

Disagreements between the Houses

From time to time since Federation the governing party or coalition has not had a majority in the Senate.¹ At these times the likelihood that the Senate might reject government legislation has been substantially increased. The Senate has equal power with the House of Representatives in respect of all proposed laws, except those appropriating revenue or moneys or imposing taxation which must originate in the House. The Senate however cannot amend proposed laws imposing taxation or appropriating revenue or moneys for the ordinary annual services of the Government, or amend any proposed law so as to increase any proposed charge or burden on the people.²

The terms of the Constitution do not prevent the Senate rejecting any legislation, financial or otherwise. Prior to 1975 the Senate had neither rejected nor refused to pass an appropriation or supply bill and thus a restraint in the nature of a convention had been established that the Senate would not do so.³ Despite the actions of the opposition-controlled majority in the Senate in 1974 and 1975, which sought to cause a dissolution of the House of Representatives by means of an amendment to a motion in respect of the Appropriation Bill (No. 4) 1973-74 (*see p. 51*) and the Appropriation Bills (Nos 1 and 2) 1975-76, there has still been no occasion when the Senate has rejected outright an appropriation or supply bill. The events surrounding the Senate's actions in 1975 on Appropriation Bill (No. 1) 1975-76, as will be explained later (*see p. 53*), brought to a head the most significant disagreement between the Houses in the history of the Parliament. The situation brought into focus a number of parliamentary, procedural, constitutional and political questions.

There have been many instances where the Senate has rejected or made unacceptable amendments to legislation initiated in the House, some of which have related to major policy proposals.⁴ Not all disagreements between the Houses are finally resolved. In many instances the House has not proceeded with bills not passed by the Senate. In other cases the Senate has not insisted on its amendments. In such cases the political forces in each House compromised and acted as a check on each other. The real problems arise when no compromise can be reached between the Houses by the usual process of agreeing to amendments or requests and communicating by message. The resolution of conflicts may be by way of conferences between the Houses or ultimately by way of the procedure specified in section 57 of the Constitution leading to a double dissolution and an election for both Houses.

CONFERENCES⁵

The standing orders of both the House and Senate provide for the holding of conferences between the 2 Houses. When the House wishes to hold a conference with the

1 A circumstance in which the Senate is commonly termed 'hostile'; *and see* Appendix 20.

2 Constitution, s.53; *and see* Ch. on 'Legislation'.

3 *See* Appendixes 20 and 21.

4 *See* Ch. on 'Legislation' for resolving differences by

the process of exchange of messages.

5 For discussion of secret meetings of both Houses during wartime *see* Chs on 'Parliament House and the House of Representatives Chamber' and 'Business of the House and the sitting day'.

Senate, it sends a request by message to the Senate, stating, in general terms, the purpose of the conference and proposing the names of not less than 5 Members of the House, to be managers of the conference on behalf of the House.⁶ No conference can be requested by the House concerning any bill or motion which the Senate possesses at that time.⁷ Equal numbers of managers are nominated by the Senate and the House.⁸ The sitting of the House is suspended during a conference.⁹

When the House requests a conference, the Senate chooses the time and place it is to be held, and when the Senate requests a conference the House decides the time and place.¹⁰ If the House agrees to a conference requested by the Senate, then the managers for the House assemble at the agreed time and place, and receive the Senate managers¹¹, and vice versa if the Senate agrees to a conference requested by the House.¹²

At all conferences the reasons or resolutions of the House or Senate are communicated by the managers in writing.¹³ After the reasons or resolutions have been read, the managers of the House and Senate confer freely together by word of mouth.¹⁴ The managers of the House attempt to obtain either a withdrawal of the point in dispute by the Senate managers or a settlement of the point by modification or further amendment. If a bill is the subject of the conference, no amendment, except a consequential amendment, may be suggested by the managers to any words of a bill to which both Houses have at that stage agreed, unless these words are immediately affected by the disagreement under discussion.¹⁵ When the conference is over, the managers for both Houses report their proceedings to their respective Houses.¹⁶

There is no provision in the standing orders of either House for a request by one House for a conference on a bill originating in the other House. The Senate standing orders provide that there shall be only one conference on any bill or other matter.¹⁷

Formal conferences

Two formal conferences have been held between the Houses, both initiated by the House of Representatives. In both cases they were held in camera and standing orders 383 (now S.O. 376 — Business of the House suspended during conference) and 390 (now S.O. 383 — Duties of Managers) were suspended for the purposes of the conferences.¹⁸

On 7 August 1930 the House resolved to request a conference with the Senate on amendments, insisted upon by the Senate, to the Conciliation and Arbitration Bill 1930. The House appointed and named 5 managers.¹⁹ The Senate agreed to the conference, appointed and named 5 managers and named the Senate Committee Room (main floor) as the place and 12.30 a.m., Friday, 8 August 1930 as the time for the holding of the conference.²⁰ The managers reported to the House that some of the amendments should be agreed to, some amendments should be agreed to with modifications, and other amendments should not be agreed to. Following consideration and the exchange of further messages, the Senate returned the bill amended in accordance with the agreement reached at the conference.²¹ The bill was thereupon passed by both Houses and assented to on 18 August 1930.²²

6 S.O.s 373, 374, 375.

7 S.O. 377.

8 S.O. 378; Senate S.O. 344.

9 S.O. 376.

10 S.O. 379; Senate S.O. 345.

11 S.O. 380.

12 Senate S.O. 346.

13 S.O. 381.

14 S.O. 382; Senate S.O. 348.

15 S.O. 383.

16 S.O. 384; Senate S.O. 349.

17 Senate S.O. 350.

18 VP 1929-31/375,476.

19 VP 1929-31/375.

20 VP 1929-31/382.

21 VP 1929-31/386,393.

22 VP 1929-31/398.

On 17 December 1930 the House resolved to request a conference with the Senate on amendments, insisted upon by the Senate, to the Northern Territory (Administration) Bill 1930. The House appointed and named 5 managers.²³ On 29 April 1931 the Senate agreed to the conference, appointed and named 5 managers and appointed the Senate Committee Room (main floor) as the place, and 8.00 p.m. that day as the time, for the holding of the conference.²⁴ On 5 May the managers reported to the House that the Senate amendments should not be agreed to.²⁵ A message was received from the Senate on 6 May insisting on its amendments.²⁶ The conference report was considered in the committee of the whole on 14 May and the House did not insist on disagreeing with the amendments insisted on by the Senate.²⁷ The bill was thereupon passed by both Houses and assented to on 21 May 1931.²⁸

Informal conference

On 10 December 1921 the Prime Minister notified the House that an informal committee of 3 Members of each House had considered an amendment requested by the Senate to the Appropriation Bill 1921-22. The amendment would have reduced a salary increase for the Clerk of the House so as to maintain parity with the Clerk of the Senate. The conference recommended that there should be uniformity in salaries of the chief officers in the Senate and the House of Representatives and that in the future preparation of the estimates this uniformity should be observed. The House endorsed the recommendations and gave the necessary authority to Mr Speaker to carry them into effect.²⁹ In view of this the Senate did not press its request for amendment.³⁰

Proposed conferences or joint meetings³¹

The only other formal conference proposed on a bill was on 22 June 1950 when the Senate resolved to request a conference with the House of Representatives on an amendment insisted upon by the House to the Social Services Consolidation Bill 1950.³² This bill was initiated in the Senate. The House did not agree to the request for a conference and asked the Senate to reconsider the amendment.³³ The Senate agreed to the amendment and the bill was assented to on 28 June 1950.³⁴

On 22 September 1903 the Prime Minister moved that a 'conference' be held of all Members of both Houses to consider the selection of a site for the Seat of Government and that the Senate be requested to concur with the resolution. The motion was agreed to, after amendment, on 23 September.³⁵ On 30 September the Senate resolved not to concur with the resolution of the House³⁶ and the proposal was not further proceeded with.

