatedly claimed that Kerr '*protected the Queen'* by maintaining her ignorance of his thinking and planning for the Dismissal. Or, as the Queen's deputy private secretary, Sir William Heseltine later claimed, 'the Palace was in a state of *total ignorance'*. (My emphasis).

Now, having read the secret 'Palace letters' between Kerr and the Queen in their entirety, this is an absolutely staggering claim.

6 Humphrey McQueen 'None dare call it conspiracy' *Politics* 11 (1) 1976 pp: 23-27.

Despite the evident fragility of the Dismissal history, one thing is abundantly clear, and that is that the Dismissal as we understand it today is vastly different from what was initially described in the simplest of terms, as the action of a reluctant Governor-General when Supply was blocked by the Coalition in the Senate. A series of archival revelations has shattered that simple uncomplicated view, revealing a protracted political strategy to remove the government by 'stealth' as Kerr termed it, while remaining silent to Whitlam who, as prime minister, was the Governor-General's chief adviser. This culminated in Kerr's 'double dismissal' - first of the prime minister and the government just as Whitlam was to call a half-Senate election, and second of the entire parliament, ignoring the House of Representatives' motion of no confidence in Malcolm Fraser as Prime Minister, which called on the Governor-General to commission a government led by the member for Werriwa, Gough Whitlam.[7]

In a powerful speech at the unveiling of the Eureka Flag in Ballarat in 1973, Gough Whitlam said 'The importance of an historical event lies not in what happened but in what later generations believe to have happened'. It reads now as a cautionary tale for future historians exploring the tortuous trajectory of the demise of his government, so much of which remained carefully hidden for decades.

The other side of secrecy however is its inevitable disclosure, the 'dialectic of concealment and revelation' as Verdery describes it.[8] As archives and interviews were opened for public access, those Dismissal secrets crumbled and a different story took shape. These shifting contours of the Dismissal underscore the essential fragility of history which, particularly for such a deeply contested event, is neither static nor unitary. As Hilary Mantel writes, 'history is a process, not a locked box with a collection of facts inside'.

It is only now, 50 years later, that we can begin to piece together that history, if not yet with completeness, then with the benefit of these revelations that transform previous understandings of it. I'll come back to what we know today that we didn't know then, but first - let's just recap what

7 Jenny Hocking and Matt Harvey, *The Double Dismissal* The Whitlam Institute 50th anniversary legacy paper. October 2025.

8 Katherine Verdery *Secrets and Truths: Ethnography in the Archive of Romania's Secret Police* (Budapest 2014) p. 133.

happened in the Governor-General's study on 11 November 1975, nearly 50 years ago.

The Prime Minister arrived at Government House, Yarralumla, at 1.00pm by arrangement with Kerr. Whitlam was there to finalise arrangements for the half-Senate election, set out in his letter to the Governor-General which he had confirmed with Kerr by phone just that morning, and was to announce in the House of Representatives that afternoon.

As Whitlam handed his letter to Kerr, the Governor-General said 'I have a letter for you' and handed Whitlam a letter, which he had already typed and signed, terminating Whitlam's commission and that of his entire ministry. Gough Whitlam later described this to me as 'the greatest shock I had ever experienced'.

The backdrop to the Dismissal was, of course, that since 16 October 1975 the Opposition Liberal and National Country party coalition Senators had refused to vote on the government's Supply bills. Supply had not been rejected, it had not even been voted on - it was in limbo as the coalition Senators passed an amendment returning the Bills to the House of Representatives with the demand that the government 'submit itself to the judgment of the people' before it would vote on them.

A critical context to the Dismissal is that this was the first Labor government for 23 years. Such a long period of unbroken, singular government was immensely damaging for the Australian polity. The decades of conservative rule had led to ossification of the structures of government and the expectations and expertise of the public service, which was culturally accustomed to the rather quiet and slow-moving coalition governments. The senior public service departmental heads in particular were, for the most part, simply not well equipped to deal with a labor government, and certainly not one as avowedly reformist and committed to change as the Whitlam government.

Treasury Secretary Sir Fred Wheeler's antipathy toward Whitlam and the government, for example, was legendary. And he was not alone among the so-called 'mandarins of Canberra'. There were notable exceptions – Sir Clarrie Harders in Attorney-General's and Sir Lennox Hewitt as head of Rex Connor's new Department of Minerals and Energy who pursued Connor's dream of an Australian energy and resource self-sufficiency with alacrity.

We often talk about the inexperience of the Whitlam ministers, as you would expect after decades in opposition. Far less talked about, and no less significant was the inexperience of the Coalition *at being in opposition*. The coalition viewed the election of the first labor government in 23 years as nothing short of catastrophic – after all, it sent them to the opposition benches for the first time in 23 years – a position they neither expected nor accepted.

The Opposition's response to their unwelcome despatch to Opposition was extreme, petulant and immensely disruptive of the new government's legislative agenda. The Coalition quite openly refused to recognise the government's legitimacy or its mandate. This was articulated within weeks of the 1972 election by the Opposition leader in the Senate, liberal Senator Reg Withers, who described Whitlam's election victory as 'an aberration', the result of the 'temporary electoral insanity' of the electorate, and denied the validity of the government's 'so called mandate' as he called it. Withers repeatedly vowed to use the Opposition's numbers in the Senate – which, remember, had not gone to election in 1972 - to force the government to another election 'in the national interest'.

It was a stark reflection of the contrast between the Labor government and its Liberal-Country party Opposition, between action and reaction, that in the first year of the Whitlam government the House of Representatives passed more legislation than in any single year since federation - and the Senate rejected or deferred more legislation than in any single year since federation.[9] This dichotomy of progress and unprecedented obstruction would mark the Whitlam government's entire tenure.

Whitlam's third treasurer and later Governor-General himself, Bill Hayden, recalled the atmosphere this generated in the parliament as 'poisonous':

[9] The Whitlam government introduced 254 Bills in 1973, 229 in 1974, 214 in 1975 – the previous largest was 169 Bills in 1968. The Senate rejected 93 Bills 1973-1975 – more Bills than rejected in the entire 71 years since federation put together. During the Whitlam government 1972-5 a record 507 Bills were passed.

> [It] made governing … impossible and intolerable... they had done this ever since the first day we were in….. The atmosphere was poisonous, absolutely poisonous—we shouldn't be there. They always owned government.[10]

Although Reg Withers, with his jocular, slightly rotund persona was often treated as a figure of fun by cartoonists, this belied what his nickname, 'Toe-cutter', more accurately captured. Withers was a ruthless and highly effective manager of Liberal party discipline in the Senate during the four weeks that supply was blocked. 'Western Australia's gift to the arts of political chicanery' in Whitlam's apt description.[11] As the architect and the enforcer of the Dismissal strategy through Senate intransigence, there was no-one more significant than Reg Withers.

The immediate precursor to the Dismissal was the Opposition's first unsuccessful attempt to block Supply in April 1974. In the complex process through which this first threat to Supply was successfully resolved, the key role played by then Governor-General Sir Paul Hasluck was critical and surprisingly overlooked in much of the history that followed. Hasluck's constructive role, and his open communication with Whitlam, brings an important perspective to the destructive and deceptive actions of his successor Governor-General, Sir John Kerr, during the blocking of Supply the following year.

When the Opposition moved to defer Supply in 1974, Hasluck accepted Whitlam's advice to call a double dissolution election - which was Whitlam's choice as prime minister, not a vice-regal imposition – conditional on a 'definite assurance' on Supply by the Senate.

> His Excellency [GG Hasluck] acceded to the Prime Minister's request and granted an immediate simultaneous dissolution of both Houses of Parliament **on condition** that a definite assurance was given that … adequate provision could be made for carrying on the Public Service during … the elections. The Prime Minister proposed,

10 Bill Hayden *Interview with Jenny Hocking* 8 June 2007.

11 E.G. Whitlam 'Future Directions For Reform In Australia' Curtin Memorial Lecture 1985.

> with His Excellency's permission, to inform Parliament of His Excellency's decision and to at once ask Parliament to make provision for Supply to cover the election.[12]

The genius of this form of words devised by Whitlam in conjunction with Hasluck is that it put the onus back on the Senate to make a decision on Supply which it had previously threatened to defer. At which the opposition Senators, who were not prepared to escalate this political brinkmanship and now be in dispute with the Governor-General as well as the government, capitulated and passed the Supply bills.

So, what had threatened to become a political crisis in 1974 had been successfully resolved - with responsible government intact, the Governor-General acting on the advice of the Prime Minister, Supply passed and a crisis averted.

This is precisely what Kerr should have done in 1975 and did not.

Apart from the historic return of the Whitlam government, the most significant outcome of the May 1974 double dissolution election that followed was in the Senate – since those numbers would determine whether the opposition might again move to defer Supply. Of critical importance here, is that the government increased its numbers in the Senate by 3 to now be equal with the coalition on 29 senators, while the DLP lost all 5 of its Senate places. There was also the South Australian liberal Movement Senator, Steele-Hall, who would support the government on Supply, and Tasmanian Independent Liberal Senator, Michael Townley, who rejoined the Liberal party in early 1975. This left the Senate evenly split at 30 votes each on the question of Supply.

What this meant was, that on those numbers, the coalition could not defer Supply, it could only reject it outright. And that distinction really mattered, because there were several 'wavering senators' - a core group of liberal Senators who, although willing to defer a vote on Supply, were not prepared to reject it. And to defer Supply required an amendment to be passed by the Senate to do so and that needed a majority - which the Opposition did not have.

12 Senator Lionel Murphy *Hansard* Senate 10 April 1974 p. 902.

The critical point is this: that *the Senate as elected in 1974 could not defer Supply*. And so, following the re-election of the government Whitlam could, just briefly, breathe a little easier, since the opposition could no longer pursue the tactic of seeking to defer supply and force the government to yet another election.

The appointment in July 1974 of Sir John Kerr as the successor Governor-General to Sir Paul Hasluck dramatically changed the political landscape. Whitlam had desperately wanted Hasluck to stay on. However, having already extended his term by 6 months, Hasluck declined. Whitlam then approached business leader Ken Myer, and his own ministers Frank Crean and Lance Barnard, all of whom declined, before settling on his fifth choice, the then Chief Justice of the NSW Supreme Court, Sir John Kerr.

Kerr negotiated with Whitlam for several months before finally accepting. He wanted an increase in salary, the introduction of a Governor-General's pension, the payment of that pension as interim salary between leaving the NSW Supreme Court and taking up the position as Governor-General, and a larger clothing allowance for himself and Lady Kerr. Finally, Kerr wanted a 10 year term instead of the usual 3 or 5 year term at 'the Queen's pleasure'.[13] Whitlam agreed to them all, even confirming with then Opposition leader Billy Snedden that the liberal party would also accept those terms should the coalition return to office within that time-frame.

There could not have been a more inappropriate vice-regal appointment. Kerr sought power and he saw it in the position of Governor-General, as he told close colleagues Sir Anthony Mason and Justice Robert Hope, whom he consulted in the months before accepting. As Chief Justice of the NSW Supreme Court for barely 18 months, Kerr had no intention of leaving for a merely nominal position. It was well known to many in the labor movement, although apparently not of concern to Whitlam, that far from being a 'Labor man' as often claimed, Kerr was no friend of the union movement. At the time of his appointment as Governor-General, Kerr was best known as the judge of the Industrial Court who in 1969 had sent Clarrie O'Shea, the Victorian State Secretary of the Tramways Union, to prison for refusing to pay the union's accrued court-imposed fines under the

[13] Department of the Prime Minister and Cabinet 'Appointment of Sir John Kerr as Governor-General 1974' NAA A 1209 1974/6544 p. 10; Jenny Hocking *The Dismissal Dossier: Everything You Were Never Meant to Know about November 1975* Melbourne University Press. Carlton. 3rd ed. 2017.

controversial and hated penal powers of the *Conciliation and Arbitration Act*.[14]

In gaoling O'Shea for contempt, Kerr had chosen the most incendiary and divisive path available to him and the outcry was both predictable and immense. As he pronounced sentence, Kerr said he would release O'Shea 'when you have purged your contempt'.[15] At which the Tramways Union promptly went on strike, precipitating a nation-wide strike of a million workers over the next few days. As other unions across the country pledged to join them, the Union's fine was anonymously paid by someone claiming to have won the NSW lottery and O'Shea was quietly released.

Kerr's unpublished manuscript, *The Triumph of the Constitution*, gives further insight into this period in his political development, revealing his support for the Liberal Party in the 1960s and linking it directly to his jaundiced view of Gough Whitlam and Whitlam's rise in the Labor Party: 'As the years passed I became more conservative and, although not joining the Liberal Party, I supported that party and not the Labor Party within which Whitlam was growing in power and position. I thought he was too much of a political smart alec'.[16]

When Kerr's pending appointment as Governor-General was announced, the Victorian Secretary of the Amalgamated Metal Workers Union, John Halfpenny, denounced it as 'an act of treachery' and demanded that Whitlam withdraw 'the notorious' Sir John Kerr's appointment. A stunned Lionel Murphy, who knew Kerr and his proclivities well from their opposing positions as barristers during the industrial disputes of the 1950s, told Whitlam 'I only hope you don't rue the day you appointed John Kerr as governor-general.'

[14] The Australian Tramways and Motor Omnibus Employees' Association better known as the Tramways union. John Merritt, 'O'Shea, Clarrie (1905-1988)', Australian Dictionary of Biography, National Centre of Biography, Australian National University, <https://adb.anu.edu.au/biography/oshea-clarrie-15436/text26651>, published first in hardcopy 2012, accessed online 10 January 2026.

[15] Rail, Tram and Bus Union Victoria 'Clarrie O'Shea and the 1969 national strike' 2019.

[16] John Kerr, *Triumph of the Constitution* unpublished manuscript NAA M4510 6.

By March 1975 there was also a new leader of the liberal party. After the disaster of the 1974 election for the coalition, Snedden's time as liberal leader was all but over. And soon after Snedden had confidently told reporters that his colleagues would 'walk over hot coals' for him, they didn't. At his second attempt to unseat Snedden, Malcolm Fraser was elected leader of the Liberal Party on 21 March 1975.

Fraser was austere, a highly conservative product of the right-wing Melbourne establishment and seen as the only liberal member who could match Whitlam in parliament. Well known as a hawk as minister for defence during the Vietnam war, Fraser reportedly told American officials during a discussion about nuclear weapons in 1964 that 'the bomb should be dropped on Hanoi'.[17] Fiercely ambitious, Fraser had in 1971 destroyed the Prime Ministership of liberal leader John Gorton in a bitter party dispute. Gorton resigned from the liberal party following Fraser's ascension as leader and unsuccessfully stood for the Senate in the ACT as an Independent at the 1975 election.[18]

Although Fraser told reporters on his election as leader that he believed the government should run its full term, he made one important proviso – except in the case of extraordinary 'reprehensible circumstances'. The immediate problem for Fraser, however, was that the coalition did not have the numbers in the Senate to defer Supply, even were those 'reprehensible circumstances' to be found. So how did the political make-up of the Senate, elected just 18 months earlier, change to enable Supply to be deferred? In the words of independent Senator Steele Hall, it did so 'over a dead man's corpse'.

The controversial re-making of the Senate political make-up was effected when two departing Labor Senators were replaced with non-Labor appointees by conservative state governments, breaking the convention that had held since 1949 that replacement senators were to come from the same political party. In February 1975, when NSW Senator Lionel Murphy was

17 Gough Whitlam, *Hansard* House of Representatives 11 May 1966 pp: 1676-7 this was in reference to the use of nuclear weapons. Whitlam stated he had been told this by US Department of Defence and Department of State officials in May and June 1964. Fraser denied it in this fiery parliamentary exchange.

