

AUSTRALIAN  
CONSTITUTION  
CENTRE

## Well may we say, "God save the Queen"

### *The 1975 Constitutional Crisis: the Dismissal*

On 11 November 1975 Australia faced its worst constitutional crisis ever. Governor-General Sir John Kerr used his reserve powers to sack Prime Minister Gough Whitlam.

Prior to the Dismissal, the Whitlam Labor Government had been unable to pass their budget through the Senate. The Liberal Opposition had 'blocked supply'. This was serious because public services, such as health and education could have shut down.

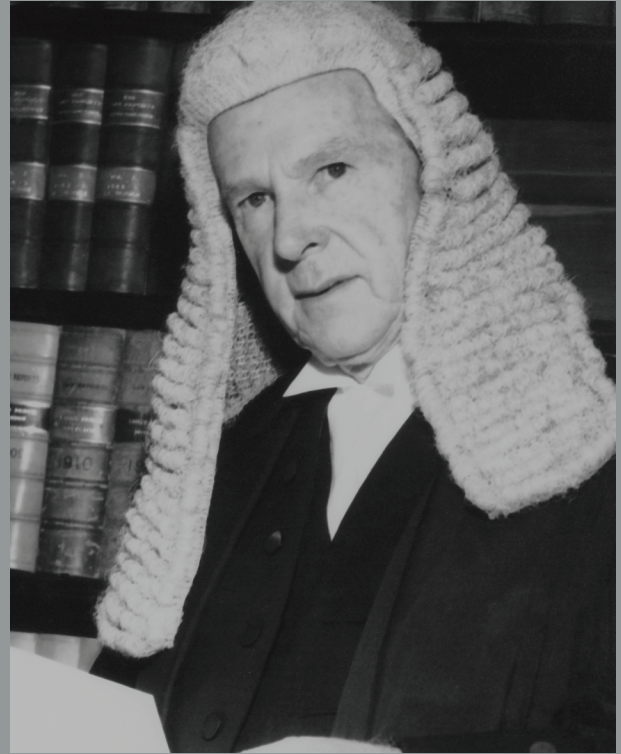
There is still discussion today about whether the Governor-General had the authority to use his reserve powers to dismiss the Prime Minister in this situation. Many argue that the Governor-General did the only thing that was available to him, while others believe he acted too quickly in removing the Prime Minister.

One of the most contentious parts of the Dismissal was that the Governor-General sought and obtained advice from Chief Justice Garfield Barwick before he sacked the Prime Minister. As the head of the Judicial branch of Government, the Chief Justice of the High Court advised the head of the Executive branch of Government that he could dismiss a Prime Minister. This created a huge controversy and blurred the lines of the principle of the Separation of Powers.

Since this affair Chief Justices Brennan and French have both publicly stated that it is unlikely for it to ever again be appropriate for a Chief Justice of the High Court to advise a Governor-General.

### The downfall of Whitlam

Gough Whitlam became Prime Minister in 1972. Much of the Labor agenda was vehemently opposed. The downfall of Whitlam can be partially attributed to the operation of section 15 of the Constitution. This sets out how Senators who



Chief Justice Garfield Barwick.  
Source: High Court of Australia

resign or die are replaced. There had been a convention (a long understood agreement) that Senate vacancies would be filled by a person nominated by the same party.

In 1975 conservative State Governments, including that of Queensland Premier Joh Bjelke-Petersen, disregarded this convention and filled Labor Senate vacancies in any manner they liked. This tipped the numbers in the Senate and led to the budget being blocked.

In 1977 the Fraser Government held a referendum to amend section 15 so that casual vacancies must be filled by someone from the same party. This alteration was approved by a majority of people in all six States with a total of 73.32% voting 'yes'.

### Background

Sir John Kerr was sworn in as Governor-General of Australia on 11 July 1974. He had previously been the Chief Justice of the Supreme Court of NSW. He sought advice from judicial colleagues about

whether or not to accept the offer to become Governor-General. When it was suggested that it was a powerless position, Kerr disagreed and pointed to the Vice-Regal prerogatives in the Constitution.

The Governor-General is nominated by the Prime Minister of the day, who recommends to the Queen to make the appointment. A memo from the Department of Prime Minister and Cabinet noted that Sir John Kerr wished to change the style of the Governor-Generalship.

Many people in Australia were outraged that the Governor-General had sacked the Prime Minister. Protests and riots occurred throughout the country. On 11 November 1975 heckling crowds drowned out the words of the Governor-General's Chief Official Secretary, David Smith, as he read the proclamation announcing a general election for both Houses.

Labor lost 30 seats in the election and the Coalition went on to win. Malcolm Fraser, who had been appointed Prime Minister by Kerr on 11 November, continued in his role until 1983.

### Did you know?

- Prior to joining the Court Barwick defended the legislation in the Communist Party Case as a barrister in 1951. This was considered by Chief Justice Latham to be the worst argument he had heard from Barwick. The legislation was ultimately found to be unconstitutional by the majority of the High Court bench (Latham CJ dissented).
- In 1953 when he was still a barrister Barwick was knighted. Only three of the seven High Court Justices had a knighthood at the time.
- One of his most notable achievements as Attorney-General was new legislation that allowed divorce on the ground of irretrievable breakdown of marriage.
- Barwick was instrumental in establishing a permanent seat for the High Court with its own building in Canberra. However his plans for the court to cease sitting on circuit in the State capitals was overridden by his colleagues.



Campaign material from the 13 December 1975 election. Source: National Museum of Australia