On 14 May 1931 the Prime Minister made a statement to the House suggesting a 'conference' of all Members of Parliament to consider Australia's economic and financial problems.³⁷ His suggestion was that such a conference last for a week during which there would be 'a general frank discussion, devoid of party feeling'. On 21 May

23 VP 1929-31/476,497.

24 VP 1929-31/598.

25 VP 1929-31/605.

26 VP 1929-31/608.

27 VP 1929-31/613,622.

28 VP 1929-31/643.

29 VP 1920-21/863.

30 VP 1920-21/864.

be prevented should both Houses agree and determine the procedure to be followed.

32 J 1950-51/99.

33 J 1950-51/108.

34 J 1950-51/108-9,112.

35 VP 1903/141-Z,146.

36 J 1903/189.

37 VP 1929-31/621; H.R. Deb. (14.5.31)1935.

31 As distinct from a joint sitting in the terms of the Constitution. A joint meeting is not provided for in the standing orders or the Constitution but would not

1931 the Leader of the Opposition made a statement in which he opposed such a conference³⁸ and the proposal was not further proceeded with.

On 3 other occasions proposals for a conference or joint meeting of Members of both Houses have been put forward, in each case on the subject of the site for a new and permanent Parliament House.

On 28 May 1969 the Leader of the Opposition in the Senate moved that a 'conference' of both Houses be convened to express a point of view on the site of the new and permanent Parliament House.³⁹ The motion was debated and negatived by the Senate on 29 May.⁴⁰

On 6 May 1971 a similar motion was again moved and agreed to by the Senate.⁴¹ The message from the Senate requesting consideration by the House of the Senate's resolution was received by the House on 7 May⁴² but was never debated.

On 23 August 1973 a motion was moved in the House proposing a joint meeting of both Houses to determine the site of the new and permanent Parliament House.⁴³ On 24 October the House agreed to the motion which was transmitted to the Senate.⁴⁴ The House received a message from the Senate not agreeing with the proposal on 20 November 1973.⁴⁵

DOUBLE DISSOLUTION

Section 57 of the Constitution⁴⁶

It is normal procedure for a bill initiated in the House of Representatives, after being passed by the House, to be sent to the Senate for its concurrence. The Senate may amend any bill except for the restrictions contained in section 53 of the Constitution relating to appropriation and taxation measures. Otherwise the Senate has equal power with the House of Representatives in respect of all proposed laws.

If a proposed law passed by the House is rejected by the Senate or passed with amendments to which the House will not agree, or the Senate fails to pass the bill, then the constitutional means for resolving the disagreement between the Houses commences with a 'double dissolution' provided for by section 57 of the Constitution.⁴⁷ A fundamental purpose of section 57 is expressed by *Quick and Garran* which states that in the exclusive powers of the House of Representatives with regard to the initiation and amendment of money bills there is a predominating national element; and this is still further emphasised in the 'deadlock clause', which is designed to ensure that a decisive and determined majority in the national chamber shall be able to overcome the resistance of a majority in the 'provincial chamber' (the Senate).⁴⁸

Section 57 provides several distinct and successive stages in the procedure by which a disagreement may be determined and reads as follows:

If the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next

38 H.R. Deb. (21.5.31)2179.

39 J 1968-69/490.

40 J 1968-69/495-6.

41 J 1970-72/574-5.

42 VP 1970-72/631.

43 VP 1973-74/289-90.

44 VP 1973-74/476.

45 VP 1973-74/545.

46 For examination of the operation of section 57 the following references are noted: *Report from the*

Joint Committee on Constitutional Review, PP 108 (1959-60) 19-34; 'Constitutional Alteration (Avoidance of Double Dissolution Deadlocks) Bill', *Report from Senate Select Committee*, S1 (1950-51); George Howatt, *Resolving Senate-House Deadlocks in Australia without endangering the smaller States*, PP 51 (1964-66); and see Bibliography.

47 The Senate can only be dissolved pursuant to this section.

48 *Quick and Garran*, p. 339.

session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously. But such dissolution shall not take place within six months before the date of the expiry of the House of Representatives by effluxion of time.

If after such dissolution the House of Representatives again passes the proposed law, with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may convene a joint sitting of the members of the Senate and of the House of Representatives.

The members present at the joint sitting may deliberate and shall vote together upon the proposed law as last proposed by the House of Representatives, and upon amendments, if any, which have been made therein by one House and not agreed to by the other, and any such amendments which are affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives shall be taken to have been carried, and if the proposed law, with the amendments, if any, so carried is affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives, it shall be taken to have been duly passed by both Houses of the Parliament, and shall be presented to the Governor-General for the Queen's assent.

As with all prerogative powers, the Governor-General dissolves both Houses on the advice of Ministers who have the confidence of the House of Representatives.⁴⁹ However the Governor-General may exercise a reserve power to refuse such advice if he is not satisfied as to the existence of the conditions of fact set out in section 57, for example, whether there was a failure to pass the proposed law.⁵⁰ The Prime Minister's advice has been accepted in all instances to date. The differences in 1975 were that Prime Minister Whitlam did not advise a double dissolution and the Governor-General dissolved both Houses acting on the advice of newly-commissioned Prime Minister Fraser who did not have majority support in the House.

It is a requirement that both Houses be dissolved simultaneously. The process for the settlement of deadlocks is only applicable to bills which have been initiated and passed by the House of Representatives.⁵¹ There is no procedure laid down in the Constitution to resolve any deadlock on legislation initiated in the Senate.

A double dissolution cannot take place within 6 months before the date the House is due to expire by effluxion of time. According to *Quick and Garran* the purpose of this restriction is that the House of Representatives may not be permitted to court a deadlock and to force a dissolution of the Senate, when the House is on the point of expiry.⁵²

It is generally accepted that the Governor-General in granting a double dissolution should satisfy himself that there is in reality a deadlock, that the requirements of section 57 have in fact been fulfilled, and that the bill at issue is one of such public importance as to justify an election for both Houses.

There must be an interval of 3 months between the time when a bill fails to pass both Houses and the next formal step in the process. That interval is required to give time for consideration and conciliation, and to permit the development and manifestation of public opinion throughout the Commonwealth. The interval may be composed of time wholly within the same session of Parliament as that in which the bill was proposed and lost, or it may be composed of time partly in that session and partly in a recess, or in the next session. The interval may be longer than 3 months, but it cannot extend beyond the next session of the Parliament.⁵³

49 *Quick and Garran*, p. 685.

50 Lumb & Ryan, p. 38.

51 *Quick and Garran*, p. 685.

52 *Quick and Garran*, p. 686.

53 *Quick and Garran*, p. 685.

The bill which is again passed by the House and sent to the Senate after the 3 month interval must be the original bill modified only by amendments made, suggested or agreed to by the Senate.

Interpretations of the phrases 'interval of three months' and 'fails to pass', contained in section 57, have been the subject of considerable examination. Interpretations of the significance and meaning of these words are dealt with in the case studies which follow.

The 1914 double dissolution

Following the general election of 1913 the Cook Liberal Ministry was sworn in on 24 June 1913 with a majority in the House of Representatives of one and a minority in the Senate.

On 31 October 1913 the Government introduced into the House the Government Preference Prohibition Bill 1913.⁵⁴ The bill was passed by the House on 18 November 1913 after a division had been called at every stage and the closure was moved to end every debate.⁵⁵ The bill was introduced into the Senate on 20 November 1913 and on 11 December the second reading of the bill was negatived.⁵⁶ Parliament was prorogued on 19 December 1913. The bill was reintroduced into the House on 6 May 1914 and again passed by the House on 28 May.⁵⁷ During the proceedings on the bill in the House the Speaker exercised his casting vote on 6 occasions.⁵⁸ The bill was again introduced into the Senate on 28 May and negatived on the first reading.⁵⁹

On 4 June 1914 Prime Minister Cook wrote to the Governor-General (Sir Ronald Munro-Ferguson) in the following terms:

Mr. Cook presents his humble duty to His Excellency the Governor-General, and advises him, in accordance with the provisions of clause 57 of the Constitution, to dissolve simultaneously the Senate and the House of Representatives. The provisions of clause 57 of the Constitution have been completely complied with in respect of a Bill ("The Government Preference Prohibition Bill"), which has twice passed the House of Representatives, and which has been twice rejected by the Senate.