18 'John Gorton: After Office' NAA *Australia's Prime Ministers: John Gorton.*

appointed to the High Court, he was replaced by Independent Senator, Cleaver Bunton. Although Bunton would follow convention and vote with the government on Supply, the significance of his appointment was the precedent it created for the replacement of Senators.

So, when Queensland Labor Senator Bert Milliner died on 30 June, country party Premier Joh Bjelke-Petersen located a renegade labor member, Albert 'Pat' Field, who promptly announced 'I'm going to Canberra for one particular purpose – to see the downfall of the Whitlam government'. This was dubbed a 'tainted Senate' - one that did not match the electoral outcome of just a year earlier. As a result, the Coalition now had the Senate numbers it had failed to achieve at the 1974 election – not only to reject Supply but also to defer it, by a single vote.

Unknown for decades is that throughout this time Kerr was developing two bastions of political and legal support, secretly advising him on the Governor-General's 'reserve powers', the possible dismissal of the government, and whether the use of those powers might, in Kerr's words, 'adversely affect the monarchy in Australia'. These were, first, High Court justice Sir Anthony Mason; and secondly, the Queen, her private secretary Sir Martin Charteris and Prince Charles, now our King. The revelation of their roles, decades later, formed two critical points of rupture in the Dismissal historiography.

In early 1975, Kerr began a series of secret meetings and discussions with sitting High Court justice Sir Anthony Mason to 'fortify me for the action I was to take' as Kerr wrote in his archival notes. Mason's role was kept secret from Prime Minister Whitlam, from his fellow High Court justices – and ultimately from our history for decades. As a Pro Chancellor of ANU, Mason arranged a series of secret meetings for Kerr with senior members of the ANU Law School, to advise him on the nature and extent of his powers. Professor Geoffrey Sawer, one of that secret cabal of legal advisers, referred to them as 'the governor-general's tutorials'.

This was not just an advisory role, it was an active involvement in the Dismissal itself, as Mason also drafted a letter of dismissal for Kerr to give to Whitlam – all of it secret at Mason's insistence. There could not have been a more profound breach of the separation of powers and the ethics of governance. When I asked Mason to speak to me about his role, in the interests of history, he replied; 'I owe history nothing'.

The revelation of Mason's role transformed the established narrative of the Dismissal as Kerr's solo act that involved no others, to one of collusion, duplicity and intrigue, with manifestly different implications. Even more explosive was the release of the Palace letters - the correspondence between Kerr and the Queen through her private secretary Charteris at the time of the Dismissal.

In assessing the Palace letters a critical context is the core requirement of a constitutional monarchy, that the Monarch remain 'strictly politically neutral' at all times. The determined political disinterest of the Monarch is the essential means of resolving the inherent contradiction that lies at the heart of a constitutional monarchy - between a Westminster-style parliamentary democracy on the one hand and an unelected hereditary monarchy on the other.

Political neutrality sits together with the 'cardinal principal' that the Monarch acts on the advice of their responsible, or elected, ministers as the cornerstone of the curious amalgam of inherited title and responsible government that constitutes the Westminster system. I have long argued that the much vaunted political neutrality is a myth, enabled and perpetuated by secrecy.[19] King Charles III of Australia's public pronouncements on domestic political matters as the 'meddling' Prince of Wales are a well-known example of the entitled expectation of Royal political intervention despite this publicly asserted neutrality. Even conservative royal commentators described then Prince Charles as, 'routinely meddling in political issues', as having 'no sense of caution … only ... entitlement', and of risking constitutional stability if he continued to do so as King.[20]

Charles's direct interventions into policy decisions of the UK Blair government were only revealed after a decade long FOI battle by *The Guardian*. The so called 'spider letters' between Charles and government ministers were reluctantly released in 2015, revealing his secret

19 Jenny Hocking 'A royal abuse of political power' *Pearls & Irritations* 12 February 2021.

20 Nick Cohen 'Unlike the Queen, King Charles will have no sense of caution, only of entitlement' *The Guardian* 5 June 2022.

'personal' lobbying of ministers, including the Prime Minister, for his favoured policies.

Having unsuccessfully fought against the release of Charles 'spider letters' for a decade, the UK government promptly changed the *FOI Act* to ensure it could never happen again. There is now an "absolute exemption" on all requests relating to the Queen and the heir to the throne. The royal correspondence with government has been secured from public view once more, in an outcome all historians should be appalled by.

What's critical for our current discussion is that these interventions are enabled by, and remain hidden because of, a little known and even less understood 'convention' of royal confidentiality and secrecy. This claimed 'convention' is hardwired in every archival holding across the Commonwealth such that any communication relating to the royal family is routinely termed 'personal' and closed to public access until the Monarch decides otherwise.

Although Queen Elizabeth II was publicly a careful adherent of that core requirement of neutrality, the revelations in the Palace letters of her and Prince Charles's discussions and counsel to Kerr about the reserve powers and the prospective dismissal of the Whitlam government, show only too well that even the most significant breaches of purported neutrality can remain hidden under the guise of a claimed 'convention of Royal secrecy'.

It was because of this putative 'convention' that the 'Palace letters' between Kerr and the Queen were deemed Kerr's personal correspondence and under the embargo of the Queen. And, so Australia's National Archives told me, Kerr had specified they could not be opened until after 2027 and only then with the approval of *both* the Governor-General's Official Secretary and the Monarch's private secretary. This gave the Queen, through her private secretary, an effective veto over the letters release even were the Australian authorities to approve this.

On any common-sense reading the label 'personal' over these letters was an untenable, if not absurd, description of letters between the two people at the apex of a constitutional monarchy – the Monarch and their representative in Australia - during what the Federal Court described as 'one of the most controversial and tumultuous events in the modern history of the nation'. The use of the label 'personal' was sophistry, reflecting nothing more than the presumption of royal secrecy over the

monarch's communications and an expectation our National Archives would adhere to it.

Reflexively acceding to royal secrecy as a means of blanket exclusion from our own archival history is deeply antithetical to expectations of transparency and accountability and contrary to the core functions of the National Archives. And yet this is what the Archives unquestioningly did. There was apparently no way to view the Palace letters.

As I have discussed elsewhere:

> Legally, the categorisation of 'personal' created an impossible Catch-22. I could not appeal to the Administrative Appeals Tribunal since that was the mechanism available under the *Archives Act* and the Act relates only to 'Commonwealth records' not personal ones. The only way to challenge the Archives decision was a Federal Court action – an onerous path for a self-funded litigant academic and one made even more so by the near infallible circularity of 'royal secrecy'.[21]

These critically important letters had been locked away in the National Archives in Canberra for decades because the Archives claimed they were 'personal' to the Queen - and the Queen said we could not see them. As the case began, the Queen's solicitors, Harbottle & Lewis, wrote to the Governor-General's official secretary and said it was essential the letters remain secret in order to preserve 'the constitutional position of the Monarch and the Monarchy'.

And having seen the letters, now we know why.

I knew, from a host of other material in Kerr's papers that referred to them, that these letters were fundamental to the full story of the Dismissal. I had found extracts from some of the Palace letters in Kerr's papers; his handwritten *1980 Journal* setting out his extensive conversations with Prince Charles, the Queen and Charteris from September 1975 about the

[21] Jenny Hocking 'The Palace letters: Royal secrets and the Whitlam dismissal' *Precedent: Lawyers' Alliance* 166 November 2021, pp: 16-21.

reserve powers and the possible dismissal of the government; his extensive notes on the Dismissal included a hand-written reference to 'Sir Martin Charteris's advice to me on dismissal'; and there were letters to friends describing his correspondence with the Queen and Charles. Every part of that research, which I had done over the previous decade, showed that the Palace letters were in no way 'personal'. And that early glimpse of the letters provided the evidentiary base for a legal action seeking their release arguing essentially that they were not personal documents but official 'Commonwealth records' under the *Archives Act*.

In 2016 I commenced an action in the Federal Court of Australia against the National Archives of Australia seeking release of the Palace letters. This was only possible because of an exceptional *pro bono* legal team of Tom Brennan SC, Antony Whitlam SC, Brett Walker SC and Corrs Chambers Westgarth. Four and a half years and 3 court cases later, in 2020 the HCA ruled in a 6:1 decision in my favour that the Palace letters were not *personal*. They were as we had always said official, or Commonwealth records, and the NAA was ordered to reconsider my request of nearly 10 years earlier to access them.

The Palace letters were finally opened and released in July 2020. And what a great victory for transparency and our history they have proved to be. After years of insistent denial, the letters finally revealed the role of the Queen, her private secretary Sir Martin Charteris and Prince Charles, now King Charles III, in Kerr's decision to dismiss the Whitlam government.

It was only during the first case before the Federal Court that I discovered there are 212 letters, more than 1,200 pages in total. This is an extraordinary number of vice-regal letters, usually sent quarterly at most. Kerr wrote obsessively, sometimes several letters in a single day, the most I counted was 5 in one day - a sort of vice-regal stream of consciousness. Just as a point of comparison, Kerr's letters comprise as many pages in three and a half years as the letters of four previous Governors-General (from Lord Casey to Sir Ninian Stephen) put together. Sir Ninian Stephen (1982-9) wrote just 23 letters in over 6 years – or less than four each year. Kerr wrote *pro rata* nearly 10 times as many.

The importance of the Palace letters is that they cover matters far from politically neutral and which relate specifically to Kerr's dismissal of the Whitlam government, revealing for the first time the role of the Queen and Prince of Wales in Kerr's decision. From September 1975, when Kerr first raises with both Prince Charles and the Queen the prospect of dismissing

the government, the letters canvass issues central to the Dismissal, including the use of the reserve powers to do so.

The first thing that strikes you about the letters is Kerr's fawning obsequiousness, his cloying deference and need for royal approbation for even the most banal matter – he even asks Charteris what he should wear to his own inauguration – should he wear morning suit or lounge suit? It is striking and humiliating to read. Former Prime Minister Malcolm Turnbull describes Kerr's 'sycophantic grovelling' as 'stomach churning'.[22]

Even more concerning is that the Queen, through her private secretary Charteris, engaged with Kerr on these highly political matters. Turnbull writes that 'Charteris and Kerr conferred on the political and constitutional circumstances of the time in considerable detail.'[23] And that's the problem. In doing so the Queen irrevocably breached the core requirement of a constitutional monarch of strict political neutrality and disinterest in domestic political matters.

The Palace letters have put beyond any question that the Queen and Prince Charles engaged in discussions with Kerr directly relevant to Kerr's decision to dismiss the elected Australian federal government. The Queen, Charteris and Charles knew that Kerr was considering dismissing the government from September 1975, two months before the Dismissal. They knew this would be against the advice of Kerr's responsible minister, Prime Minister Whitlam, who was about to call a half-Senate election - and was also against the advice of the Australian chief law officers, the Solicitor-General Sir Maurice Byers and the Attorney-General Kep Enderby. And they knew that Kerr was by his own admission refusing to speak to the Prime Minister about this, much less to 'consult, encourage, and warn' him as Bagehot describes the duty of the Crown to elected government.

Overarching all these intersecting pressures on Kerr was what Geoffrey Robertson KC considers the '*sine qua non* for the dismissal - Royal

22 M Turnbull, 'Foreword' in Jenny Hocking *The Palace Letters: The Queen, the Governor-General and the Plot to dismiss Gough Whitlam* Scribe Publishing. Melbourne. 2020 p.xiii.

23 *Ibid.*

approval. Without it, Robertson writes, 'Kerr would have stayed his hand'.[24] And recently released files of Canadian Governor-General, Jules Léger, from the Canadian Archives, show Kerr believed he had the Queen's approval. Kerr later told Léger during a discussion about 'the position he had taken' in relation to the Dismissal that 'the Queen approved of his position, as did Lord Charteris'. Leger adds that Kerr 'is convinced that he served the monarchy well in Australia'.[25]

Prince Charles, now our King Charles III, also fully supported Kerr's actions, as did his uncle and mentor, the Queen's second cousin, and royal *eminence grise*, Lord Louis Mountbatten. Like Mountbatten, Charles also wrote to Kerr soon after the Dismissal telling him 'What you did ... was right and the courageous thing to do'. This was not only our current King's view, it was the view of 'the Palace', including the Queen. Charteris wrote to Kerr on behalf of the Queen soon after the Dismissal and assured him that 'no other course was open to you ... I have found no-one who has been able to tell me what you ought to have done instead'. The latest revelations from Canadian Governor-General Léger's detailed notes of his discussions with Kerr are the first indication from Kerr himself that the Queen herself also approved.

Now, I can't go through every one of these letters today, so I'll focus on 3 or 4 that I see as particularly significant. And of course, they're all discussed in detail in my book *The Palace Letters*.

Kerr's substantive discussions with the Queen about the reserve powers began in September 1975. In his letter of 20 September, Kerr raises the prospect of Supply being blocked in the Senate and Whitlam refusing to call an election, telling Charteris that in such a circumstance he 'may have to find someone who will'.[26] This is the first reference by Kerr to the Queen of the possible dismissal of the Prime Minister and replacement with another, several weeks before Supply was blocked.

24 Geoffrey Robertson, ''The Crown in Australia: From James Cook to Charles III, Another Perspective' *Australian Law Journal* 2021 95 pp: 539-566; p.556.

25 Jenny Hocking 'Whitlam dismissal secrets unearthed from the archives of the Canadian governor-general *Crikey* 27 October 2025.

26 Kerr to Charteris, NAA AA1984/609, pt 1 (20 September 1975).

Undoubtedly the most important discussion about the reserve powers in the context of the Dismissal was between Kerr and Prince Charles in Port Moresby during the PNG Independence Day celebrations in mid-September 1975. In this key conversation, two months before the Dismissal, Kerr raised with Charles the prospect that the coalition might move to block Supply in the Senate and that he might need to exercise the reserve powers to dismiss the government in that context. Kerr's abiding concern was, as ever, for his own position as Governor-General, specifically his fear that the Prime Minister might recall him from office should Whitlam become aware that Kerr was considering this prospect.[27] Kerr notes Charles's solicitous response in his 1980 *Journal*, 'But surely Sir John, the Queen should not have to accept advice that you should be recalled … *should this happen when you were considering dismissing the Prime Minister'*.[28]

The Palace letters have confirmed that this critical conversation between Kerr and Prince Charles 'considering dismissing the Prime Minister' was relayed by Charles on his return to London to the Queen and Charteris. From that point on the letters between the Queen and Kerr address issues at the heart of the Dismissal, advising him on the existence and use of the reserve powers, and conferring on the Queen's response should Whitlam seek to recall Kerr - in full knowledge the Governor-General was maintaining a 'policy of silence' towards Prime Minister Whitlam, his chief adviser.

The most important part of this letter of 24 September 1975 is the handwritten addendum by Charteris pointing Kerr to the work of Eugene Forsey – Canadian Senator and theorist, ardent monarchist, expert on the discretionary 'reserve powers of the Crown' and firm believer in their continued existence and benefit to the Monarchy. Charteris writes that Forsey 'lays it down as a principle that if Supply is refused that always makes it constitutionally proper to grant a dissolution'.[29]

27 John Kerr, *Journal for 1980* M4523 1 pt 17, p. 130.

28 Jenny Hocking, *The Palace Letters: The Queen, the Governor-General and the Plot to dismiss Gough Whitlam* Scribe Publishing. Melbourne. 2020 (author's emphasis).

29 Charteris to Kerr 24 September 1975 NAA AA1984/609, pt 1 (20 September 1975).

This was a very particular directive from Charteris, pointing Kerr to the work of Forsey -knowing (as Charteris did) that Forsey believed the Monarch still had the power to dismiss a government and force a dissolution which, according to Charteris in his note to Kerr would be 'always constitutional'. Kerr was left in no doubt therefore of the Palace's view were he to re-animate the 'reserve powers' to force a dissolution.

With the dismissal of Minister for Minerals and Energy Rex Connor on 14 October 1975 for misleading parliament over his continued discussions with financial broker Tirath Khemlani in the search for loans to fund the government's national pipeline and resources development plans, the *National Times* proclaimed 'at last – the footsteps of a giant reprehensible circumstance!' Two days later the Opposition deferred Supply in the Senate, passing an amendment in identical terms to that proposed in May 1974, that it would not proceed with the Bills until the government agreed to 'submit itself to the judgment of the people'.

The government's response to this uncharted situation was always to call the half-Senate election due at that time. A labor party caucus meeting on the evening of 16 October unanimously agreed that if the coalition continued to block Supply, the half-Senate election would be called 'at a time of PM's choosing'. The half-Senate election was the only election then due, and it was a constitutional requirement under section 13 of the Constitution that it be held before 30 June the following year.

So there was never any doubt as to what the government would do, and what the prime minister's advice to the Governor-General would be, if the coalition continued to defer a vote on Supply in the senate. Yet despite its centrality to these unfolding events, the half-Senate election quickly faded from the historical narrative that took shape in the immediate aftermath of the Dismissal. It was a notable aspect of the many commentaries on the 50th anniversary of the Dismissal, that the detail about the half-Senate election, if mentioned at all, was either irrelevant or simply wrong. Gerard Henderson for instance readily dismissed the prospect of a half-Senate election – which the Prime Minister was perfectly entitled and indeed required to call – since, in Henderson's view, 'this would not have resolved the conflict'.[30]

30 Gerard Henderson *Media Watch Dog* No. 756 28 November 2025.

A Governor-General cannot choose whether to accept a Prime Minister's proper advice regarding the timing of a dissolution simply on his own view of who might win that election. As Dr H.V. Evatt noted, to do so would place the Monarch 'in the position of a political prophet'.[31] More significantly, the definitive claim that the half-Senate election would not 'resolve the crisis' is neither relevant nor supported by the only contemporaneous opinion poll released in early November 1975.

This fails to recognise this was no ordinary half-Senate election. There were very good reasons why the Opposition was said to be in a state of 'panic' about it and why, as Whitlam said, 'they will do anything to avoid a half-Senate election'.

What made the prospect of the half-Senate election uniquely troubling for the Coalition is this - the four new Territory Senators who, together with the two likely newly elected Labor Senators expected to take the 'replacement' positions filled by Bunton and Field, would then take their places immediately after the election. The remaining Senators-elect however, would not take up their seats until the following July 1976.

It was this peculiar Senate algebra, a rare confluence of electoral and political circumstance, that was causing great agitation in the Coalition, that with six new Senators taking their places immediately after the half-Senate election, the Labor Party might gain control of the Senate for the next 6 months. Opinion polls released in early November, which showed a sharp swing away from the coalition the longer Supply was blocked, only added to that concern.[32]

An important intervention came towards the end of October when Kerr sought, through Whitlam, an opinion from Solicitor General Sir Maurice Byers on the situation in the Senate. In that opinion, delivered to Whitlam on 4 November and to Kerr on 6 November, Byers expressed 'the gravest doubt' as to the continued existence of the Governor-General's prerogative. Most pertinently and precisely for Kerr, the Solicitor-General

31 H. V. Evatt *The King and His Dominion Governors* Oxford University Press. 1936 :104-5.

32 'New poll - Fraser support sinks' *The Bulletin* 1 November 1975 p. 17.

concluded that 'The mere threat of or indeed the actual rejection of Supply neither calls for the ministry to resign nor compels the Crown's representative thereupon to intervene.'[33]

Attorney-general Enderby took Byers opinion to Kerr and discussed it with him in person on 6 November. Kerr at no stage disagreed with any of it. As Enderby later recalled, 'I expressed certain views to Sir John. He did not demur or dissent from them'.[34]

Reflecting on these events some years later, Byers was even more emphatic, saying:

'The reserve powers are a fiction. They don't exist. You can't have an autocratic power which is destructive of the granted authority to the people … you can't have a reserve power because you are saying the Governor-General can override the people's choice ... and that's a nonsense.'

On 9 November, following a schema devised in conjunction with Sir Anthony Mason, Kerr rang the Chief Justice Barwick and asked to see him the following morning. Decades later Mason later wrote of this clandestine discussion that neither he nor Kerr 'had any doubt that Barwick would be of the same view as we held'.[35] Both Kerr and Mason were also well aware that in discussing these matters with Barwick, Kerr was going against Whitlam's advice that Kerr could not seek the counsel of the Chief Justice. There were three cogent reasons for this: firstly, the Governor-General's legal advisers were the Australian law officers - the Solicitor-General and the Attorney-General – whose advice was soon to be provided to Kerr; secondly, as Professor Helen Irving notes, it is 'well settled that the High

33 Cited in Richard Ackland, 'Kerr's legal advice – don't sack Whitlam' *Australian Financial Review* 17 November 1975 see n.18.

34 Enderby cited in Whitlam *The Truth of the Matter* p84. David Marr *Barwick* p264 n39 cites Clem Lloyd & Andrew Clark *Kerr's King Hit* p. 214.

35 See David Marr, *Barwick* p. 267; Anthony Mason, 'It was unfolding like a Greek tragedy'; John Kerr 'Conversation with Sir Anthony Mason', Personal and confidential papers of Sir John Kerr: Private and confidential papers relating to the constitutional crisis of 1975, NAA: M4523 1, Part 14.

Court of Australia cannot give advisory opinions',[36] a position dating back to the High Court's own decision in 1921;[37] thirdly, and perhaps most importantly, in the narrowly split High Court rulings on matters relating to Whitlam Government legislation, Barwick had found against the Government.

Nevertheless, and unknown to Whitlam, Barwick twice visited Kerr at Admiralty House (the official Sydney residence of the Governor-General) on 10 November 1975 in the morning and again for lunch, where – in a remarkable occurrence for a Chief Justice responsible for protecting the separation of powers and rule of law in Australia - they discussed Kerr's decision to dismiss the Government for which Kerr sought Barwick's legal support. Barwick agreed to provide Kerr with his written comments the next morning. Kerr's 'Statement of Reasons' mirrors the letter of advice received from Barwick.[38] It is an indication of the proximity of Kerr himself to this ostensibly independent advice from the Chief Justice, that Kerr rang Barwick's chambers later in the afternoon of 10 November to suggest a change to the words that Barwick 'was contemplating using' and to propose an alternative form of words that he might like to use instead.[39]

While Kerr was waiting for the advice of the Solicitor-General on this very point, the Queen - through Charteris - assured him in a letter dated 4 November, that the contested and controversial reserve powers 'do exist' and 'that you have powers in recognized'.[40]

36 Helen Irving, 'Advisory Opinions, the Rule of Law, and the Separation of Powers' [2004] MqLawJl 6; (2004) 4 *Maquarie Law Journal* 105.

37 In re The Judiciary Act 1903-1920 and In re The Navigation Act 1912-1920 (1921) 29 CLR 257.

38 See Letter of the Chief Justice to the Governor-General 10 November 1975 and Statement by the Governor-General of 11 November 1975 A1209,1975/2448.

39 Garfield Barwick, Personal files while Chief Justice, *Dismissal of Labour [Labor] Government, 1975-1979* NAA M3942, 18. p. 309.

40 Charteris to Kerr, NAA AA1984/609, pt 2 (4 November 1975).

Yet, we might ask, by whom was it recognised? The use of the reserve powers while parliament was still considering the budget bills was not 'recognised' by Prime Minister Whitlam, the Attorney-General or the Solicitor-General, whose advice to Kerr on this very point was in direct contradiction to Charteris bald assertion that 'you have powers'.[41]

In his final letter before Kerr dismisses Whitlam, Charteris assuages a concern which Kerr expressed in a previous letter, that any use of the reserve powers might affect the Monarchy in Australia. Kerr had specifically asked for the advice of Charteris on this point: 'I should welcome any observation on a private and personal basis which you may care to make and which , as you see it, should be taken into account in the interests of the Monarchy in Australia'.[42] Charteris in reply on 5 November gives this advice, assuring Kerr that 'If you do, as you will, what the constitution dictates … you cannot possible [sic] do the Monarchy any avoidable harm. The chances are you will do it good.'[43]

Robertson calls this 'the prompt from the Palace'. Robertson writes that this letter 'made clear to the Governor-General that the Queen would regard the dismissal of Whitlam as an honourable act and one that would not damage the Crown'. Or as one legal commentator noted at the time of the letters' release, 'Buckingham Palace gave Sir John Kerr a green light to dismiss the Whitlam government only a week before November 11'.[44]

Throughout the four weeks that Supply was blocked, Kerr gave no hint to Whitlam of any concern about the half-Senate election. To the contrary, David Smith, the official secretary, worked with Whitlam's office on the drafting of the necessary documentation for this election over the days before 11 November. Whitlam finalised his letter calling the half-Senate election with Kerr himself on the morning of 11 November 1975 - prior to

41 M Steketee, 'The governor-general's ambush', *Inside Story* (2 November 2020).

42 Kerr to Charteris, NAA AA1984/609, pt 2 (27 October 1975).

43 Charteris to Kerr, NAA AA1984/609, pt 2 (5 November 1975).

44 Christopher Pollard 'The facts of the Whitlam dismissal are more important than ever' ABC 11 November 2015 <https://www.abc.net.au/news/2017-11-11/whitlam-dismissal-five-facts-you-need-to-know/9133768>.

their prearranged meeting at 1pm in order, Whitlam believed, to call the half Senate election. As Whitlam moved to hand Kerr the letter they had previously agreed on, Kerr handed him a letter terminating Whitlam's commission and that of his entire ministry, without warning. That it was without warning is important, since as Bagehot famously described it is a right of the Crown in a constitutional monarchy 'to be consulted, to encourage and to warn'. Kerr's secret adviser, Sir Anthony Mason, acknowledged the enormity of this failure to warn, later claiming to have told Kerr that 'if he did not warn the prime minister, he would run the risk that people would accuse him of being deceptive.'[45] By failing to warn Whitlam, Kerr had both deceived and refused to act on the advice of his Prime Minister, in complete breach of the cardinal principles of a constitutional monarchy.

Whitlam was unaware, as he walked down the long corridor to leave Government House, that Malcolm Fraser was emerging from an *ante-room* at the other end, to be ushered into Kerr's study. By the time Whitlam arrived at the Lodge, Fraser was already Prime Minister.

The Second Dismissal

A final point is that the Dismissal didn't end there in the Governor-General's study at 1.00pm on 11 November 1975. It's often forgotten that both the House and the Senate continued to sit after the Dismissal, with both resuming at 2.00pm. As the parliament reconvened, Kerr was hosting an elaborate lunch with three visiting prospective *aides de camp* who had arrived to be interviewed on that auspicious day. Kerr, fortified by a pre-lunch gin and tonic before dismissing the Prime Minister, continued to imbibe over lunch.[46]

At approximately 2.00pm Lady Kerr told the official secretary, David Smith, to ring Buckingham Palace and inform them that Whitlam had been dismissed and that Fraser was now Prime Minister, even though events of material significance were still unfolding in the parliament. In Kerr's

45 A. Mason 'It was unfolding like a Greek tragedy' 27 August 2012.

46 Jenny Hocking *Gough Whitlam: His Time* Melbourne University Publishing. Carlton. 2012. p. 334-6.

schema, his duty was to the Queen and the Monarchy, not to the elected government or the Australian parliament. The workings of parliament did not at that moment figure in the formation of government – that was Kerr's decision as an emanation of vice-regal reserve power exercised on behalf of the Queen.[47]

Dreyfus describes Kerr's deference in informing the Palace instead of the parliament as 'affronting':

> Kerr should have immediately informed the Speaker of the House of Representatives and the President of the Senate of his decision to dismiss Whitlam and appoint Fraser as Prime Minister. That he advised the Palace but not the Parliament is as remarkable as it is affronting.[48]

The insouciance and disrespect these most senior legal and political figures in Australia displayed towards the system of constitutional parliamentary governance they were sworn to uphold is beyond 'affronting'. One is reminded of EP Thompson's arch observation that; 'for many of England's governing elite the rules of law were a nuisance, to be manipulated and bent in what ways they could'.[49]

At 3.14pm Fraser then lost the all-important motion of confidence in the House, by ten votes. Importantly, that same motion affirmed the confidence of the House in Whitlam and called on the Governor-General to commission a government led by the member for Werriwa, Gough Whitlam: 'That this House expresses its want of confidence in the Prime Minister and requests Mr Speaker forthwith to advise His Excellency the Governor-General to call on the Honourable member for Werriwa to form a government.'

47 Geoffrey Robertson, 'The Crown in Australia: From James Cook to Charles III, Another Perspective' *Australian Law Journal* 2021 95 pp. 539-566; p. 556.

48 The Hon Mark Dreyfus KC 'Labor and the Constitution' Australian National University 2025 Geoffrey Sawer Memorial Lecture 20 November 2025.

49 EP Thompson *Whigs and Hunters.*

The House of Representatives then adjourned to enable the Speaker, Gordon Scholes, to inform Kerr of the motion of the House confirming its confidence in the Whitlam government. Since Supply had also been passed by the Senate an hour earlier, Whitlam expected to be back in office later that afternoon. In an extraordinary series of events in which conventions were torn up like confetti, Fraser refused to resign as Prime Minister, and Kerr refused to receive the Speaker or acknowledge the motion of the House against Malcolm Fraser as Prime Minister.

Only 37 years later did we find out that during the adjournment Kerr, concerned by this unanticipated turn of events, rang Sir Anthony Mason for one final secret piece of advice. Mason told Kerr that the House of Representatives motion of no confidence against Fraser was 'irrelevant' since he had already appointed Fraser as Prime Minister – which is a truly breathtaking statement for a High Court justice to make, let alone in secret, to a Governor-General bent on dismissing an elected government.

Kerr duly ignored this defining motion of the House of Representatives on the formation of government, and dissolved both Houses of parliament under section 57 of the Constitution, on the advice of the former leader of the opposition, with the Speaker still waiting to see him, leaving Fraser in office as Prime Minister and a live motion of no confidence against him.

This was Kerr's 'second dismissal', the dismissal of the parliament itself and specifically the motion of the House of Representatives by which governments are made and unmade.[50] Of all the breaches of convention and propriety along the path to dismissal, this denial of the primacy of the House of Representatives in the formation of government was in many ways the most egregious

Sir Richard Eggleston, former judge of the Commonwealth Industrial Court and colleague of Sir Robert Menzies, argued strongly that 'once supply had been passed and a vote of no confidence in Mr Fraser had been carried, Mr Whitlam was entitled to be recommissioned as Prime

50 See my earlier discussion of 'the second dismissal' in *Gough Whitlam: His Time* Melbourne University Publishing. Carlton. 2012. p. 346.

Minister'.[51] Fifty years later, Dreyfus echoed this view: 'Kerr should have acknowledged the resolution of the House of Representatives expressing confidence in Whitlam, not Fraser, and acted in accordance with the democratic demands of the House.'

The day after the Dismissal, Speaker Gordon Scholes wrote to the Queen. Kerr's actions, the Speaker said, 'constituted an act of contempt for the House of Representatives … to maintain in office a Prime Minister imposed on the nation by Royal prerogative rather than through Parliamentary endorsement constitutes a danger to our Parliamentary system.'[52] In his terse reply, the Queen's private secretary Charteris wrote 'The Queen has no part in the decisions which the Governor-General must take in accordance with the Constitution'. This claim would hold for the next 45 years - until the Palace letters revealed its sophistry.