The almost equal numbers of the two parties in the House of Representatives, and the small number supporting the Government in the Senate, render it impossible to manage efficiently the public business.⁶⁰

In a lengthy background memorandum Mr Cook also told the Governor-General that the Labor majority in the Senate 'has for two successive sessions made the parliamentary machine unworkable'.⁶¹ In conclusion Mr Cook advised the Governor-General that it:

... appears that the expressed views of those who took part in the framing of the Constitution support the conclusion drawn from the language and the scheme of the Constitution itself, namely, that the discretion of the Governor-General to grant or to refuse a dissolution of both Houses, under section 57, is a discretion which can only be exercised by him in accordance with the advice of his Ministers representing a majority in the House of Representatives.⁶²

The Governor-General replied on the same day:

Referring to the Prime Minister's memorandum of this date, the Governor-General desires to inform the Prime Minister that, having considered the parliamentary situation, he has

54 VP 1913/132.

55 VP 1913/162-5.

56 J 1913/93,137.

57 VP 1914/33,61.

58 VP 1914/40,41,42,48,53,61.

59 J 1914/53.

60 *Double Dissolution—Correspondence between the late Prime Minister (the Right Honourable Joseph Cook) and His Excellency the Governor-General*, PP 2(1914-17)3.

61 PP 2(1914-17)4.

62 PP 2(1914-17)8.

decided to accede to the Prime Minister's request, and will grant an immediate simultaneous dissolution of the Senate and the House of Representatives, on condition that he receives a definite assurance that the financial position is such that adequate provision exists for carrying on the Public Service in all its branches during the period of time covered by the elections.

Mr Cook replied to the Governor-General guaranteeing that a supply bill would be introduced and passed before an election was held.⁶³

On 29 June 1914 the Governor-General prorogued Parliament⁶⁴ and on 30 July 1914 the Governor-General issued the following proclamation dissolving both Houses simultaneously⁶⁵:

PROCLAMATION

Commonwealth of
Australia to wit.
R.M. FERGUSON,
Governor-General.

By His Excellency the Right
Honorable Sir RONALD CRAUFURD MUNRO
FERGUSON a Member of His Majesty's
Most Honorable Privy Council, Knight
Grand Cross of the Most
Distinguished Order of Saint Michael
and Saint George, Governor-General
and Commander-in-Chief in and over
the Commonwealth of Australia.

WHEREAS by Section 57 of the Constitution of the Commonwealth of Australia it is provided that if the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously:

And whereas on the eighteenth day of November One thousand nine hundred and thirteen the House of Representatives passed a Bill for an Act to prohibit, in relation to Commonwealth employment, preferences and discriminations on account of membership or non-membership of an association, and the Senate on the eleventh day of December One thousand nine hundred and thirteen rejected the said Bill:

And whereas on the twenty-eighth day of May One thousand nine hundred and fourteen the House of Representatives in the next session again passed the said Bill, and the Senate on the twenty-eighth day of May One thousand nine hundred and fourteen rejected the said Bill:

And whereas it is expedient to dissolve the Senate and the House of Representatives simultaneously:

Now therefore I, the Governor-General aforesaid, do by this my Proclamation dissolve the Senate and the House of Representatives.

Given under my Hand and the Seal of the Commonwealth of Australia this thirtieth day of July in the year of our Lord One thousand nine hundred and fourteen, and in the fifth year of His Majesty's reign.

By His Excellency's Command,
JOSEPH COOK

(L.S.)

GOD SAVE THE KING!

63 PP 2(1914-17)3.

64 Gazette 38(29.6.14)99.

65 Gazette 48(30.7.14)101.

Elections were held on 5 September 1914 and the Labor Party was elected to government with a majority in both Houses. The deadlock having been broken a joint sitting did not therefore eventuate.

An interesting facet of the 1914 double dissolution was that with Prime Minister Cook's consent, the Governor-General sought advice from the Chief Justice of the High Court, Sir Samuel Griffith, who held the view that:

An occasion for the exercise of the power of double dissolution under Section 57 formally exists . . . whenever the event specified in that Section has occurred, but it does not follow that the power can be regarded as an ordinary one which may properly be exercised whenever the occasion formally exists. It should, on the contrary, be regarded as an extraordinary power, to be exercised only in cases in which the Governor-General is personally satisfied, after independent consideration of the case, either that the proposed law as to which the Houses have differed in opinion is one of such public importance that it should be referred to the electors of the Commonwealth for immediate decision by means of a complete renewal of both Houses, or that there exists such a state of practical deadlock in legislation as can only be ended in that way. As to the existence of either condition he must form his own judgment. Although he cannot act except upon the advice of his Ministers, he is not bound to follow their advice but is in the position of an independent arbiter.⁶⁶

A formal address from the Senate to the Governor-General, seeking the reasons advanced by Mr Cook for the double dissolution, was agreed to by the Senate on 17 June 1914⁶⁷ but was rejected by the Governor-General in the following terms:

I am advised by [my Advisers] that the request . . . is one the compliance with which would not only be contrary to the usual practice, but would involve a breach of the confidential relations which should always exist in this as in all other matters between the representative of the Crown and his Constitutional Ministers. I am advised further that to accede to the request . . . would imply a recognition of a right in the Senate to make the Ministers of State for the Commonwealth directly responsible to that Chamber . . . and that such a recognition would not be in accordance with the accepted principles of responsible government.⁶⁸

The 1951 double dissolution

Following the general election on 10 December 1949 a Liberal-Country Party coalition led by Prime Minister Menzies was returned to power with a majority in the House of Representatives and a minority in the Senate.

On 16 March 1950 the Commonwealth Bank Bill 1950 was introduced into the House of Representatives.⁶⁹ The bill passed the House on 4 May 1950⁷⁰ and was introduced into the Senate on 10 May.⁷¹ On 21 June the Senate passed the bill with certain amendments.⁷² On 22 June the House disagreed to the Senate amendments, and sent a message to the Senate asking the Senate to reconsider.⁷³ The Senate insisted on the amendments⁷⁴ and the House resolved that 'The House insists on disagreeing to the Amendments insisted on by the Senate'.⁷⁵ The Senate received the message from the House to this effect on 23 June. On 10 October the opposition majority in the Senate took control of business in order that the message could be considered in committee of the whole. The Senate again insisted on its amendments.⁷⁶ The message was received by the House on 11 October but was not considered.⁷⁷

66 'Memorandum by Sir Samuel Griffith', quoted in L.F. Crisp, *Australian National Government*, pp. 404-05.

67 J 1914/86-8.

68 J 1914/98. Double dissolution papers later tabled in House on 8 October 1914, VP 1914-17/5.

69 VP 1950-51/34.

70 VP 1950-51/73.

71 J 1950-51/42.

72 J 1950-51/93-4.

73 VP 1950-51/170-1.

74 J 1950-51/107-08.

75 VP 1950-51/174.

76 J 1950-51/123-5. *Odgers* gives a more detailed account on pp. 28-9.

77 VP 1950-51/195.

On 4 October 1950 the Commonwealth Bank Bill 1950 [No. 2], identical to the earlier Commonwealth Bank Bill, was introduced into the House of Representatives. Responding to a point of order the Speaker ruled that 'in accordance with certain provisions of the Constitution, it was in order for two identical bills to be before the Parliament at the one time'.⁷⁸ On 11 October the bill was declared an urgent bill and passed by the House.⁷⁹ The bill was introduced into the Senate on 12 October⁸⁰ and following its second reading on 14 March 1951 was referred to a select committee.⁸¹

On 16 March Prime Minister Menzies wrote to Governor-General McKell advising him to dissolve simultaneously both Houses and sending him supporting opinions from the Attorney-General and Solicitor-General.⁸² In his letter to the Governor-General, Mr Menzies set out the stages of proceedings on the Commonwealth Bank Bill in both Houses and stated:

... there is clear evidence that the design and intention of the Senate in relation to this Bill has been to seek every opportunity for delay, upon the principle that protracted postponement may be in some political circumstances almost as efficacious, though not so dangerous, as straight-out rejection. Since failure to pass is, in section 57, distinguished from rejection or unacceptable amendment, it must refer, among other things, to such a delay in passing the Bill or such a delaying intention as would amount to an expression of unwillingness to pass it. Clear evidence emerges from the whole of the history of the legislation in the Senate.