The Palace letters give the lie to the foundational myth of the dismissal as a solo act by the Governor-General who 'protected the Queen' from getting involved. The letters not only reveal that involvement, they are themselves constitutive of it. The Queen *was* involved from the time she first entered into conversation with Kerr in late September 1975 about the possible use of the reserve powers against the government. As NSW Solicitor-General Michael Sexton SC notes, 'Kerr's likely course of action was known to the Palace and so to the Queen, but completely secret from Whitlam and his ministers'.[53]

As we reflect on the Dismissal at 50, Kerr appears as the last of the colonial-style governors. He saw himself as the font of a reservoir of uncapped discretionary vice-regal power, responsible not to the prime minister as his chief adviser under the Westminster system, not to the Australian system of government, and certainly not to personal and political propriety, but as the protector of the monarchy whose advice and counsel he secretly sought, received and followed. As he told the Queen

51 Eggleston, R. 'Sir Richard Eggleston' in *Constitutional Seminar 1977* Constitutional Association and UNSW Press. 1977:3-14.

52 The Speaker, the Hon Gordon Scholes, to Queen Elizabeth II 12 November 1975 <Whitlamdismissal.com>.

53 Michael Sexton 'Palace letters shed light on a PM kept in the dark' *The Australian* 24 December 2020.

soon after the Dismissal, 'the decisions I had to make were specifically made in order to protect the Crown and the Monarchy in the future'.[54]

Yet for decades after the Dismissal this evident Royal involvement in Kerr's decision was publicly denied and the letters that would reveal it to us were wilfully hidden, closed by the National Archives of Australia as 'personal' correspondence. If the Palace letters had remained closed as the Queen, the Palace, the Morrison government, the Archives and Government House had all wanted them to be, our history would still be the incomplete and inaccurate version in which the Palace played no part, effectively a falsification of history.

The closure of archival records, decades after events they describe, raises fundamental questions about the nature of history itself and about our capacity as historians to write a complete and accurate history while relevant documents are not available to us. As I have discussed elsewhere, it is deeply concerning that important records relating to the Dismissal including Whitlam's ASIO file, the Government House visitors' books for 1974 and 1975, and a box of congratulatory letters to Kerr from prominent individuals including Lord Mountbatten have been lost or destroyed by the Archives or 'accidentally' incinerated while under the care and responsibility of Government House, despite their obvious historical significance.[55]

For 40 years the Dismissal history was constructed around the unquestioned central pillar that the Queen was not involved, the Dismissal was the work of local political actors only, reinforcing what Elkins would call the 'imperial fiction' that the Monarch remains above politics and strictly politically neutral.[56] It took a High Court action to secure release of correspondence that has shown this to be categorically untrue.

54 Kerr to Charteris NAA AA1984/609, pt 2 (22 January 1976).

55 Jenny Hocking 'Critical Archival Encounters and the Evolving Historiography of the Dismissal of the Whitlam Government' *Australian Journal of Politics & History* 70 (2) 2024 p. 281-299.

56 Caroline Elkins 'The imperial fictions behind the Queen's platinum jubilee' *The New York Times* 4 June 2022.

This comprehensive reappraisal has been possible only because of public access to the key archival documents that revealed it to us. As the Dismissal history unravelled and then reformed around newly released documents, the impact of archives and public access on that history has been critical. The routine closure of records that should now be available for public access is a formidable barrier to an honest accurate history. It places an impossible constraint on original archival research – the essence of historical inquiry – leaving us with what Lownie terms 'a curated history' of uncertain veracity.[57]

And so, it is deeply troubling that even today, 50 years after the dismissal, hundreds of files in Sir John Kerr's papers remain closed to the public – either closed completely, heavily redacted, or not yet examined for public access. The NAA recently acknowledged that thousands of files relating to Gough Whitlam, nearly one third of their total holdings on Whitlam, are yet to be opened to the public decades after their creation.[58] This makes a mockery of the Open Access provisions of the *Archives Act* under which records should be available for public release after 20 years. And it is antithetical to the core functions of the National Archives which include preserving and *making publicly available'* our most significant historical records.[59] This is profoundly wrong. It diminishes and distorts our history and continues to deny us the capacity to know the full story of the Dismissal and the history of that time. The National Archives of Australia is at risk of being seen, not as the facilitator of public access to its (our) historical records, but as its most assiduous curator.

[57] Andrew Lownie 'Censoring Our History' *Transactions of the Royal Historical Society*. 2024 2 :401-411.

[58] April Glover 'Author Jenny Hocking's dogged pursuit of the truth 50 years after the Gough Whitlam dismissal' *9News* 11 November 2025.

[59] *Archives Act* 1983 2A(a)(iii)).

As we mark 50 years since the dismissal of the Whitlam government which changed the course of this country so dramatically, it's time to return to the promise and commitment of Gough Whitlam to open government and an informed and engaged citizenry, and restore the right to public access at the heart of the National Archives' democratic function.

Monash University

Email: Jenny.Hocking@monash.edu

Making Working Women Equal in the 'subversive' 1970s

Diane Kirkby*

The 1970s was a watershed moment in women workers' history and the policies of the Whitlam Labor government were a crucial factor. A move towards 'economic inclusion' was occurring in other jurisdictions and advanced economies, and also began to change women's experience in the Australian workforce. Historian Nancy MacLean has asked how a society (the United States) which had for generations taken for granted the exclusion of the majority of its population, (i.e. women), from full participation in citizenship, become one valuing and pursuing diversity. [1] Her answer was the 1960s black freedom movement's fight for jobs and justice: their pursuit of economic inclusion in the mainstream inspired broader change - among women, other social groups and across business organisations and workplaces. The same question can appropriately be asked of Australia. Here, too, the origins of change that manifested in the 1970s is located in developments of the 1960s but the emphasis is placed on the organised labour movement.

Three factors converged in bringing change: the pull of the labour market, the push of government intervention, and the resurgence of the women's movement with a more radical bent.[2] All were necessary and this article shows how that confluence took shape in early 1970s Australia when the Whitlam government was elected. In doing so it contributes a labour history focus to a growing Australian historical literature on the 1970s by highlighting the significance of women's paid work.[3] It takes the concept

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1 Nancy McLean, *Freedom is Not Enough: The Opening of the American Workplace* (Cambridge, MA: Harvard University Press, 2006) 3-5.

2 Anne Lise Ellingsaeter, 'Women's right to work: The interplay of state, market and women's agency', *Nora: Nordic Journal of Women's Studies,* 7:2-3, (1999) 109-123.

3 Michelle Arrow, *The Seventies: The Personal, The Political, and the Making of Modern Australia* (Sydney: NewSouth Publishing, 2019); Michelle Arrow and Angela Woollacott, 'Revolutionising the everyday: The transformative impact of the sexual

of the 1970s as 'subversive' from US scholar Michael Hardt who has argued the political movements of that decade were revolutionary in their legacy of potential to confront today's issues.[4]

The labour market

The first key factor was the change in the labour market. Throughout the 1960s women had entered the paid workforce in higher numbers than ever before. In two decades since the end of World War Two, the number of women in Australia undertaking paid work more than doubled, growing rapidly by 165 percent, compared to a 50 per cent growth in men's labour force participation; women had reached 30 per cent of the workforce.[5] As women's participation in the labour force grew, so did the proportion of married women entering full and part-time work and the numbers who were unionised.[6] In the early 1950s only 12 per cent of married women were in paid work. That had risen to 40 percent by 1974 and married women in the age group likely to be mothers of young children (25-34 years) accounted for 73 per cent of the increase in the female labour force.[7] The long-standing national conservative Liberal-Country Party Coalition governments had upheld 'the marriage bar' - compelling clerical and professional women to leave the paid workforce on marriage - until

and feminist movements on Australian society and culture,' in *Everyday Revolutions: Remaking Gender, Sexuality and Culture in 1970s Australia,* eds. Michelle Arrow and Angela Woollacott; (Canberra: ANU Press, 2019) 1-22; Jon Piccini, ' "Women are a colonised sex": Elizabeth Reid, Human Rights and International Women's Year 1975,' *Australian Historical Studies* 49, No. 3 (August 2018): 307-23.

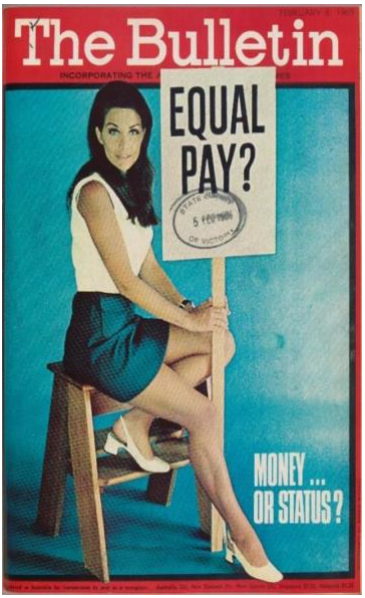
4 Michael Hardt, *The Subversive Seventies* (NY: Oxford University Press, 2023).

5 Carol O"Donnell and Philippa Hall, *Getting Equal: Labor Market Regulation and Women's Work* (Sydney: Allen & Unwin, 1988) 20; Edna Ryan and Ann Conlon, *Gentle Invaders* (Sydney: Nelson, 1975), 174.

6 Rhonda Galbally, 'Women, Inequality and Australian Trade Unions: The Development of the Working Women's Charter Campaign and the ACTU Charter for Working Women, Two Case Studies' (Master of Arts preliminary diss., La Trobe University, 1979); 'The Role of a Woman in the Unions,' *SMH*, August 5, 1976, 12.

7 O'Donnell and Hall, *Getting equal*, 7, 21.

1966, long after other jurisdictions overseas.[8] This meant the proportion of married women in the Australian workforce in 1961 was 18.7 percent when it was 31- 32 per cent in England, Wales, the United States of America, and France.[9] As well, the central system of wage-fixation in Australia's industrial tribunals had since 1907 maintained award of a breadwinner's wage to men but never to women, regardless of actual circumstances.[10] By this means women were denied equal pay and confined to the lowest-paid jobs with no career path.



Representing the woman worker, *The Bulletin*, 8 February 1969, courtesy State Library of Victoria

8 Marian Sawer, *Removal of the Commonwealth marriage bar: a documentary history,* Belconnen, A.C.T. : Centre for Research in Public Sector Management, University of Canberra, 1996.

9 Katy Richmond, 'The workforce participation of married women in Australia,' in Don Edgar, ed., *Social Change in Australia: Readings in Sociology* (Melbourne: Cheshire, 1974) 267-308, 267.

10 *Ex parte H.V. McKay* (1907) 2 CAR 1. n 1907 set a 'living' or 'family' wage, supposed to allow an unskilled labourer to support a wife and three children, Edna Ryan and Ann Conlon, *Gentle Invaders*, 89; Diane Kirkby, 'Arbitration and the Fight for Economic Justice', in Stuart Macintyre and Richard Mitchell, eds., *Foundations of Arbitration*, (Melbourne, Oxford University Press, 1989), 334-351.

They were therefore largely concentrated in lower-paid jobs, drawn by the needs of industry – 'the somewhat mysterious forces of the economy,'[11] rather than a political demand for a right to work - and opportunities were not evenly available. There were prohibitions on women working in dangerous jobs such as operating metal-working and welding machines, or occupations deemed harmful to their health and reproductive capacity - such as working with lead or mercury, or simply for long hours. [12] Women's employment was often treated as a threat to the interests of men,[13] although from the mid-1960s it was taken more seriously.

A push to recognise the reality of working women's access and conditions came from women organising in international labour bodies: the International Labour Organisation (ILO), the World Federation of Trade Unions (WFTU), to which several Australian communist-led unions were affiliated, and the International Confederation of Free Trade Unions (ICFTU) which drew up a Charter of Rights of Working Women in 1965.[14] In keeping with these international moves, the same year the Communist Party of Australia (CPA) discussed the matter of women's work and the Union of Australian Women called for apprenticeships for women in both light and heavy industry. They were concerned that in regional areas like the Illawarra and Newcastle in New South Wales, a lack of employment opportunities for women was among various social problems created by the rapid growth of the male-dominated steel and subsidiary industries.[15]

11 Brian Hoad, 'Equal Pay – Money or Status?,' *Bulletin.* 8 February 1969, 29.

12 O'Donnell and Hall, *Getting Equal,* 7.

13 Hence the title of Ryan and Conlon's, *Gentle invaders.*

14 Dorothy Sue Cobble, 'International Women's Trade Unionism and Education,' *International Labor and Working-Class History*, No. 90 (Fall 2016),153–163; see e.g., World Federation of Trade Unions, *Working Women Shape Their Future: 2nd International Trade Union Conference on the Problems of Working Women,* Bucharest, May 11 to 16, 1964.

15 See Sally Bowen, 'Women in Battle for Equal Rights,' in *Tribune,* 23 February, 1966, 8.

The peak union body, the Australian Council of Trade Unions (ACTU), affiliated to the ICFTU, responded with a national conference about trade unions and women. ACTU Federal Secretary Albert Monk spoke against widening women's employment prospects.

He acknowledged moves to introduce women into industries traditionally closed to them, and that many people believed 'there should be absolutely no restriction placed on the employment of women in any industry or industrial occupation whatsoever.'

However, he argued this view—that 'full equality of opportunity inevitably leads to the opening for [sic] the employment of women in any occupation they choose' —was not accepted more generally within either the union movement or the wider community.

He used the maritime industry to support his argument against employment for women outside their 'traditional' jobs. While claiming there was 'no real reason why a woman could not become an effective efficient ship's officer,' he singled out waterside work – as well as coalmining - as the kind of occupations he claimed the majority of the community believed were not suitable for women. His explanation that this was 'for psychological, physical and social reasons' was sweeping and vague. He listed a range of occupations where women were 'more suitable and more efficient' - all lower paid jobs where women were already working, including the clothing trade, food preserving, confectionary manufacturing, clerical work and nursing.[16] Even as Monk made his case, his defence of Australia's highly sex-segregated labour market was becoming unsustainable. In 1966 waterside work was still very hard physical labour, but the Australian waterfront was on the brink of major technological change through containerization.

A few women in other industries were doing the same work as men. One example was the sausage making section of the meat industry, which demonstrates the difficulties women faced.

[16] Noel Butlin Archives Canberra (NBAC), N68 Australian Council of Trade Unions, Box 672, 'The Trade Unions and the Woman Worker': Talk given by Federal Secretary on behalf of ACTU at National Conference on the Status of Women in Employment, May 4, 1966, 2–4 Australian Council of Trade Unions Archives.

Unlike the UK which legislated equal pay in 1970, in Australia equal pay had to be won in the industrial tribunals, in different states or the federal Arbitration Commission, in cases brought by the unions, industry by industry. In 1969 the Australasian Meat Industry Employees Union (AMIEU) won a landmark claim before the Commonwealth Conciliation and Arbitration Commission for 'equal pay for equal work'.[17] However, the limitations of this success were quickly apparent. Australia's system of wage fixation was a complex matter of calculation of a basic rate plus margins, and the meat industry workers award did not apply to workers in other industries. More significantly, equal pay for women only applied under this concept where they were judged to perform an identical job to men. Too few did so.[18] It needed a second decision in 1972 and a new definition, 'equal pay for work of equal value' to bring change (discussed further below).[19]

Nevertheless, a shift was occurring in the policy direction of the general labour movement. Unions now recognised women's potential for strengthening their membership and funds. [20] The ACTU Congress in 1971 noted the dramatically increasing number of women in the work force and the speed of technological change that would continue to create more employment prospects for women. These factors 'highlight[ed] the need for greater urgency in the implementation of policy . . . to obtain equal remuneration . . . [and] in achieving our objective of equal pay for the sexes.'

17 Hoad, 'Equal Pay – Money or Status?'; Ryan and Conlon, *Gentle invaders*, 148-51.

18 Ryan and Conlon, *Gentle invaders,* 151.

19 Ryan and Conlon, *Gentle invaders,* 149-151, 154, 159-62.

20 A point made by Galbally, 'Women, Inequality and Australian Trade Unions'; see also Glenda Strachan, ' "Changing the Unions" Agenda: Women's Activism in Australian Trade Unions in the 1970s and 1980s,' *Labour History* 117 (November 2019): 181–202.

The initial push to expand opportunities for women came from progressive unions—those on the left of the labour movement, such as the seamens' and building workers' unions. [21] At the ACTU Congress, the Builders Labourers' Federation (BLF) submitted an agenda item on the 'Right of Women to Learn Skilled Trades' and to be admitted into these occupations. The document wanted the ACTU to be explicit about the concentration of women in unskilled and semi-skilled occupations at the lowest rates of pay: 'Even if all these women received the rate for the job, they would still be the lowest paid section of the work force.' The agenda item urged training for women if they were not to be disadvantaged by technical progress requiring vocational qualifications and higher education credentials. It noted that in the experience of many highly industrialised countries technological progress caused redundancy, which more harshly affected women workers.

The BLF's submitted document was a scathing indictment of the union movement's lack of support for women workers to date: 'Because of sheer prejudice, tradition, and craft narrowness, trade unions generally have played little or no part in championing the rights of women workers to learn skilled trades.' The document claimed this had impacted on women workers' expectations, that the only work they were suited to was unskilled, monotonous, and low paid, and that their capability was limited to performing the traditional 'women's work'. The BLF used the example of the steelworks in the city of Wollongong NSW to illustrate the strength of assumptions about gendered work.

21 For a union supporting the employment of women, see Meredith Burgmann and Verity Burgmann, *Green Bans Red Union: Environmental Activism and the New South Wales Builders Labourers' Federation,* (Sydney: UNSW Press, 2017); Jim Hagan, *History of the ACTU* (Melbourne: Longman Cheshire, 1981); The Communist Party's program on the needs of working women was discussed by Alice Hughes, ' "Getting with" the Working Women,' *Tribune* (Sydney), August 13, 1969, 6.

There, even though 'industrial experts admit that many of the jobs in the steelworks could be done by women,' still the employers pressed the Government at public expense to recruit (male) migrant labour, while leaving thousands of women (many of them also migrants) unemployed.[22] Consequently, the ACTU Congress called on affiliated unions to concern themselves with working women's problems and for state branches also 'to extend their equal pay Committees to deal with all problems of women in industry'.[23]

The ACTU Congress in 1971 saw a culmination of the changes that had been growing stronger since the mid-1960s. Here we can see how links between an expanded labour market, and the organised labour movement were shifting the dial towards 'equality'. Adding to this was a newly resurgent women's movement. In 1974, the CPA newspaper claimed it was a combination of militant unionism and women's liberation that 'opened up new employment for women.'[24]

The Women's Movement advocates for change

There were links between the growth of married women in the workforce and the emergence of the women's liberation movement, largely made up of educated women who were married.[25] The Women's Electoral Lobby (W.E.L.) for example, was founded in Melbourne by academic and professional women and rapidly spread nationally. The arrival of the

22 NBAC, N21 Australian Council of Trade Unions, Box 326.; Carla Gorton and Pat Brewer, *Women of Steel: Gender Jobs and Justice at B.H.P* (Sydney, Resistance Books, 2015) tells the story of Wollongong women's Jobs For Women campaign and the sex discrimination case they won in 1989.

23 NBAC, N68, Box 908, 'Needs of Women Workers: Recommendation of the ACTU Executive to the 1971 Congress'.

24 'It's Not All Bad,' *Tribune* (Sydney), October 1, 1974, 5; Mrs. Noreen Hewett, 'Equal Opportunities Essential for Women', *Tribune* (Sydney), September 8, 1965, 10 shows policy within the Communist Party of Australia.

25 A point made by Richmond, Workforce participation of married women, 267.

Women's Liberation Movement in Australia, usually located with the first march in Sydney in 1970, brought its attention to trade unionism, adding grassroots pressure to calls for policy change.[26] Wives had always been important political actors on the left of the Australian labour movement. The maritime unions, along with other communist-aligned unions, had long had women's committees organised and run by the wives of men on the wharves and ships. They were being organised as part of the women's movement and discussing women's lack of rights in the early 1960s. [27]

In 1970 the women's committees of these several unions promptly joined with the Union of Australian Women to organise a two-day seminar on the subject of 'Women and Trade Unions.' At that meeting, a transport worker who worked as a conductor on the buses spoke about how 'union officials tended to forget women, and concentrate "on the boys"'. Although women conductors had enjoyed equal pay since the early 1940s, she claimed women wanted more than being 'just conductresses'; they now wanted 'equality of opportunity—bus driving—with the men.'[28] She revealed the impetus for change that was coming from women themselves. Her choice of phrase – 'equality of opportunity' - was not yet enacted in law, but was in circulation in progressive circles. [29] Militant women unionists began actively organizing an Alternative Trade Union Women's Conference in parallel with the ACTU Congress. They aimed to act as a pressure group on the ACTU.[30] The first alternative conference in 1971 was followed by

26 'Women's Lib Turns to Union,' *Canberra Times,* August 9, 1971, 3.

27 *Women and the Waterfront,* Newsletter of the WWF Women's Committee, Newcastle Branch, 1959-65, MUA Newcastle Branch Rooms; Margo Beasley, 'Soldiers of the Federation: The Women's Committees of the Waterside Workers Federation of Australia,' *Labour History,* no.81, November 2001, 109-127.

28 Fred Wells, Industrial Reporter, 'Solidarity Thy New Name is Woman . . [sic],'*SMH,* October 14, 1970, 6.

29 e.g. Hewett, 'Equal Opportunities Essential for Women.'

30 Kay Hargreaves, *Women at Work* (Melbourne: Penguin, 1982), 29; Strachan, 'Changing the Unions' Agenda'; Patricia Grimshaw, Nell Musgrove, and Shurlee Swain, 'The Australian Labor Movement and Working Mothers in the United Nations' Decade for Women,' in *The Time of Their Lives: The Eight Hour Day and Working Life*, ed. Julie Kimber and Peter Love (Melbourne: Australian Society for the Study of Labour History, 2007), 139.

others in 1973 and 1975, reportedly to give all women the opportunity to discuss their needs in the work force.[31]

Also in 1971, a National Women's Liberation Conference that focused on women at work and women and the trade unions met in Melbourne to coincide with the ACTU Congress being held in the city. Consistent with what Michael Hardt has recently reminded us to acknowledge - that 'those engaged in the progressive and revolutionary movements of the 1970s were in fact (and understood themselves to be) subversives' – liberationists were seeking 'to undermine the bases of established authorities and transform the fundamental structures of society.' Rather than working within the system for 'limited social and political reforms', the aim of the Women's Liberation activists was instead 'to dismantle and overthrow the social structures of domination'.[32] There was mass leafletting in Melbourne's City Square, a march through the streets and intense lobbying at the opening session of the ACTU Congress.[33] Amidst 'the chin-chucking and head-patting and the contemptuous remarks' from union delegates, the issues that emerged as central were equal pay and (as with the women who wanted to drive buses), wider job opportunities for all women, in short 'the absolute right for women to work.'[34]

Women's 'absolute right' to paid work was the path to economic liberation. It went beyond equal pay, beyond doing women's low paid jobs as industry demanded, beyond being channelled into service industries. This new militancy of the Women's Liberation Movement drew long-time campaigners for equal pay from the union movement, as well as a new generation of radicals demanding women's liberation from economic oppression. Working women were motivated by their own experiences of inequities. Long-standing union activists such as Edna Ryan - the first woman President of the Local Government Officers' branch of the Municipal Employees Union of NSW - became more vocal and impatient with male unionists. Women's activism exposed and began to influence

31 'Unions—Women's Lib Style,' *SMH,* August 24, 1973, 1.

32 Hardt, *Subversive Seventies.*

33 'Women go to ACTU', *Tribune* (Sydney), September 1, 1971, 12.

34 'Women's Liberation: Looking at the Melbourne Conference', *Tribune* (Sydney), September 15, 1971, 10.

the sex-segregated structure of the labour force and the power structure of the union movement, as the aims of union activists dovetailed with those of the Women's Liberation Movement and posed a challenge to the traditions of organised men's labour. The proportion of women unionists grew dramatically to virtually half all wage-earning women (48 per cent) within just a few years.

The push that was now coming from women moving into paid work would be mixed with a new militancy, signalled by journalist Michelle Grattan who announced in 1971 that 'Australian women are increasingly seeking a place in the economic sun'.[35] She was referring to more than the economic pull from industry. Young women, born after World War Two and coming of age in the late 1960s, expected to work and increasingly to have careers that would continue after they married. They wanted equality of opportunity and income, and the exercise of choice. Marriage and motherhood were no longer to be barriers. In posing the question were women equal? Grattan identified issues related to the workplace, but did not talk about trade unions or employers. She concentrated on women's perspective of their ambitions and singled out working mothers for attention. 'The mother working in factory, commercial or clerical work faces many problems keeping her dual role going smoothly;' she wrote, 'the family woman who seeks the top of the business or administrative tree, confronts even more.'

Grattan's concentration on particular problems for married women indicated what was new. In the 1970s, debates over married women's work now took a new turn as child care and maternity leave became the focus and equal pay was reconceived as the freedom to work at any occupation of choice. Access to careers needed changes to the laws and the provision of complaints procedures, as well as child care and leave arrangements to facilitate working mothers' participation. These were all goals set, and achievements won, by the 1970s women's liberation movement. These successes changed the economic landscape. Industries came under sustained challenge to open up the labour market with new career prospects for women and entry to a multitude of occupations.

After 1970 married women's paid work had become a political demand, of women's right to work, and militancy was now driving it. As Hardt identified, women's liberation was subversive - and in Australia the ACTU

[35] Michelle Grattan, 'Are women equal?' *The Age* (Melbourne) 22 February, 1971, 8.

was resistant. The 1971 ACTU Congress 'acknowledge[d] the rights of young female workers to enter all skilled trades'; but this wording focused on young (implicitly single) women, designed to appease the unions which objected to a blanket endorsement of married women's right to paid work.[36] These tended to be unions on the right, which were generally hostile to women's liberation despite coming from industries employing more women and with higher numbers of women members.

By 1975, International Women's Year, women activists in the field of work were intensifying their pressure on unions and the ACTU. They had lost patience with working together with union men on 'general issues' to achieve their aims. Instead, they recognised they needed 'a firmly formulated set of cohesive demands' that could be used to ground particular actions on targeted issues as well as being a useful stick to beat the ACTU, its member unions, the employers and the government.[37] The ACTU felt itself under attack even as it tried to acknowledge women's issues when two unions proposed the ACTU adopt a Working Women's Charter.[38] Over the next several years, ACTU officers 'vigorously and at times bitterly opposed' the most overtly feminist demands.[39] Working women continued to press their own agendas.

Women workers who challenged tradition

In November 1972 the ACTU Executive adopted a policy of getting women into non-traditional jobs. Within a matter of weeks, W.E.L. made pursuing this policy its focus.[40] There was as yet no legislation to impose obligations on employers or penalties for discrimination. Women workers began applying for jobs. Janet Oakden was a 32 year old mother of three living in Sydney when she decided to pursue her girlhood dream of driving a train,

36 See NBAC, N33 Amalgamated Metal Workers' and Shipwrights Union (Tom Wright's records), Box 21.

37 Galbally, 'Women, Inequality and Australian Trade Unions,' 32.

38 Ibid., 41.

39 'Women Fight for Rights in ACTU,' *The Australian*, March 16, 1978.

40 Minutes, January 1973, Women's Electoral Lobby, Sydney Branch, Archives, Jessie Street Library, Sydney.

trying to become NSW's first woman train driver. Janet was an English migrant to Australia who wanted to continue the family tradition of her grandfather and uncles who worked on the railways in England. Janet was a union organiser who already worked on the NSW railways as a steward when she started training to become a driver.[41]

Finishing the training and qualifying was just the first step. She had then to find employment. In March 1975 she approached the NSW Public Transport Commission (PTC) who refused to employ her, saying they couldn't do so without agreement from the engine-drivers' union. Although the Australian Federated Union of Locomotive Employees (AFULE) claimed to be sympathetic to the idea of women drivers, they always raised many obstacles – especially the absence of appropriate amenities (toilets, accommodation) - when women challenged their exclusion. The stalling tactic of the union was to keep referring any decision to its branches. That made it very difficult for Janet, who attended many meetings and spoke constantly to the rank-and file. In her bid to become a train driver she had repeatedly to take on these arguments about the lack of suitable facilities for women – a logistical and financial battleground which unions could simply refer back to employers to resolve. Behind the essentially bureaucratic bluster about the details, these 'Men of the Footplate' as the drivers were known, deeply identified with their powerful engines and were not going to share them easily. The traditional sex segregation of the railways career structure - with women stuck in lower grade occupations such as carriage cleaning - reinforced drivers' gendered occupational identity, fuelling their resistance.[42] The PTC would not override the union.

The unified rejection from the unions and the PTC, her prospective employer, prompted Janet to engage with the Women's Liberation Movement. She became something of a feminist folk hero. At demonstrations in her support at Trades Hall, Sydney, protestors and supporters marched through and around the building singing the song composed about her struggle which included the line: 'When she tried to join the union, the men all ran like hell!'.

41 'Battle to be Train Driver,' *Daily Telegraph* (Sydney), May 27, 1976, 7.

42 Analysis by Emma Robertson in paper presented to Australian Women's History Network Conference ANU, Canberra, 2018.

Janet Oakden's fight continued for two years before the PTC appeared to relent, allowing her to undergo a recruitment examination which involved taking a medical. While driving trains was not especially heavy work, drivers needed to be fit to climb on and off the train, especially in case of mechanical failure, and to have excellent eyesight to deal with signals given the potential for injury or death to passengers and themselves. The medical was administered by the PTC's own doctor and, conveniently for the PTC, Janet failed the mandatory eyesight test. Her supporters questioned the standard the doctor applied in the eye test, which made no allowance for her age in contrast to the rules for male applicants. Controversy, however, made no difference; the matter was now resolved.[43]

The power of this particular union to resist the incursion of women into the prized occupation of train driver illustrates how the tradition of a sex segregated labour force was very hard to dislodge before there was anti-discrimination legislation. Union support for women was critical but patchy and piecemeal. Train driving proved the most tenacious of male-dominated transport occupations. For other women, beginning to make their way on to ships, as deck crew and officers, the union response was usually more welcoming and came from the leadership. While the AFULE actively opposed women driving trains, in 1978 a Sydney newspaper claimed that two unions 'traditionally reserved for men' were now 'encourag[ing] women to join their ranks'.[44] These unions were the Federated Engine Drivers' and Firemen's Association (FEDFA) for drivers of cranes and stationary engines (not locomotives), and the Seamans Union of Australia (SUA) the principal trade union for merchant seamen in Australia until the 1990s. Although the SUA committed itself to recruiting women in 1972, the labour market downturn meant by 1978 the two unions still only had one woman member between them: Aileen de Gracie, an operator of a stationary power engine for the Western Mining Corporation in Western Australia.[45]

When the ACTU held a Special Union Conference in 1978 on the Working Women's Charter, very few ACTU-affiliated unions attended. The SUA did

43 The file has disappeared from the PTC archives.

44 'Women at Sea . . . and on the Light Rails,' *Sun* (Sydney), April 12, 1978.