In particular I should emphasise two points of interest:

- (a) When the first Bill was returned to the Senate on June 23rd with a message indicating (as I have set out above) that the House of Representatives had insisted on its disagreement to the Senate's amendments, the Senate, against the vote of the Government, resolved that the message of the House of Representatives be considered in Committee of the whole "during the next sittings of the Parliament". The then sittings were about to end, and therefore the decision of the Senate postponed its further consideration of a decision already twice clearly conveyed to it by the House of Representatives until the later sittings which, in fact, commenced on October 4th, 1950. This step seems to have been taken under the belief or hope that the completion of the first condition of section 57 of the Constitution would be thereby postponed. That the sole purpose was one of delay was subsequently tacitly admitted; for, on October 10th, when the matter came on for consideration, the Senate simply reaffirmed its insistence on its amendments on a Division without debate. That this move was, as I submit, quite irrelevant and inoperative does not deprive it of its evidentiary value as an indication of the real intentions of the Senate.
- (b) When the Bill as a whole was before the Senate for the second time, its Second Reading was moved on October 17th, 1950, and the debate on that reading (notwithstanding that a precisely similar Second Reading debate had occurred months before) continued on the 1st, 2nd, 7th and 8th November.

The Senate could at that time have passed the Second Reading and appointed a Select Committee. Indeed the Leader of the Opposition stated that his party proposed to use its majority to do so. If a Select Committee had then been appointed, clearly its report could have been available a considerable time ago. But the appointment of a Committee was designed solely as an instrument of delay. The Senate therefore took no steps at that time. It waited until March 14th, 1951, before it did so.

There is no room for doubt that ever since the Bill went to the Senate for a second time on October 12th, 1950, no new issues have arisen in relation to it. It is a relatively short Bill. Its contentious provisions are clear, have been canvassed in both Houses of

78 VP 1950-51/189.

79 VP 1950-51/195-7.

80 J 1950-51/131-2.

81 J 1950-51/223-4.

82 *Simultaneous dissolution of the Senate and the House of Representatives by His Excellency the Governor-General on 19 March 1951*, PP 6(1957-58).

Parliament at great length, and have been the subject, as I have shown, of a long series of votes. The appointment of a Select Committee at this extremely late hour is conclusive evidence of an intention to delay the Bill, and clearly constitutes a failure to pass it.⁸³

In addition to stating that grounds existed for a double dissolution in respect of the Commonwealth Bank Bill, Mr Menzies also referred to disagreements between the Houses on the Social Services Consolidation Bill, the Communist Party Dissolution Bill and the National Service Bill, none of which had gone through the constitutional requirements to be the reason for a double dissolution. Mr Menzies said that in considerations surrounding the 1914 double dissolution 'some importance appears to have been attached to the unworkable condition of the Parliament as a whole' and stated that 'the present position in the Commonwealth Parliament is such that good government, secure administration, and the reasonably speedy enactment of a legislative programme are being made extremely difficult, if not actually impossible'.⁸⁴

In his foreword to the published double dissolution documents, Mr Menzies wrote on 24 May 1956:

In the course of our discussion, I had made it clear to His Excellency that, in my view, he was not bound to follow my advice in respect of the existence of the conditions of fact set out in section 57, but that he had to be himself satisfied that those conditions of fact were established.⁸⁵

In the concluding paragraph of his advice tendered to the Governor-General, Mr Menzies stated:

I am, of course, at Your Excellency's service to discuss with you the matters referred to above and also any other aspects of the problem which seem to Your Excellency to merit examination. But my advice to you is, as I have said, that you should forthwith dissolve the Senate and the House of Representatives simultaneously so that the conflicts which have arisen may be authoritatively resolved.⁸⁶

In an opinion submitted to the Governor-General by Mr Menzies, the Solicitor-General stated that he believed that the 3 month interval between the first and second passage of the bill through the House of Representatives commenced when the Senate passed the bill with amendments to which the House would not agree and that this view had also been taken in 1930 by Sir Robert Garran.⁸⁷

When the Senate considered the Commonwealth Bank Bill for the second time and referred it to a select committee it did not actually reject the bill. Therefore to comply with the constitutional requirements for a double dissolution it had to be established that the Senate had 'failed to pass' the bill. The Senate Opposition argued that a double dissolution was not justified on the grounds that:

- the reference of the bill to a select committee was a normal procedural form and should not be regarded as a 'failure to pass', and
- the required interval of 3 months had not in fact transpired.

In an opinion submitted to the Governor-General by Mr Menzies, the Attorney-General stated:

The words "fail to pass" in the section are designed to preclude the Senate, upon being proffered a Bill with an opportunity to pass it with or without amendments or to reject it, from declining to take either course, and instead deciding to procrastinate.

83 PP 6(1957-58)10-12.

84 PP 6(1957-58)12.

85 PP 6(1957-58)4.

86 PP 6(1957-58)15.

87 PP 6(1957-58)20-1.

In the present circumstances the Senate has had a second opportunity of choosing whether to pass with or without amendments or to reject the proposed law. It has declined to take either course and, unquestionably, has decided to procrastinate. In my opinion, this completely satisfies the words "fail to pass" as properly understood in the section and, in my opinion, the power of the Governor-General to dissolve both Houses has arisen.⁸⁸

The Solicitor-General made the following points in his opinion:

The addition of the words "fail to pass" is intended to bring the section into operation if the Senate, not approving a Bill, adopts procedures designed to avert the taking of either of these definitive decisions on it. The expression "fails to pass" is clearly not the same as the neutral expression "does not pass", which would perhaps imply mere lapse of time. "Failure to pass" seems to me to involve a suggestion of some breach of duty, some degree of fault, and to import, as a minimum, that the Senate avoids a decision on the Bill.

In a recent opinion, Sir Robert Garran enumerated as follows, and in terms which in general I respectfully adopt, the matters to be taken into account in ascertaining the fact of failure or non-failure to pass:—

"Mainly, I think, the ordinary practice and procedure of Parliament in dealing with Bills; including facts arising out of the unwritten law relating to the system of responsible government: the way in which the Government arranges the order of business and conducts the passage of Government measures through both Houses, and the various ways in which the Opposition seeks to oppose. It will be material to know what opportunities the Government has given for proceeding with the Bill, and what steps the Senate has taken to delay or defer consideration.

There are many ways in which the passage of a Bill may be prevented or delayed: e.g.—

- (i) It may be ordered to be read (say) this day six months.
- (ii) It may be referred to a Select Committee.
- (iii) The debate may be repeatedly adjourned.
- (iv) The Bill may be 'filibustered' by unreasonably long discussion, in House or in Committee.

The first of these would leave no room for doubt. To resolve that a Bill be read this day six months is a time-honoured way of shelving it.

The second would be fair ground for suspicion. But all the circumstances would need to be looked at.

The third, if it became systematically employed against the Government, would lead to a strong inference.

But just at what point of time failure to pass could be established, might be hard to determine . . .

In the fourth case too, the point at which reasonable discussion is exceeded, and obstruction, as differentiated from honest opposition, begins, would be very hard to determine. But sooner or later, a 'filibuster' can be distinguished from a debate . . ."

Section 57 cannot of course be regarded as nullifying the express provision in section 53 that except as provided in that section the Senate should have equal power with the House of Representatives in respect to all proposed laws. But it is equally clear that on the fair construction of section 57 a disagreement between the Houses can be shown just as emphatically by failure to pass a Bill as by its rejection or amendment. Perhaps the principle involved can be expressed by saying that the adoption of Parliamentary procedures for the purpose of avoiding the formal registering of the Senate's clear disagreement with a Bill may constitute a "failure to pass" it within the meaning of the section.⁸⁹

Mr Menzies made it clear in his memorandum to the Governor-General that he considered that the Senate had adopted parliamentary procedures for the purpose of avoiding the formal registering of the Senate's clear disagreement with the bill.