45 'Woman Engine Driver gives a Lead,' *SMH*, March 16, 1978, 1.

not even submit items for the agenda on the ground that it [still] did not have any women members.[46] Aileen De Gracie attended the conference as FEDFA's solitary woman member – 'an example for women and the work opportunities available to them.'[47] She spoke to the Conference as a single mother of four whose weekly earnings were significantly more than most women's. She encouraged women – the applauding delegates - to realise the opportunities available, instead of being 'inclined to hang back and not try.' She supported a successful move to recommend to the ACTU the formation of a special women's unit to promote and support working rights for women.[48]

Working Women in the ACTU Charter

As the ACTU developed its women's charter, individual unions struggled over the contentious matter of married women workers like Janet Oakden and Aileen de Gracie. In 1975 the Australian Council of Salaried and Professional Associations (ACSPA) established a Working Women's Centre with funding provided by the federal ALP government.[49] A year later, their Working Women's Charter was presented for discussion.[50] The ACSPA Charter recognised the situation of working mothers. It called for education and training, including trade union training for women, as well as maternity and paternity leave, provision of childcare and flexible working hours. Added to this was a demand for increased wages through 'equal pay for work of equal value' and expansion of trade union activities to increase women's participation.[51] A Working Women's Charter Campaign was set up with the aim of having the charter adopted by the ACTU and individual unions. The Working Women's Charter Campaign

46 NBAC, Z129 Seamen's Union of Australia, Additional Box 35.

47 'Woman engine driver gives a lead'.

48 Ibid.

49 Galbally, Women, inequality and trade unions, 33; <https://www.womenaustralia.info/biogs/AWE0012b.htm>.

50 'Unions Are for Women Too: A Report of the First Australian Women's Trade Union Conference,' Sydney, August 6–8, 1976.

51 Grimshaw, Musgrove and Swain, 'The Australian Labour Movement,' 150–52.

groups, organised throughout Australia, convened a number of conferences between 1975 and 1977.[52] This activity spurred the ACTU into presenting its own charter at its 1977 Congress. There were now two Charters: one arising from women's independent feminist activism and one from the ACTU.[53] Even with a dedicated charter in place, the ACTU maintained that 'action on behalf of women's special interests should take place through the unions, and the ACTU and its State branches.'[54] Thus it was left to the still male-dominated individual unions and State branches to implement the ACTU women's charter. As only one part of it directly exhorted the trade unions to act, there remained 'much room for a displacement of responsibility onto other bodies in the workplace such as government and employers.'[55]

While the press reported on the ACTU charter as 'an attack on male domination of the trade union movement,' in practice this was far from the case.[56] The ACTU strategically adopted a centrist position amid the Left-Right polarity dividing the labour movement in the second half of the 1970s.[57] The ACTU approach on women's issues was no different. In the final ACTU charter, there was no demand to change existing power structures of unions to require a defined proportion of women to be represented. Decision-making on women's issues was also confined to male union officials and the all-male ACTU Executive. The Executive had already deliberately ignored women's groups when they rejected a proposal 'that women's organisations be directly represented on the body to develop the charter.'[58] This excluded the very people—the Working

52 Booth and Rubenstein, 'Women in Trade Unions,' 124–25.

53 Galbally, 'Women, Inequality and Australian Trade Unions.'

54 Hagan, *History of the ACTU,* 380–81.

55 Galbally, 'Women, Inequality and Australian Trade Unions,' 43, citing L Cupper and J Hearn, 'The 1977 ACTU Congress: An Appraisal,' Research Paper No 60, University of Melbourne.

56 Galbally, 'Women, Inequality and the Australian Trade Unions,' 34, citing 'Unions Let Us Down,' *Sun* (Sydney), August 1976.

57 Iola Mathews, *Winning For Women*: *a Personal Story* (Melbourne: Monash University Publishing, 2019), 132.

58 Galbally, 'Women, Inequality and the Australian Trade Unions,' 42.

Women's Centre and the Women's Trade Union Commission—who developed the original charter proposal. Moreover, although they composed 25 percent of the membership of the ACTU, women made up just 4.5 percent of delegates at the 1977 ACTU conference (approximately 30 women out of a total of 650 delegates).

At the 1978 ACTU conference, one of the outcomes was that each state was now expected to set up its own branch of the Working Women's Charter Committee.[59] This further highlighted the problem of making implementation of the charter 'dependent on the energy, priorities and commitment of individual union officials' who were still mostly men.[60] Women continued to be 'handicapped by structural influences' and were only 'a peripheral subject of concern in trade union education.'[61]

Rather than risk push-back from their own members by introducing changes within their own organisations, left-wing unions put pressure on the ACTU to act. In turn, the ACTU, even as it acknowledged demands for a greater role for women through Congress, emphasised the need for government action. In short, responsibility was being forced upward, always to some other body, which meant there was little practical action within individual unions. Those unions that put pressure on the ACTU did not themselves necessarily welcome women into their own trades, nor were they recruiting women on to their executives.[62] In summary then, even as the proportion of women union members increased, women remained largely excluded from exercising real power in union governance and had limited representation at conferences. That led to a further struggle which began to have effect in the 1980s.

Another, arguably more successful, change related to 'every working woman's nightmare' – the gender-based violence they routinely experienced in the workplace. Activists in the United States in the 1970s gave it a name, sexual harassment, began researching the issue and

59 For reports of the conference see 'Women Fight for Rights in ACTU,' *The Australian*, 16 March, 1978; 'Union Talks on Women's Rights,' *Courier Mail* (Brisbane), February 8, 1978.

60 Pauline Costello, 'Women and Trade Unions: The Working Women's Charter,' *Melbourne Journal of Politics* 15 (1983/84): 46.

61 Ibid.

62 Ibid.

educating women about it - and advocated for legislative change.[63] By the end of the 1970s women had succeeded in making sexual harassment an accepted doctrine in US courts, and the concept was being picked up by Australian equal employment opportunity (EEO) Commissioners led by Victoria's Fay Marles. It was subsequently written into the federal *Sex Discrimination Act 1984*.[64] Gradually under pressure from women and a number of governments across Australia, unions made sexual harassment an industrial issue and businesses developed strategies for managing it.

Sexual harassment law by 2023, Banner posted on Trades Hall, Melbourne, photographer DK

63 Constance Backhouse and Leah Cohen, *Sexual Harassment On the Job* (Englewood Cliffs, NJ: Prentice Hall, 1981); Catherine MacKinnon, *Sexual Harassment of Working Women* (New Haven: Yale UP; 1979).

64 Gail Mason and Anna Chapman, 'Defining Sexual Harassment: A History of the Commonwealth Legislation and its Critiques' *Federal Law Review,* 31 (2003), also published as Centre for Employment and Labour Relations Law Working Paper No.27, (March 2003), 2.

Government intervention

The third element in the move towards equal economic inclusivity was government intervention. The election of the Australian Labor Party (ALP) government of Prime Minister Gough Whitlam in December 1972 brought the kind of intervention that would address some of the problems and open new opportunities. Principally that was in providing the principles and direction on which action could occur. Women's right to equality at work had been recognised in the United Nations ILO conventions on equal remuneration (passed in 1951) and non-discrimination (1958).[65] The Whitlam government committed to ratifying these ILO Conventions. This was very significant for the labour experience of women and something which previous Liberal-Country Party (L-CP) coalition governments had refused to do.

The first step the government took immediately on election was to have the Arbitration Commission reopen the 1972 Equal Pay Case which had begun but not been settled by the time of the election. The outcome was to extend a male rate of pay to women, regardless of the work they did, i.e. using a concept of 'equal pay for work of equal value', coming from the US.[66] Yet the decision was still unsatisfactory, because most women workers were covered by state rather than federal awards. It took a further case in 1974, when advocates from the Union of Australian Women, the National Council of Women, the Women's Electoral Lobby and from the federal government, produced much compelling evidence about family breadwinners and low paid workers. Both men and women would now receive the minimum wage, but the government had made clear it had to be on new terms. Edna Ryan wrote, 'it was a tremendous victory in principle as well as in fact' but it depended on the still buoyant state of the labour market.[67] The confluence of necessary factors was brief, but the goal was achieved.

The second step the new government took was in mid-1973 when the government established a National Committee on Discrimination in Employment to examine all aspects of reported discrimination by sex,

65 ILO Equal Remuneration, Convention 100, 1950; ILO Discrimination (Employment and Opportunity) Convention No. 111, 1958, ratified by Australia June 1973.

66 O'Donnell and Hall, *Getting equal*, 45; Ryan and Conlon, *Gentle invaders.*

67 Ryan and Conlon, *Gentle invaders,* 171.

race, religion or age, and appointed Gail Wilenski, a founding member of W.E.L.'s Canberra branch, to have special responsibility for women. One of its prime objects was to remove the sex basis - the male/female requirement - on which many jobs were advertised.[68] The federal government also began improving the situation for working women with maternity leave for public servants and increased childcare funding. It engaged as well with the question of education and training for women, setting up an inquiry into the Technical and Further Education (TAFE) sector. In 1975 Gail Wilenski was appointed Director of the new Equal Employment Opportunity Section of the Public Service Board. The federal government's lead prompted state-based anti-discrimination laws: beginning in South Australia under Labor premier Don Dunstan in 1975, followed by NSW under Labor premier Neville Wran in 1977 and in Victoria under Liberal Party premier Rupert Hamer. By then the Whitlam government had lost office and federal legislation covering federal government employees had to wait until 1984 after the election of the Hawke Labor government.[69]

In line with the ILO convention, government measures meant discrimination was to be removed from existing labour practices. On the wharves this was very direct: the Waterside Workers Federation had to change its rules to enable women to join, before the federal government would draft new legislation to give the union control over the hiring of labour they had lost under the Menzies government's legislation.[70] Here the 1967 ILO Convention articles on maximum weights were relevant. Convention 27 Article 3 stipulated 'No worker shall be required or permitted to engage in the manual transport of a load which, by reason of its weight, is likely to jeopardise his health or safety.' Article 7 specifically addressed differences between men and women: '1. The assignment of

68 Chris Anderson, 'Inquiry into Veto on Women as Wharfies,' *SMH*, 15 September, 1974, 33.

69 *Sex Discrimination Act 1975* (SA), Anti-*Discrimination Act 1977* (NSW), *Equal Opportunity Act 1977* (Vic), *Sex Discrimination Act 1984* (Cth).

70 National Archives Australia, Typescript, The WWF – Employment Of Women, NAA B146, 1974/4702 Stevedoring Industry – Employment of Women on the Waterfront; C H Fitzgibbon, General Secretary to Mr R M Northrop, QC, Chairman, Stevedoring Industry Council, 27 February 1975, Box 36-7 Employment [no dates] NBUA Z432 Box 36 File Employment WWF 1975-1977 Recruitment Procedures Vol 2.

women and young workers to manual transport of loads other than light loads shall be limited. 2. Where women and young workers are engaged in the manual transport of loads, the maximum weight of such loads shall be substantially less than that permitted for adult male workers.'[71] This was followed by Maximum Weights Recommendation No.128, 1967, which specified the amounts to be lifted: for men no more than 55kgs, for women 'substantially less', for shorter periods of time and not during pregnancy or soon after giving birth if there was a risk recognised by a physician.[72]

In agreeing to change its rules, the Waterside Workers Federation negotiated strict guidelines with the Stevedoring Industry Authority. Women wharfies were to be required to do the full range of jobs, no special allowance was going to be made (except for ILO stipulations on women carrying weights – and also to satisfy the early occupational health and safety laws emerging in some states). 'That includes lumping bags of flour, tipping up drums of chemicals, handling heavy steel lashings on container ships, and handling conventional cargo in holds. The only concession will be the weights they may lift. The federation will follow the International Labour Organisation's limits'.[73] The women were to get equal pay and 'will be equal in every way' or 'very equal' as the federation's assistant general secretary said. What this actually meant was there would be no concessions and no privileged positions would be reserved for women applicants.[74] In reality, however, a downward turn in the maritime labour market in 1974 complicated efforts to get women hired, with union branches giving preference to existing (male) members.[75]

In jurisdictions where anti-discrimination legislation applied, employers could no longer legally refuse to appoint women to 'men's' jobs. The legal change did not of itself bring equality for women, but it changed the battle

71 ILO Maximum Weights Convention No.127 1967.

72 Ibid.

73 News cutting: Janet Hawley, 'No Holds Barred for Women Wharfies,' *Australian,* 11 July, 1974, 3, also included in NAA file NAA B146.

74 Hawley, 'No holds barred for women wharfies.'

75 Margo Beasley, *Wharfies: A History of the Waterside Workers Federation* (Sydney: Halstead Press, 1996) 236-7; 'Geelong No to Women Wharfies', *Geelong Advertiser,* 10 September, 1974, 1.

tactics.[76] One of those young women coming of age with ambitions for her future in transport was Deborah Lawrie (later Wardley). She was 'seeking her place in the sun' in a career in aviation which, like train driving and the maritime sector, was traditionally closed to women. Like many women who entered transport occupations, Deborah was very close to, and inspired to follow, her father. [77] She inherited and shared his passion for flying. When he took up lessons to get a pilot's license, she got involved, helping him study and watching his progress, learning how it could be done. He assisted her to start taking her own lessons as soon as she could, as a sixteen year old, though she subsequently paid for them herself. She soon discovered the most she could aspire to was flying small, chartered aircraft and working as a flying instructor. Ambitiously she set her heart on flying big aircraft and that meant becoming a pilot with a commercial passenger airline.

At that time women pilots had their own association and competed in races and air events, but none worked for airline companies. Despite one or two applying each year, 'none had the right qualifications' according to those doing the hiring.[78] In 1976 Deborah was twenty-three years old with 2,500 hours flying time, a B.Sc. from the University of Melbourne and, like so many talented women, was teaching High School (Science and Maths). She was also teaching young men to fly, who then went on to careers as commercial pilots. She tried to do the same. She applied to both of Australia's major domestic airlines to become a trainee pilot, the government-owned airline Trans Australia Airlines (TAA) didn't respond. Ansett Airlines granted her an interview, although the company policy on not hiring women pilots was bald and unequivocal. The company chair Sir Reginald Ansett was overtly misogynistic, calling adult women

76 For an analysis of the legislation in a single industry see Erica French and Glenda Strahan, 'Women at work! Evaluating equal employment policies and outcomes in construction,' *Equality, Diversity and Inclusion: An International Journal,* 34 No. 3, (2015), 227-243.

77 Elaine McKenna and Deborah Lawrie, *Letting Fly: Deborah Wardley Australia's trail-blazing pilot*, (Sydney: Allen & Unwin, 1992); see also 'The sky's the limit The case of Deborah Wardley,' *Tribune* (Sydney) 15 August 1979, 9 and Carmel Shute, 'Breaking the Mould,' *Tribune* (Sydney) 5 September 1979, 14.

78 Quoted in Belinda Smith, 'From Wardley to Purvis: How far has Australian law come in thirty years,' *Australian Journal of Labour Law,* 21, no.3, (2008) 3-24.

stewardesses 'old boilers' and claiming their menstrual cycles made them unsuited to flying planes.[79]

Ansett's airline executives were aware that changes were taking place. Women pilots were routinely being hired overseas and Australia lagged significantly behind.[80] Perhaps they put Deborah through an interview and selection process because they were curious, sick of her applying incessantly, or there were internal disagreements and machinations for control within the company, to bring about change.[81] Whatever the reason, the company's standing policy prevailed. Despite her qualifications and an acknowledgement she was a good pilot, her application predictably, but still surprisingly to her, failed. She promptly alleged discrimination under Victoria's recently passed EEO legislation.

Much of the increase in women's labour force participation came from the rising proportion of married women, yet a marriage bar which overtly existed against public servants until 1966 still covertly prevented other women's full access to career opportunities. This was manifested in Deborah's attempt to become an Ansett pilot and was a significant reason for the rejection she received. She was engaged to be married at the time of her interview and the selection committee worried she would soon become pregnant, and therefore be taking leave. The prospect of pregnancy was one of various matters covered in the interview which related to her as a woman. She sought to reassure the interviewers of her commitment to doing the job and having a long-term career.[82]

In their turn, the company seemed surprised their policy of excluding women was being challenged. They defended it but added that Wardley was being excluded on an economic rationale – the cost involved in making provision for women's maternity – that the company's legal team argued would impact the company's profitability and could apply to any

79 Fay Marles, *Aiming For the Skies* (Carlton: Miegunyah Press, 2012).

80 Captain Norman Murdoch, ex-manager of Ansett flight operations quoted in McKenna and Lawrie, *Letting Fly,* 35.

81 Debbie Cramsie, 'Deborah's all set to fly again,' *Catholic Weekly*, 20 April 2020. <https://catholicweekly.com.au/deborahs-all-set-to-fly-again/>.

82 Quoted in Belinda Smith, 'From Wardley to Purvis'.

applicant.[83] She was not even yet married and motherhood was a vague prospect in her future, 'one day'. It was her *potential* for motherhood that drove Ansett's business case for the way she, and all women, were to be treated. It was, however, no longer legal to do so under Victoria's new laws. Ansett, led by its Chairman, fought a protracted battle, taking the case all the way to the High Court, which held 4:2 that refusing to hire women because they were women was unlawful under the Victorian legislation.[84] The case generated a huge public interest from both women and men, mobilised a lot of women's organisations, involved a fundraising campaign to meet Wardley's expenses and a boycott of Ansett's business travel which lost Ansett 50 per cent of that trade in just six months.

The passage of equal opportunity and anti-discrimination laws was 'a vital legislative milestone'.[85] Wardley's case was a triumph for Victoria's EEO Commissioner Fay Marles and a landmark decision for formal legal equality, although the legal victory did not remove barriers from traditional attitudes and practices more subtly practiced - nor did it generate a flood of women airline pilots, or create social change more broadly.[86] Nevertheless, thanks to the Whitlam government's anti-discrimination policy, non-discrimination was the new principle.

The removal of male and female as requirements for job selection was a major achievement. As a consequence, the government-owned shipping company, Australian National Line had now to advertise for its cadets in gender-neutral language. As soon as she saw the advertisement for a new group of cadets 'for young *people* not young *men*', aspiring seafarer Elizabeth Datson 'knew it was meant for [her]'. She had abandoned hope

83 Smith, From Wardley to Purvis.

84 *Ansett Transport Industries (Operations) Pty. Ltd v Wardley* (1980) 142 CLR 237; Marles, *Aiming For the Skies*; Beth Gaze, 'The Sex Discrimination Act at 25: Reflections on the Past, Present and Future,' in Margaret Thornton, ed., *Sex Discrimination in Uncertain Times,* (Canberra: ANU Press, 2010), 107-32, at 110.

85 Gaze, 'Sex Discrimination Act after 25 years,' 108; Margaret Thornton, *The Liberal Promise: Anti-Discrimination Legislation in Australia*, (Melbourne: Oxford University Press, 1990).

86 Lynn Bennington and Ruth Wein, 'Anti-discrimination legislation in Australia: Fair, Effective, Efficient or Irrelevant*?,*' *International Journal of Manpower,* 21, No.1, (2000), 21-33.

of her dream career but with that simple change in language, her life's course changed and in 1978 Liz Datson became Australia's first maritime cadet officer. She went on to become the first Master Mariner in 1988 and the first woman who took command as Captain of her own ship in 1990.[87] Other women followed her path. These firsts – trailblazers – are notable individuals, but broader industry change has also been significant, albeit more difficult to achieve and uneven in its success.

'a place in the economic sun'?

Deborah Wardley broke new ground in bringing and winning the first anti-discrimination case against an employer - and by setting new standards for women's career ambitions. Despite individual success in getting employed, in the early 1980s US researchers found that while policy changes might increase the hiring of women, barriers at the workplace or plant impeded women's access and advancement in non-traditional male-dominated occupations.[88] That simple truth could also be observed in Australian jurisdictions. Context was important.

For Deborah Wardley winning the argument of discrimination was just a first step, a door opening, that put the onus on her to make it work. Having won the right to be taken on as a trainee she then faced the realities. Ansett made it clear from the outset that if forced to employ her, they would try to immediately dismiss her. She was under constant scrutiny, aware she had to do better than the men and that Ansett was 'managing' the media attention in their own interests, timing her departures and arrivals accordingly. Wardley faced the continuing prospect of dismissal on the spot for the slightest infringement – 'she might be sacked before her uniform is creased'. The Pilots' Federation came to her defence after she

87 Conveyed in interview with Diane Kirkby November 2023; see also Diane Kirkby, *Voices From the Ships: Australian Seafarers and Their Union* (Sydney: UNSW Press, 2008) 314-5.

88 Sharan Harlan and Brigid O'Farrell, 'After the Pioneers: Prospects for Women in Nontraditional Blue Collar Jobs,' *Work and Occupations* 9, no. 3 (August 1982): 363–86.

was 'vindictively assailed' by Ansett when placed under investigation for an 'everyday' minor air incident.[89]

Her memoirs - in careful rather than aggrieved expression - document how she had to tolerate the pressure and personal inconvenience from an unrelenting and intimidating media, the awkwardness of her peers, their discontent bordering on resentment at media reports playing up her qualifications or downplaying theirs. Her first marriage did not survive the tensions and she only became a mother in her second marriage, long after she had finished her training.[90]

Deborah Wardley was not motivated by women's liberation but rather by her own personal drive to fly and absolute belief in the principle of equal opportunity. Her passion for flying never faltered, and as she hoped, she went on to have a very long career. She survived the demise of the Ansett company, the pilots' strike of 1989 and after more than 50 years, in the 2020s became globally the oldest pilot still employed.[91]

However, the number of women following her into the Australian aviation industry has been few. Women's stories expose the complexities of women's lived experience and show how the shortcomings of formal equality principles and the rigidity of economics - the business case rationale – underpinned the way their challenges were dealt with. Academic lawyers argue that anti-discrimination law was flawed as a solution for resolving women's workplace inequities, that the High Court judgment in Wardley's case merely established that women had to be treated as men - which was not on their own terms - and court judgments grew even less progressive over time.[92] The matter of married women – often working mothers – had been a focus of the 1970s during a period of great optimism but success had dissipated with the courts' increasingly narrow application of doctrine to discrimination claims. Substantive

89 Wardley, *Letting Fly*; see also 'Pilots Back Wardley' *Tribune* (Sydney) 29 November, 1979, 4.

90 Wardley, *Letting Fly,* 227.

91 Debbie Cramsie, 'Deborah's all set to fly again,' *Catholic Weekly,* 20 April 2020. <https://catholicweekly.com.au/deborahs-all-set-to-fly-again/>.

92 Gaze in Thornton, 'Sex discrimination Act after 25 years': Smith, 'From Wardley to Purvis'.

equality is rendered in outcomes and requires that differences are acknowledged and accommodations made for them. Rather than ignoring differences and treating all workers the same, 'people with family responsibilities [need] to be treated differently' - indeed 'ignoring differences, can exacerbate inequality'.[93]

Conclusion

Despite their limitations, the initiatives of the 1970s did have an important impact. State government-owned utilities in transport, maritime services and electricity started accepting girls as apprentices in their trades for the first time.[94] At the end of the decade in the state of New South Wales alone, there had been a 554 per cent increase in young women applying for trade apprenticeships. The state's Public Service Board's Job Opportunity Division reported numbers had jumped from 40 applications in 1977 to 258 the next year. The state of Western Australia now had girls employed or apprenticed in seventeen of the eighty-three trades in which men worked - including motor mechanics, painting and decorating, electrical automotive mechanics, butchering, optical mechanics, horticulture, and furniture trades.[95] The 1980s and 1990s saw more women doing non-traditional work and since then they have continued to move into formerly closed occupations and industries. Women are now 51 percent of the paid labour force, although male-dominated and female-dominated occupations persist, and driving machines and labouring jobs remain stubbornly male-dominated. [96]

Sexual harassment measures have not wiped out harassment, and violence, nor the cultures of masculinism and power that often characterise workplaces, but women's voices now have a language to use and formal recognition in federal and state legislation that has continued

93 Smith, "Wardley to Purvis," 14, 6.

94 Rosemary Munday, 'Working Women: As the 70s End, What Has Really Been Achieved?' *Australian Women's Weekly*, October 3, 1979, 16.

95 Ibid.

96 Workplace Gender Equality Agency, Gender Distribution by Occupation, 2023, Data Explorer, <www.wgea.gov.au>.

to evolve. The election of the Whitlam government in 1972 offered hope for change, made clear there could not be explicit discrimination and facilitated strategies that meant by the end of the government's term in 1975, cracks had begun to appear in the wall of male domination, and they continued to widen. Anti-discrimination laws have continued to be updated in all Australian jurisdictions.

While legal remedies and reforms were moving women towards 'equality', the 1970s broke with tradition in more radical ways. The 1970s was also the decade when neo-liberalism first began to take hold, subsequently restructuring workplaces and shifting the power towards employers and away from unions. Work has become insecure, casualised and precarious. Strategies from the 1970s do not fit readily but women's liberation also brought new theories to explaining gender power within capitalism that can be drawn on. Most important in transforming our understanding of women's experience of the workplace has been the concept of 'capitalist patriarchy' developed by 1970s socialist feminists.[97] As Michael Hardt says, this 'provides a prime illustration of the successful navigation' of conflicting issues: capitalist domination that is 'relatively gender-blind' and 'patriarchy' or male-domination that is relatively blind to economic and class differences. That they are seen to be 'completely intertwined' in neo-liberalism can offer insights and critiques for today's structures of economic and political domination.[98]

This article has shown why women's paid work warrants more attention in studies of the 1970s. Nancy MacLean pointed out that paid work has been a key site for constructing and challenging social inequality and shapes the experience of all other aspects of daily life. For those 'shut out' from full economic participation, being confined to a restricted range of job opportunities meant being lessened as a person. [99] As legal scholar

97 Heidi Hartmann and Ann Markusen, 'Contemporary Marxist Theory and Practice: A Feminist Critique,' *Review of Radical Political Economics* 12 (Summer 1980) 87-94; Heidi Hartmann, 'The Unhappy Marriage of Marxism and Feminism: Towards a More Progressive Union,' in Lydia Sargeant, ed., *Women and Revolution* (Montreal: Black Rose Books, 1981) 1-41.

98 Robin Truth Goodman, *Gender Work: Feminism After Neoliberalism* (NY: Palgrave Macmillan, 2013) Hardt, *Subversive Seventies.*

99 MacKinnon, *Sexual harassment of working women,* 7; MacLean, *Freedom is not enough,* 6-7.

Catherine MacKinnon wrote in 1979, 'Work is critical to women's survival and independence'. Women's liberation's demand for 'an absolute right to work' was and remains revolutionary in its significance. As advocates like Edna Ryan indicated at the time, women should not have to prove they are equal to men in order for their work to be recognized and valued.

University of Technology Sydney

Email: Diane.Kirkby@uts.edu.au

EXHIBITION REVIEW

Eli Branagh

‘Is it our time yet?’: Whitlam’s Legacy in Contemporary Australian Politics

Where to from here? Visions for Australia, at the Whitlam Institute, Western Sydney University, from 8 October 2025 to 5 February 2026

It has been fifty years since Governor-General John Kerr infamously invoked his constitutional power to dismiss Prime Minister Gough Whitlam, ending Australia’s most reformist government in history. Whitlam’s government passed a record 203 Bills in its first year, after being elected on the iconic campaign slogan ‘It’s Time’. Whitlam’s electoral campaign made a historical argument – and a set of promises – about the inevitable progression of time towards justice, equality, and inclusion. 50 years on, Western Sydney artists lay bare the uneven accomplishments and unfulfilled promises of Whitlam’s government in the Whitlam Institute’s exhibition, ‘Where to from here? Visions for Australia’.

The Whitlam Institute is a think tank, prime ministerial archive, and public museum dedicated to Whitlam’s legacy. The Institute partnered with Western Sydney Creative to commission twelve Western Sydney artists to respond to the Institute’s 35,000-objects-strong archival collection and three questions: where is Australia now, where are we heading, and where do we see ourselves in the future? They were also prompted to provide a question for visitors to contemplate as they viewed the exhibition.

These artworks and some accompanying archival documents are on display in the historical building of the Female Orphan School at Western Sydney University. The exhibition straddles the conventions of a museum and an art gallery. While the contents of the exhibition are concerned with historical events and ideas, the exhibition follows the art gallery convention of light signposting and few expository panels throughout. The historian will likely want for more historical context throughout the exhibition, while the average museum goer might find the lack of labels or signposting disconcerting. However, there is some benefit to the curator’s light touch: rather than prescribing a single interpretation of the artworks

on display, the exhibition creates space for visitors to form their own interpretations. Accordingly, my review reflects my general knowledge of Whitlam and subsequent interpretation of the artworks.

The few expository panels at the start of the exhibition keenly assert Whitlam's legacy as a reformer and social progressive. By contrast, the exhibited artists challenge Whitlam's legacy to ask incisive questions about the shortcomings of his government for Australian politics today. For example, Anney Bounpraseuth's *Party Crashers* (2025) is a gloriously kitschy textile recreation of Whitlam's celebratory cake after his 1972 election win. The cake is made from found and recycled fabric, ribbon, and trims, and adorned with beads, fake flowers, rhinestones, and imitation pearls. Red embroidery sprawls across the cake, cheekily quoting Cher Horowitz's high school speech about Haitian refugees in *Clueless* (1995): 'get to the kitchen, rearrange some things, we could certainly party'. The table itself is a mess, littered with fabric recreations of spills and leaks: a jar of Leggo's Italian chicken sauce splashes onto the tablecloth, leaving a blood red stain in the shape of Manus Island. (I was later delighted to learn that Whitlam appeared in a television advertisement for Leggo's in 2001, where he addressed his fellow Australians in poorly spoken Italian). A can of 'Compassiona' fruit juice leaks a yellow stain in the shape of Nauru. A bowl of salad overflows, leaving a brown stain in the shape of the New South Wales suburb that is home to the Villawood Immigration Detention Centre. Bounpraseuth serves a glorious buffet of national contradictions, juxtaposing the vapid naivety scrawled across Whitlam's cake with the bloody mess of Australia's detention centre policies. Clearly, the optimism and reforms of the Whitlam era have not created room for everyone at the national table.

Australian Filipina artist Marikit Santiago's family portraits unsettle Whitlam's legacy by attesting to migrant experience in post-Whitlam Australia. The first portrait is of her three children. Their chins are lifted as they look directly at the viewer, wearing the learned resilience and pride of children who are racially othered in their country of birth. The second portrait shows Santiago's first-generation immigrant parents standing in the front doorway of their suburban home, allowing the viewer an intimate peek into their private life. Their ageing faces smile softly but proudly, now grandparents of third-generation immigrant grandchildren. As we glimpse their tired smiles, Santiago subverts Whitlam's slogan 'It's Time' and asks 'is it our time yet?'

How aged will Santiago's parents be before their descendants get 'their time' – their justice, equality, and inclusion – in Australia?

While these artists observe the shortcomings of Whitlam's legacy in contemporary migration politics, Garry Trinh asks about his responsibility to help realise Whitlam's unfulfilled promises. Trinh's *The Gallery. Inside you is another you* (2025) is a miniature wooden recreation of the Whitlam's Cabramatta residence where the Whitlams accepted constituents into their living room and dining room to discuss their concerns. Trinh adorns the mid-century modern home with tiny family portraits, political posters, and photos of historical events. In one room, Trinh playfully hangs his own family portraits alongside Whitlam's family portraits. Peering into the small windows of the Trinh-Whitlam home, the viewer experiences the wonder of a child peering into a dollhouse. Trinh knows that Whitlam's Australia has not been fully realised for all: leaning into the viewer's child-like wonder, he poses his question in first-person so that the curious viewer asks themselves, 'how can I be helpful?'