88 PP 6(1957-58)16-17.

89 PP 6(1957-58)21-2.

On 17 March the Governor-General wrote to Mr Menzies:

I have given most careful consideration to the documents referred to and have decided to adopt the advice tendered in your memorandum.⁹⁰

On 19 March the Governor-General issued a proclamation in the following terms⁹¹:

PROCLAMATION

Commonwealth of
Australia to wit.
W.J. McKELL
Governor-General.

By His Excellency the Governor-General
in and over the Commonwealth of
Australia

WHEREAS by section fifty-seven of the Constitution of the Commonwealth of Australia it is provided that if the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously:

And whereas on the fourth day of May, One thousand nine hundred and fifty, the House of Representatives passed a proposed law, namely, a bill for an Act to repeal the *Banking Act 1947-1948* and to amend the *Commonwealth Bank Act 1945-1948*:

And whereas on the twenty-first day of June, One thousand nine hundred and fifty, the Senate passed the proposed law with amendments:

And whereas on the twenty-second day of June, One thousand nine hundred and fifty, the House of Representatives disagreed to the amendments:

And whereas on the eleventh day of October, One thousand nine hundred and fifty, the House of Representatives, in the same session, again passed the proposed law:

And whereas the Senate has failed to pass the proposed law:

Now, therefore, I, the Governor-General aforesaid, do by this my Proclamation dissolve the Senate and the House of Representatives.

(L.S.) Given under my Hand and the Seal of the Commonwealth this nineteenth day of March, in the year of our Lord, One thousand nine hundred and fifty-one, and in the fifteenth year of His Majesty's reign.

By His Excellency's Command,
ROBERT G. MENZIES
Prime Minister.

GOD SAVE THE KING!

A general election was held on 28 April 1951 and the Menzies Government was returned with a majority in both Houses, enabling the Government to effect the passage of the Commonwealth Bank Bill which was assented to on 16 July 1951.⁹²

The 1974 double dissolution

On 2 December 1972 there was a general election and the Whitlam ALP Government was elected to office with a majority of 9 seats in the House of Representatives. In

90 PP 6(1957-58)23.

91 Gazette 19A(19.3.51)740A.

92 VP 1951-53/82; Act No. 16 of 1951.

the Senate the Government held only 26 of the 60 seats, the Opposition Liberal-Country Party coalition also held 26, the Democratic Labor Party 5 and 3 seats were held by independent Senators.

During the course of the 28th Parliament 6 bills were considered by the Government to have fulfilled the constitutional requirements to be treated as double dissolution bills.⁹³

On 21 March 1974 Prime Minister Whitlam announced in the House that the Government had decided to invite the Governor-General to communicate with the State Governors proposing that the next election for half the Senate should be held on 18 May 1974.⁹⁴

The catalyst for the 1974 double dissolution, however, was not so much the defeat in the Senate of government legislation but the Senate's threat to prevent passage of Appropriation Bills (Nos 3 and 5) 1973-74.

On 2 April 1974 Appropriation Bill (No. 4) 1973-74 was introduced into the House of Representatives.⁹⁵ On 10 April the bill was passed by the House and sent to the Senate.⁹⁶ On 4 April Prime Minister Whitlam had informed the House that if the Senate rejected any 'money' bill he would advise the Governor-General to dissolve both Houses.⁹⁷ Appropriation Bill (No. 4) 1973-74 was introduced into the Senate on 10 April and debate on the second reading adjourned. A motion was then moved 'That the resumption of the debate be an order of the day for a later hour of the day', to which the Leader of the Opposition in the Senate (Senator Withers) moved an amendment to add the following words to the motion:

... but not before the Government agrees to submit itself to the judgment of the people at the same time as the forthcoming Senate election . . .

The debate was interrupted to enable the Leader of the Government in the Senate (Senator Murphy) to announce that Prime Minister Whitlam had advised the Governor-General to grant a simultaneous dissolution of both Houses and that the Governor-General had agreed to do so on the condition that the necessary provisions were made for carrying on the Public Service. Senator Withers thereupon withdrew his amendment and Appropriation Bill (No. 4) was passed by the Senate⁹⁸, together with Appropriation Bills (Nos 3 and 5) 1973-74 and Supply Bills (Nos 1 and 2) 1974-75 received from the House that day.

In his advice to the Governor-General, Mr Whitlam listed the progress on the 6 bills which he considered satisfied the requirements of section 57 of the Constitution. He also gave other examples of the Senate's obstruction of the government program including the fact that 21 out of the 254 bills put before Parliament in the first session had been rejected, stood aside or deferred by the Senate.⁹⁹ Mr Whitlam provided the Governor-General with a joint opinion from the Attorney-General and the Solicitor-General which concluded that section 57 was applicable to more than one proposed law.¹⁰⁰ An opinion from the Attorney-General that the 6 bills had satisfied the requirements of section 57 accompanied the Prime Minister's advice to the Governor-General.¹⁰¹

93 See Appendix 22. For details of general Senate opposition to government activity and other political developments see *Odgers*, pp. 33 ff. and Bibliography for further reading.

94 VP 1974/65.

95 VP 1974/77.

96 VP 1974/102-03.

97 H.R. Deb. (4.4.74)1054.

98 J 1974/109-14.

99 *Simultaneous dissolution of the Senate and the House of Representatives*, 11 April 1974, PP 257(1975)4.

100 PP 257(1975)30-1.

101 PP 257(1975)32.

In his letter to the Prime Minister, accepting his advice, the Governor-General stated:

As it is clear to me that grounds for granting a double dissolution are provided by the Parliamentary history of the six Bills listed above, it is not necessary for me to reach any judgment on the wider case you have presented that the policies of the Government have been obstructed by the Senate. It seems to me that this is a matter for judgment by the electors.¹⁰²

On 11 April 1974 the Governor-General issued the following proclamation¹⁰³:

PROCLAMATION

Australia
PAUL HASLUCK
Governor-General

By His Excellency the
Governor-General of
Australia

WHEREAS by section 57 of the Constitution it is provided that if the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously:

AND WHEREAS the conditions upon which the Governor-General is empowered by that section of the Constitution to dissolve the Senate and the House of Representatives simultaneously have been fulfilled in respect of the several proposed laws intituled—

Commonwealth Electoral Act (No. 2) 1973
Senate (Representation of Territories) Act 1973
Representation Act 1973
Health Insurance Commission Act 1973
Health Insurance Act 1973
Petroleum and Minerals Authority Act 1973

NOW THEREFORE, I, Sir Paul Meernaa Caedwalla Hasluck, the Governor-General of Australia, do by this Proclamation dissolve the Senate and the House of Representatives.

(L.S.) Given under my Hand and the Great Seal of Australia on 11 April 1974.

By His Excellency's Command,

E. G. WHITLAM
Prime Minister

The elections were held on 18 May 1974 and the Whitlam Government was returned with a majority of 5 seats in the House. In the Senate, the election resulted in the Government holding 29 seats, the Liberal-Country Party coalition also holding 29, the Liberal Movement one, and one seat being held by an independent Senator.

The new Parliament met on 9 July 1974 and on 10 July the 6 double dissolution bills were introduced into the House and declared urgent bills.¹⁰⁴ The Commonwealth Electoral Bill (No. 2), the Senate (Representation of Territories) Bill and the Representation Bill were passed by the House that day.¹⁰⁵

The Health Insurance Commission Bill, the Health Insurance Bill and the Petroleum and Minerals Authority Bill were passed by the House on 11 July.¹⁰⁶ All 6 bills were negatived by the Senate at the second reading between 16 July and 24 July 1974.¹⁰⁷

¹⁰² PP 257(1975)38.

¹⁰³ Gazette 31B(11.4.74).

¹⁰⁴ VP 1974-75/17-18.

¹⁰⁵ VP 1974-75/22-4.

¹⁰⁶ VP 1974-75/26-8.

¹⁰⁷ See Appendix 22.

The Government considered that these 6 bills had then fulfilled the constitutional requirements to be submitted to a joint sitting of the Houses (for further proceedings and developments *see* pp. 68 ff.).

The 1975 double dissolution¹⁰⁸

The double dissolution of 11 November 1975 differed from earlier double dissolutions. Liberal Prime Minister Fraser who advised the Governor-General to grant a double dissolution had been Prime Minister only for a matter of hours and was not supported by a majority in the House. The bills, which had satisfied the requirements of section 57 and which formed the basis of the double dissolution, had been introduced by the ALP Government which was dismissed from office earlier that day.

From July 1974, when the 29th Parliament commenced, to November 1975, there were 21 bills fulfilling the requirements of section 57 having been twice rejected by the Senate. In addition there was Senate opposition to a considerable number of other government bills.¹⁰⁹

As with the 1974 double dissolution, the critical event leading up to the double dissolution concerned the passage of bills appropriating revenue for the ordinary annual services of the Government, namely, Appropriation Bills (Nos 1 and 2) 1975-76. It was on these bills that the Houses were in actual deadlock but they were not the bills in respect of which the double dissolution was granted. The deadlock in fact was broken when the Senate finally passed the Appropriation Bills on 11 November prior to the announcement of the proposed double dissolution (*see* p. 56). On 19 August 1975 these bills were introduced into the House¹¹⁰ and passed on 8 October.¹¹¹ The bills were introduced into the Senate on 14 October.¹¹² On 16 October the Senate agreed to the following amendment to the motion for the second reading in respect of each of the bills:

this Bill be not further proceeded with until the Government agrees to submit itself to the judgment of the people, the Senate being of the opinion that the Prime Minister and his Government no longer have the trust and confidence of the Australian people . . .¹¹³

A similar resolution had been agreed to by the Senate on the Loan Bill 1975 on the previous day.¹¹⁴ Meanwhile the House on 16 October agreed to the following motion¹¹⁵:

Considering that this House is the House of the Australian Parliament from which the Government of Australia is chosen;

Considering moreover that on 2 December 1972 the Australian Labor Party was elected by judgment of the people to be the Government of Australia; that on 18 May 1974 the Australian Labor Party was re-elected by judgment of the people to be the Government of Australia; and that the Australian Labor Party continues to have a governing majority in this House;

Recognising that the Constitution and the conventions of the Constitution vest in this House the control of the supply of money to the elected Government;

Noting that this House on 27 August 1975 passed the Loan Bill 1975 and on 8 October 1975 passed the Appropriation Bill (No. 1) 1975-76 and the Appropriation Bill (No. 2) 1975-76 which, amongst other things, appropriate moneys for the ordinary annual services of the Government;

108 There were many political factors which had a direct bearing on the 1975 double dissolution, e.g. the manner of filling casual vacancies in the Senate, the 'loans affair', and ministerial resignations. The intention here is to cover only the parliamentary aspects of the crisis.

109 *See* Appendixes 23 and 24.

110 VP 1974-75/840.

111 VP 1974-75/953-6.

112 J 1974-75/952.

113 J 1974-75/962-5.

114 J 1974-75/954-6.

115 VP 1974-75/987-90.

Noting also that on 15 October 1975, in total disregard of the practices and conventions observed in the Australian Parliament since Federation, the Leader of the Opposition announced the intention of the Opposition to delay those Bills, with the object of forcing an election of this House; that on 15 October 1975 the Leader of the Opposition in the Senate announced that the Opposition parties in the Senate would delay the Bills; and that on 15 October 1975 the Senate, against the wishes of the Government, decided not to proceed further with consideration of the Loan Bill 1975;

Considering that the actions of the Senate and of the Leader of the Opposition will, if pursued, have the most serious consequences for Parliamentary democracy in Australia, will seriously damage the Government's efforts to counter the effect of world-wide inflation and unemployment, and will thereby cause great hardship for the Australian people:

- (1) This House declares that it has full confidence in the Australian Labor Party Government;
- (2) This House affirms that the Constitution and the conventions of the Constitution vest in this House the control of the supply of moneys to the elected Government and that the threatened action of the Senate constitutes a gross violation of the roles of the respective Houses of the Parliament in relation to the appropriation of moneys;
- (3) This House asserts the basic principle that a Government that continues to have a majority in the House of Representatives has a right to expect that it will be able to govern;
- (4) This House condemns the threatened action of the Leader of the Opposition and of the non-government parties in the Senate as being reprehensible and as constituting a grave threat to the principles of responsible government and of Parliamentary democracy in Australia, and
- (5) This House calls upon the Senate to pass without delay the Loan Bill 1975, the Appropriation Bill (No. 1) 1975-76 and the Appropriation Bill (No. 2) 1975-76.

Following the above resolution and receipt of Senate messages communicating its resolutions on the Appropriation and Loan Bills on 16 October 1975¹¹⁶, a series of further messages concerning the bills were exchanged between the Houses:

- On 21 October the House asserted that the Senate's action on the Appropriation Bills was not contemplated within the terms of the Constitution and was contrary to established constitutional convention.¹¹⁷ On the same day in considering the Senate's resolution in relation to the Loan Bill the House resolved that the action of the Senate in delaying the passage of the bill for the reasons given in the Senate's resolution was contrary to the accepted means of financing a major portion of the defence budget and requested the Senate to pass the bill without delay¹¹⁸;
- On 22 October the Senate asserted that its action in delaying the bills was a lawful and proper exercise within the terms of the Constitution and added several statements to support this view¹¹⁹;
- On 28 October the House, in dealing with the Senate's message, denounced the Senate's action as a blatant attempt to violate section 28 of the Constitution¹²⁰ for political purposes by itself endeavouring to force an early election for the House of Representatives and resolved that it would uphold the established right of the Government with a majority in the House of Representatives to be the Government of the nation¹²¹;
- On 5 November the Senate rejected the House's claims¹²² and the House, when dealing with the Senate's reply, declared that the Constitution and its conventions

¹¹⁶ VP 1974-75/992-3,997-8.

¹¹⁷ VP 1974-75/1004-06.

¹¹⁸ VP 1974-75/1007-09.

¹¹⁹ J 1974-75/978-80.

¹²⁰ Section 28 reads 'Every House of Representatives

shall continue for 3 years from the first meeting of the House and no longer, but may be sooner dissolved by the Governor-General'.

¹²¹ VP 1974-75/1045-7.

¹²² J 1974-75/1016-18.

vest in the House the control of the supply of moneys to the elected Government and that the action of the Senate constituted a gross violation of the roles of the respective Houses in relation to the appropriation of moneys. The House further declared its concern that the unprecedented and obstructive stand taken by the Senate in continuing to defer the passage of the bills was undermining public confidence in the parliamentary system of government¹²³, and

- A further resolution was agreed to by the Senate on the same day with respect to the Loan Bill 1975 [No. 2] in the same terms as that agreed to on the first Loan Bill on 15 October but was not considered by the House.¹²⁴

Whilst these messages were being exchanged between the Houses, the House on 22 October and again on 29 October, introduced and passed Appropriation Bills similar to the first bills.¹²⁵ Upon receipt of these sets of bills, the Senate, on each occasion, again resolved that the bills would not be further proceeded with until the Government agreed to submit itself to the judgment of the people. The Senate resolution on the third set of bills was transmitted but was not considered by the House.¹²⁶

The Government was not only faced with the problem of the general obstruction of the Senate to its legislative program. By early November, the moneys provided by the supply bills to maintain the public services of the country for the first 5 months of the financial year, pending the passage of the main Appropriation Bills, were becoming depleted and there were indications that there would be insufficient moneys to meet the necessary commitments of the Government at some time prior to 30 November.

A motion of want of confidence in the Government had been moved on 29 October and defeated¹²⁷ and on 6 November, 4 sitting days later, Leader of the Opposition Fraser gave notice of a motion of censure of the Government based on the consequences of the Appropriation Bills failing to pass both Houses.