Meanwhile, Gamilaroi and Dharug artist Travis de Vries created *Gamilaroi Founding Documents: Constitution of the Gamilaroi Nation* (2025) to manage the unravelling of Whitlam-era accomplishments for First Nations peoples. After the failure of the 2023 Voice Referendum to enshrine an Indigenous 'Voice to Parliament' in the Australia Constitution, de Vries contemplates the limitations and possibilities of writing a constitution for his own people. His constitution is four pages long and displayed as A3 prints. The speculative document instructs the colonial government to 'hear this [declaration] not as a request, but as a warning: We will not be ruled.' However, de Vries is not so self-assured in his accompanying piece. In *Fevered Visions–What are we willing to leave behind?* (2025), he frets over what might be compromised or lost in adopting a Gamilaroi constitution. The black outline of a shield floats at the centre of a large piece of canvas. Around this shield, hastily drawn lines, symbols, and words buzz like urgent working-out or brainstorming. There is an ambivalence in this working-out about how to defend de Vries' people. He writes 'We Govern', before crossing out the word 'govern'. Elsewhere, he sketches the mournfully bowed head of a man wearing a crown and a colonial breastplate with the colonisers' word 'King'. With a similar mournfulness about the difficulty of representing his peoples' interests, de Vries asks what colonial strictures a constitution imposes on the full realisation of Gamilaroi sovereignty.

Part of the success of de Vries' artwork is its display next to the archival material he drew on in his creative process. His work is displayed near the famous photograph of Whitlam pouring soil into the hand of Gurindji man Vincent Lingiari in 1975. The photograph was taken at the ceremony marking the legal transfer of Wave Hill Station back to the Gurindji people. It lends history to de Vries' anxieties about the Gamilaroi constitution as another example of what seems to be only ever partial success at asserting First Nations' sovereignty in colonial Australia.

Few artworks are placed in such direct relationship with archival material, meaning that historical details in artworks across the exhibition risk being lost on visitors. For instance, it would take a serious Whitlam fan to recognise his Cabramatta residence or his opening lines in the Leggo's advertisement. I hope the audience of this exhibition is wider than Whitlam fanatics because the works on display – half of which I have not touched on here – offer productive subversions of Whitlam's legacy. On the fiftieth anniversary of Whitlam's dismissal, these artworks refuse uncritical nostalgia about Whitlam's government. Instead, they probe at the uneven accomplishments of his 'It's Time' campaign to expose on-going injustice, inequality, and exclusion in Australian politics today.

Macquarie University

Email: Eli.Branagh@mq.edu.au

OBITUARY: IAN DUNCANSON (1946-2025)

Diane Kirkby and Margaret Thornton

Ian at his Graduation Ceremony for his PhD in politics at the University of Melbourne in 2008

It is with great sadness that ANZLHS mourns the loss of Ian Duncanson who died only a few months after being presented with ANZLHS's inaugural Outstanding Achievement Award for his leadership in the field. Initiating our annual conferences and bringing together scholars from across Australia and New Zealand, later North America and Britain, was just the beginning of Ian's contribution to fostering the field in Australia.

The British Empire was his major research project, published as a monograph *Historiography, empire, and the rule of law: imagined constitutions, remembered legalities* (Routledge, 2012). It was reviewed as "an excellent work of history and an engaging historiographical project to deconstruct the legal subject …an interesting and critical counter-history of late eighteenth and early nineteenth century legal theory," in *Law Culture and the Humanities* (June 2012): 376

Ian brought a critical perspective to the study of English legal history, no doubt because he identified with his Scots heritage. His family, originally from the Scottish Highlands, were forced to move to the lowlands in his grandfather`s time to work in the woollen mills. Scotland was his father's birthplace, and holidays spent with his grandparents fostered a deep love of the Scottish landscape and a strong class-consciousness; grounded in his grandfather's accounts of British politics and his own army service in World War One. He had been in a Highland regiment which played football

with the German and French soldiers on Christmas Eve in 1914, an event made famous in the movie *Jolie Noel*. Though born in England, Ian was a fierce Scottish nationalist and welcomed the resurgence of Scotland's Independence movement.

Ian the historian linked his early school years with his continuing work on the history of the English cultural and political landscape. His schooling was undertaken at an Independent Grammar school, High Pavement, in Nottingham. The school was established by Dissenters from the Church of England in the 18th Century, and worked hard at continuing the dissenting traditions. Ian believed that the commitment of the dissenting movement in England, to value education for all, could explain England turning towards electoral reform. The commitment came at the time other nations turned to revolution in the 18th and 19th centuries. Ian also benefited from the Scottish system of funding tertiary education as he pursued an LLB at the University of Southampton. From there he went on to postgraduate study, writing a thesis at the University of Durham, a shortened version of which was subsequently published as "Equity and Obligations" in *Modern Law Review* (May 1976). He undertook a PhD at the University of Melbourne after his teaching career had ended.

Ian came to Australia in 1980 to escape Margaret Thatcher's Britain. He began his career teaching law at the University of Newcastle-upon-Tyne and was a Senior Lecturer in Law at the University of Keele when an opportunity arose to join the Legal Studies Department at La Trobe University in Melbourne. That was a time when universities were committed to intellectual pursuits, rather than successfully performing as businesses. There he joined forces with another English-born historian, Chris Tomlins, soon to be joined by another historian, Diane Kirkby, to organise the first and next six Law and History Conferences (1982-87) held at La Trobe. The conferences were concentrated in a single room, no parallel sessions, over a single weekend, while Ian's children Sandy and Kirsty perched on the windowsills reading their books and absorbing the intellectual ambience. Today Kirsty is an Associate Professor in Legal Studies at La Trobe; and Sandy who graduated in Law from the University of Tasmania, before his untimely death from cancer in 2010, has a social justice lecture and a scholarship named in his memory (see: https://www.utas.edu.au/about/events/sandy-duncanson).

That first conference was largely Ian's initiative, and it laid the foundation for what has become an important field of scholarship. ANZLHS was formed a decade later, and the conference is still held annually, now in its 45th year. Ian was also instrumental in founding the Law and Society conference, as he pursued intellectual interests that moved him into more interdisciplinarity and a more theoretical direction. Titles of his publications indicate the intellectual range of his interests: "Legal education and legal knowledge"; "Jurisprudence"; "Nostalgia and Empire"; "Sovereignty; Postcolonial Feminist and Legal Theory"; "Contemporary issues of the semiotics of law"; "Socio-legal studies in the ages of empire"; "The sovereign, the law and the two British empires". His scholarship always brought his broad interest to the fore. In his monograph, *Historiography, Empire and the Rule of Law* he not only showed how knowledge about law and empire are embedded in history, but it's a work noteworthy for his understanding of how both imperialism and colonialism are underpinned by misogyny - an insight that all too often eludes male scholars. Ian was a scholar and a polymath. He was extraordinarily well read in the areas of history, literature, sociolegal scholarship, politics, postcolonial studies and feminist theory. He also possessed a wide knowledge of popular culture, including film and cinematography.

Ian at his book launch in 2012, courtesy of Judith Grbich

Colleagues from the Legal Studies Department which became the School of Law recall him as a legal educator par excellence, eschewing a positivistic and 'how-to' approach to legal education in favour of critical and independent thinking. He wanted students to think outside the box, i.e to think for themselves, to reject orthodoxy and not to be told how to respond to known knowledge. This may not have always been appreciated by more conservative colleagues or by students anxious to progress quickly to the corporate track; but was welcomed by the more able and imaginative students. Ian understood well that a broad liberal education such as he had experienced, would stand students in good stead in the future, rather than short-term training for job readiness, as represented by the 'Priestley eleven' (the eleven subjects specified by the admitting authorities for admission to legal practice).

Ian will be remembered for the intellectual leadership he showed, in playing a key role not only in his own school and university, but more widely in the Australian academic community. He was also a generous colleague, always willing to engage in conversation and share ideas. Ian was a convivial host, willing to continue these discussions over good food and wine; an excellent cook preparing memorable meals to accompany talk of history and politics, in conversations which continued as engaged as ever from his hospital bed, until the end was near. His extensive knowledge of and enduring passion for Scottish and British history was matched by a similarly terrific passion for knowledge, truth and justice.

Ian struggled to come to terms with the loss of Sandy but was fortunate to have Judy Grbich as his life's companion, wife, stalwart, advocate and adviser. She helped him record his memoirs and reflections. Thus we know his final thoughts were for the future of the field:

> One hopes that in the future the works of Bill Gammage and Bruce Pascoe on indigenous history of Australia - and John Borrows on Canadian First Peoples History and legality - will be included as major components of the discipline of `law and history.` As indigenous methods of recording become included within the discipline of `law and history,` the Australian contribution on indigenous works will take the time of human history back some 65,000 years. It will no longer be possible to refer to indigenous history under the theme of colonialism, when the artefacts and

> records of indigenous creation predate colonial society by some 65,000 years.

Ian also wrote,

> Speaking of legality now, at the time of my reflections upon my 50 years of scholarship, the theorization of legality for which I was always seeking, can be understood similarly to that way of governance found in the first peoples of Australia. For some 65,000 years they have practiced a way of life in which sovereignty dwells within country, that is, there is a structure of being where the indigenous person is said to be owned by the country, and have obligations to preserve and maintain both habitat, fauna and flora. Country is sovereign if one must continue to use this word simply to communicate with a western jurisprudence. However, an indigenous scholar would simply explain that Country is everything.

Ian died on July 10th , 2025, with Judy and his daughter Kirsty by his side. His legacy to our understanding of law, in and as history, and the need to challenge orthodoxies, endures.

Diane Kirkby, Honorary Professor of Law and Humanities, UTS, and Professor Emeritus La Trobe University

Margaret Thornton, Emerita Professor, ANU College of Law, Governance & Policy, formerly Professor of Law and Legal Studies, La Trobe University.

With thanks to Judy Grbich for sharing Ian's memoirs.

BOOK REVIEWS

Heidi Norman ed. *Land Back: Aboriginal Land Rights in New South Wales, Today and Always* (Kensington: Newsouth, 2025). ISBN 9781761170072, 368pp, $49.99

It has been over forty years now since New South Wales passed its *Aboriginal Land Rights Act 1983* (ARLA). At the time, it was a triumph. It took many years of advocacy and argument to achieve.

But *less than half of one per cent* of land in NSW has been returned to Aboriginal control under the Act. Considering that Aboriginal and Torres Strait Islander people make up over 3 per cent of the NSW population[1] (and besides, before colonisation began, Aboriginal people controlled 100 per cent of the land), the Act has failed to deliver even the most basic equity, let alone fulfil broader ambitions for justice through compensation and reparation. So, what happened, and what still needs to be done to get the land back?

Land Back: Aboriginal Land Rights in New South Wales, today and always seeks to answer these questions. Put together by esteemed Gomeroi historian, Heidi Norman, and arising from her research into the history of Aboriginal land rights in NSW, *Land Back* brings together a diversity of scholars, lawyers, policy-makers, activists and organisers (most of whom are Aboriginal) – a hefty thirty-four contributors across eighteen chapters to tell us what has been achieved and what is next for land and water rights.

'Getting back the land!' has always been the central objective, as Norman's interviewees emphatically reminded her. Although the simple catch-cry – 'land back!' – succinctly and clearly captures this agenda, Norman points out that the passage of history means that land rights are inevitably complex. As she writes:

> Land rights has not so much restored old rights, but created new rights in an altered social and philosophical context. In New South Wales these laws advanced more conceptual

[1] Australian Bureau of Statistics, *New South Wales: Aboriginal and Torres Strait Islander population summary*, 1 July 2022. Available online: https://www.abs.gov.au/articles/new-south-wales-aboriginal-and-torres-strait-islander-population-summary

> things, such as the economic and political autonomy and wealth and wellbeing of First Nations peoples as a distinct group. Land rights in NSW has therefore been an exercise in new selves shaped by practical and material possibilities and imbued with ideas about spiritual practices, cultural responsibilities and political ambitions (p.x).

Land rights are and have been mostly about getting 'land back', but they are also about self-determination, economic independence and cultural and spiritual resurgence. They do not hark back to a pre-colonial past. They look forward to a self-determined future.

The book is divided into four sections. The first, 'how laws operate', explains the origins and functions of the Act. Jason Berhendt's provocation, 'has the NSW ARLA (1983) failed?' sets up the debate. 'Yes and no', the contributors respond. As of 2022, only 0.2 per cent of the state had been granted (p. 9). For Behrendt, the most significant barrier is lack of political will. In 2014 an amendment to the ARLA enabled the Minister to transfer land even where it did not meet the definition of 'claimable Crown lands' under the Act (p. 13). But this all depends on the willingness of governments to act to achieve land justice (p.14).

The second section turns to 'what remains to be done'. There is plenty to be done. Janet Hunt shows us the awkward gaps and overlaps between the three Acts covering heritage protection in NSW: The ARLA, the *Native Title Act 1994* (NSW), and *National Parks and Wildlife Act 1974* (NSW). The current legislative regime makes it very difficult for Aboriginal people who speak for Country to control their own cultural heritage. Heather Goodall takes us to river rights. Country is more than 'dry land', but ARLA has 'very little to say about water and river rights' (p.70). Aboriginal collective surface water holdings of any given catchment area is usually less than 0.1 per cent of the total water holdings (p.99).

Then we learn of the ways the ARLA has failed to deliver on the core concerns of those who struggled to achieve it. Oongi Barb Flick and Karen Flick, as well as Peter Thompson give strong critiques of the present-day function of the Act. As Flick and Flick write, 'we who carried on the struggle for land justice in NSW now only see another Sydney real estate agency! There is no Aboriginal Land Council!' (p.104). Likewise, Thompson argues that 'ARLA has been a failure in the primary purpose of returning a land base to Aboriginal people' (p111). In becoming an 'everything' Act: seeking to leverage other services and rights, his

argument is that land itself is neglected. (p119). Land cannot and must not be traded away in exchange for other rights and services. Land must be inalienable: 'Land rights is not a real estate business' (p.121).

The third section, 'making ARLA work' is more optimistic, providing examples of where ARLA is working for the good of community, and how it can be made to work better. Norman demonstrates that ARLA was always intended to do more than return land, it was to support economic development. She provides an account of the history of land councils as collectivist enterprises, of Aboriginal-controlled means of economic development as a form of self-determination. A chapter from Tim Stevenson shows us how the transition to renewable energy has presented opportunities for Aboriginal people. This section also covers issues in planning and development and environmental planning,

The final section takes us to 'participation and future directions'. Ed Wensing outlines the legislative changes that are needed to harmonise the ARLA and *Native Title Act 1994* (NSW). Helpfully outlining the points of distinction between the two systems, he demonstrates the way that they unfortunately pit Aboriginal people against each other. Ash Walker takes us to what's needed next: treaty. He argues that the land rights system 'must evolve in a way which allows Traditional Owners to speak for their Country and engage meaningfully in a Treaty Process' (p.250). ARLA needs to move towards a 'traditional owner-centric structure' (p.250) that would avoid some of the difficulties pointed out by Wensing. Elija Ingram's penultimate chapter reveals the importance of young people to carry on the struggle, as well as considering the rights and contributions of those with disability.

Iva Mencevska, finally, considers 'land rights and women.' It was unfortunate that women were last. They were not an afterthought (considering most the contributors to the volume are women). But the story of land rights – and self-determination more broadly - is sometimes told as one of 'big men', and, as Mencevska shows, this is far from the case.

I was surprised by the relative absence of historians in the collection (with the significant exceptions of Heather Goodall and Norman herself) and I wondered why historians were not obvious candidates for inclusion. It seems historians have not been contributing to these discussions as we might, and those who are concerned for these issues more often find their home in other disciplines. I wondered, and worried, what this means for history, our usefulness and relevance. Because this is certainly a book

historians can learn from. Norman has brought together an incredible feast, an abundance of expertise, knowledge and experience that tell us there is plenty to celebrate about this story, and plenty more to do.

Laura Rademaker

Australian National University

Email: Laura.Rademaker@anu.edu.au