The next sitting day, 11 November, produced a sudden and dramatic climax of events. The Government allowed precedence to the motion of censure to which Prime Minister Whitlam moved an amendment censuring Leader of the Opposition Fraser. The motion, as amended, was agreed to by the House.¹²⁸

During the lunch adjournment Mr Whitlam went to Government House for a prearranged meeting with Governor-General Kerr. Mr Whitlam intended to advise His Excellency to approve an election for half the Senate, which was due in any case before 30 June 1976. During the course of the meeting the Governor-General terminated Mr Whitlam's commission as Prime Minister. The following is the text of the letter of dismissal¹²⁹:

Government House,
Canberra. 2600
11 November 1975

Dear Mr Whitlam,

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

You have previously told me that you would never resign or advise an election of the House of Representatives or a double dissolution and that the only way in which such an election could be obtained would be by my dismissal of you and your ministerial colleagues. As it appeared likely that you would today persist in this attitude I decided that, if you did, I

123 VP 1974-75/1105-07.

124 J 1974-75/1018-20; VP 1974-75/1107.

125 VP 1974-75/1017-21, 1067-70.

126 J 1974-75/987-8, 1023-4; VP 1974-75/1118.

127 VP 1974-75/1059-60.

128 VP 1974-75/1121-3.

129 *Simultaneous dissolution of the Senate and the House of Representatives by His Excellency the Governor-General on 11 November 1975*, PP 15(1979)1.

would determine your commission and state my reasons for doing so. You have persisted in your attitude and I have accordingly acted as indicated. I attach a statement of my reasons which I intend to publish immediately.

It is with a great deal of regret that I have taken this step both in respect of yourself and your colleagues.

I propose to send for the Leader of the Opposition and to commission him to form a new caretaker government until an election can be held.

Yours sincerely,
(signed John R. Kerr)

The Honourable E. G. Whitlam, Q.C., M.P.

At 2.34 that afternoon Mr Fraser announced to the House that the Governor-General had commissioned him to form a Government.¹³⁰ The Governor-General informed the Speaker by letter that he had that day determined the appointment of Mr Whitlam and had commissioned and administered the oath of office to Mr Fraser as Prime Minister. In accepting the commission Prime Minister Fraser made the following undertakings in a letter to the Governor-General:

. . . I confirm that I have given you an assurance that I shall immediately seek to secure the passage of the Appropriation Bills which are at present before the Senate, thus ensuring Supply for the carrying on of the Public Service in all its branches. I further confirm that, upon the granting of Supply, I shall immediately recommend to Your Excellency the dissolution of both Houses of this Parliament.

My Government will act as a caretaker government and will make no appointments or dismissals or initiate new policies before a general election is held.¹³¹

A few minutes before Mr Fraser made his announcement in the House, the Senate had passed the main Appropriation Bills.¹³² Following Mr Fraser's announcement, the House agreed to the following motion by Mr 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 the Honourable Member for Werriwa [Mr Whitlam] to form a Government.¹³³

In speaking to his motion Mr Whitlam stated:

There is no longer a deadlock on the Budget between the House of Representatives and the Senate. The Budget Bills have been passed. Accordingly, the Government which twice has been elected by the people is able to govern. Furthermore, as has been demonstrated this afternoon, the parties which the Prime Minister leads do not have a majority in the House of Representatives. The party I lead has a majority in the House of Representatives. It has never been defeated in the year and a half since the last election and in those circumstances it is appropriate, I believe, that you, Mr Speaker, should forthwith advise the Governor-General—waiting upon him forthwith to advise him—that the party I lead has the confidence of the House of Representatives, and you should apprise His Excellency of the view of the House that I have the confidence of the House and should be called to form His Excellency's Government.¹³⁴

At 3.15 p.m. the Speaker suspended the sitting and sought an appointment with the Governor-General to convey to him the terms of the House's resolution. An appointment was made for the Speaker to see the Governor-General at 4.45 p.m. At 4.30 p.m. the Governor-General dissolved both Houses and at 4.45 p.m. the double dissolution proclamation, in accordance with practice, was read by the Governor-General's

¹³⁰ H.R. Deb. (11.11.75)2928; Gazette S227(11.11.75).

¹³¹ H.R. Deb. (11.11.75)2928.

¹³² J 1974-75/1031.

¹³³ VP 1974-75/1125-7.

¹³⁴ H.R. Deb. (11.11.75)2931.

Official Secretary on the steps of Parliament House. The sittings of the Houses did not resume. The double dissolution proclamation was signed before the Speaker was able to see the Governor-General and present the House's resolution to him.¹³⁵

The double dissolution proclamation read as follows¹³⁶:

PROCLAMATION

Australia
JOHN R. KERR
Governor-General.

By His Excellency the
Governor-General of
Australia

WHEREAS by section 57 of the Constitution it is provided that if the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously:

AND WHEREAS the conditions upon which the Governor-General is empowered by that section of the Constitution to dissolve the Senate and the House of Representatives simultaneously have been fulfilled in respect of the several proposed laws intituled —

Health Insurance Levy Act 1974
Health Insurance Levy Assessment Act 1974
Income Tax (International Agreements) Act 1974
Minerals (Submerged Lands) Act 1974
Minerals (Submerged Lands) (Royalty) Act 1974
National Health Act 1974
Conciliation and Arbitration Act 1974
Conciliation and Arbitration Act (No. 2) 1974
National Investment Fund Act 1974
Electoral Laws Amendment Act 1974
Electoral Act 1975
Privy Council Appeals Abolition Act 1975
Superior Court of Australia Act 1974
Electoral Re-distribution (New South Wales) Act 1975
Electoral Re-distribution (Queensland) Act 1975
Electoral Re-distribution (South Australia) Act 1975
Electoral Re-distribution (Tasmania) Act 1975
Electoral Re-distribution (Victoria) Act 1974
Broadcasting and Television Act (No. 2) 1974
Television Stations Licence Fees Act 1974
Broadcasting Stations Licence Fees Act 1974

NOW THEREFORE, I Sir John Robert Kerr, the Governor-General of Australia, do by this my Proclamation dissolve the Senate and the House of Representatives.

(L.S.) Given under my Hand and the Great Seal of Australia on 11 November 1975.

By His Excellency's Command,
MALCOLM FRASER
Prime Minister

GOD SAVE THE QUEEN!

¹³⁵ An acknowledgement, dated 13 November, of receipt of the resolution of the House was received by the Speaker on 17 November.

¹³⁶ Gazette S229(11.11.75).

The Governor-General made public the same day his reasons for dismissing Prime Minister Whitlam¹³⁷:

Statement by the Governor-General

I have given careful consideration to the constitutional crisis and have made some decisions which I wish to explain.

Summary

It has been necessary for me to find a democratic and constitutional solution to the current crisis which will permit the people of Australia to decide as soon as possible what should be the outcome of the deadlock which developed over supply between the two Houses of Parliament and between the Government and the Opposition parties. The only solution consistent with the Constitution and with my oath of office and my responsibilities, authority and duty as Governor-General is to terminate the commission as Prime Minister of Mr Whitlam and to arrange for a caretaker government able to secure supply and willing to let the issue go to the people.

I shall summarise the elements of the problem and the reasons for my decision which places the matter before the people of Australia for prompt determination.

Because of the federal nature of our Constitution and because of its provisions the Senate undoubtedly has constitutional power to refuse or defer supply to the Government. Because of the principles of responsible government a Prime Minister who cannot obtain supply, including money for carrying on the ordinary services of government, must either advise a general election or resign. If he refuses to do this I have the authority and indeed the duty under the Constitution to withdraw his Commission as Prime Minister. The position in Australia is quite different from the position in the United Kingdom. Here the confidence of both Houses on supply is necessary to ensure its provision. In the United Kingdom the confidence of the House of Commons alone is necessary. But both here and in the United Kingdom the duty of the Prime Minister is the same in a most important respect —if he cannot get supply he must resign or advise an election.

If a Prime Minister refuses to resign or to advise an election, and this is the case with Mr Whitlam, my constitutional authority and duty require me to do what I have now done—to withdraw his commission—and to invite the Leader of the Opposition to form a caretaker government—that is one that makes no appointments or dismissals and initiates no policies, until a general election is held. It is most desirable that he should guarantee supply. Mr Fraser will be asked to give the necessary undertakings and advise whether he is prepared to recommend a double dissolution. He will also be asked to guarantee supply.

The decisions I have made were made after I was satisfied that Mr Whitlam could not obtain supply. No other decision open to me would enable the Australian people to decide for themselves what should be done.

Once I had made up my mind, for my own part, what I must do if Mr Whitlam persisted in his stated intentions I consulted the Chief Justice of Australia, Sir Garfield Barwick. I have his permission to say that I consulted him in this way.

The result is that there will be an early general election for both Houses and the people can do what, in a democracy such as ours, is their responsibility and duty and theirs alone. It is for the people now to decide the issue which the two leaders have failed to settle.

Detailed Statement of Decisions

On 16 October the Senate deferred consideration of Appropriation Bills (Nos 1 & 2) 1975-76. In the time which elapsed since then events made it clear that the Senate was determined to refuse to grant supply to the Government. In that time the Senate on no less than two occasions resolved to proceed no further with fresh Appropriation Bills, in identical terms, which had been passed by the House of Representatives. The determination of the Senate to maintain its refusal to grant supply was confirmed by the public statements made by the Leader of the Opposition, the Opposition having control of the Senate.

137 PP 15(1979)2-4.

By virtue of what has in fact happened there therefore came into existence a deadlock between the House of Representatives and the Senate on the central issue of supply without which all the ordinary services of the government cannot be maintained. I had the benefit of discussions with the Prime Minister and, with his approval, with the Leader of the Opposition and with the Treasurer and the Attorney-General. As a result of those discussions and having regard to the public statements of the Prime Minister and the Leader of the Opposition I have come regretfully to the conclusion that there is no likelihood of a compromise between the House of Representatives and the Senate nor for that matter between the Government and the Opposition.

The deadlock which arose was one which, in the interests of the nation, had to be resolved as promptly as possible and by means which are appropriate in our democratic system. In all the circumstances which have occurred the appropriate means is a dissolution of the Parliament and an election for both Houses. No other course offers a sufficient assurance of resolving the deadlock and resolving it promptly.

Parliamentary control of appropriation and accordingly of expenditure is a fundamental feature of our system of responsible government. In consequence it has been generally accepted that a government which has been denied supply by the Parliament cannot govern. So much at least is clear in cases where a ministry is refused supply by a popularly elected Lower House. In other systems where an Upper House is denied the right to reject a money bill denial of supply can occur only at the instance of the Lower House. When, however, an Upper House possesses the power to reject a money bill including an appropriation bill, and exercises the power by denying supply, the principle that a government which has been denied supply by the Parliament should resign or go to an election must still apply—it is a necessary consequence of Parliamentary control of appropriation and expenditure and of the expectation that the ordinary and necessary services of government will continue to be provided.

The Constitution combines the two elements of responsible government and federalism. The Senate is, like the House, a popularly elected chamber. It was designed to provide representation by States, not by electorates, and was given by Sec. 53, equal powers with the House with respect to proposed laws, except in the respects mentioned in the section. It was denied power to originate or amend appropriation bills but was left with power to reject them or defer consideration of them. The Senate accordingly has the power and has exercised the power to refuse to grant supply to the Government. The Government stands in the position that it has been denied supply by the Parliament with all the consequences which flow from that fact.

There have been public discussions about whether there is a convention deriving from the principles of responsible government that the Senate must never under any circumstances exercise the power to reject an appropriation bill. The Constitution must prevail over any convention because, in determining the question how far the conventions of responsible government have been grafted on to the federal compact, the Constitution itself must in the end control the situation.

Sec. 57 of the Constitution provides a means, perhaps the usual means, of resolving a disagreement between the Houses with respect to a proposed law. But the machinery which it provides necessarily entails a considerable time lag which is quite inappropriate to a speedy resolution of the fundamental problems posed by the refusal of supply. Its presence in the Constitution does not cut down the reserve powers of the Governor-General.

I should be surprised if the Law Officers expressed the view that there is no reserve power in the Governor-General to dismiss a Ministry which has been refused supply by the Parliament and to commission a Ministry, as a caretaker ministry which will secure supply and recommend a dissolution, including where appropriate a double dissolution. This is a matter on which my own mind is quite clear and I am acting in accordance with my own clear view of the principles laid down by the Constitution and of the nature, powers and responsibility of my office.

There is one other point. There has been discussion of the possibility that a half-Senate election might be held under circumstances in which the Government has not obtained

supply. If such advice were given to me I should feel constrained to reject it because a half-Senate election held whilst supply continues to be denied does not guarantee a prompt or sufficiently clear prospect of the deadlock being resolved in accordance with proper principles. When I refer to rejection of such advice I mean that, as I would find it necessary in the circumstances I have envisaged to determine Mr Whitlam's commission and, as things have turned out have done so, he would not be Prime Minister and not able to give or persist with such advice.

The announced proposals about financing public servants, suppliers, contractors and others do not amount to a satisfactory alternative to supply.

Government House,
Canberra. 2600.
11 November 1975

The advice tendered by the Chief Justice was¹³⁸:

Dear Sir John,

In response to Your Excellency's invitation I attended this day at Admiralty House. In our conversations I indicated that I considered myself, as Chief Justice of Australia, free, on Your Excellency's request, to offer you legal advice as to Your Excellency's constitutional rights and duties in relation to an existing situation which, of its nature, was unlikely to come before the Court. We both clearly understood that I was not in any way concerned with matters of a purely political kind, or with any political consequences of the advice I might give.

In response to Your Excellency's request for my legal advice as to whether a course on which you had determined was consistent with your constitutional authority and duty, I respectfully offer the following.

The Constitution of Australia is a federal Constitution which embodies the principle of Ministerial responsibility. The Parliament consists of two houses, the House of Representatives and the Senate, each popularly elected, and each with the same legislative power, with the one exception that the Senate may not originate nor amend a money bill.

Two relevant constitutional consequences flow from this structure of the Parliament. First, the Senate has constitutional power to refuse to pass a money bill; it has power to refuse supply to the Government of the day. Secondly, a Prime Minister who cannot ensure supply to the Crown, including funds for carrying on the ordinary services of Government, must either advise a general election (of a kind which the constitutional situation may then allow) or resign. If, being unable to secure supply, he refuses to take either course, Your Excellency has constitutional authority to withdraw his Commission as Prime Minister.

There is no analogy in respect of a Prime Minister's duty between the situation of the Parliament under the federal Constitution of Australia and the relationship between the House of Commons, a popularly elected body, and the House of Lords, a non-elected body, in the unitary form of Government functioning in the United Kingdom. Under that system, a Government having the confidence of the House of Commons can secure supply, despite a recalcitrant House of Lords. But it is otherwise under our federal Constitution. A Government having the confidence of the House of Representatives but not that of the Senate, both elected Houses, cannot secure supply to the Crown.

But there is an analogy between the situation of a Prime Minister who has lost the confidence of the House of Commons and a Prime Minister who does not have the confidence of the Parliament, i.e. of the House of Representatives and of the Senate. The duty and responsibility of the Prime Minister to the Crown in each case is the same: if unable to secure supply to the Crown, to resign or to advise an election.

In the event that, conformably to this advice, the Prime Minister ceases to retain his Commission, Your Excellency's constitutional authority and duty would be to invite the Leader of the Opposition, if he can undertake to secure supply, to form a caretaker government (i.e. one which makes no appointments or initiates any policies) pending a general

¹³⁸ Kerr, pp. 342-4.

election, whether of the House of Representatives, or of both Houses of the Parliament, as that Government may advise.

Accordingly, my opinion is that, if Your Excellency is satisfied in the current situation that the present Government is unable to secure supply, the course upon which Your Excellency has determined is consistent with your constitutional authority and duty.

Yours respectfully,
(sgnd Garfield Barwick)

His Excellency the Honourable Sir John Kerr, K.C.M.G
Governor-General of Australia
Admiralty House
SYDNEY
10 November 1975.

On the following day Mr Scholes, as Speaker, wrote to the Queen expressing his serious concern that¹³⁹:

. . . the failure of the Governor-General to withdraw Mr. Fraser's commission and his decision to delay seeing me as Speaker of the House of Representatives until after the dissolution of the Parliament had been proclaimed were acts contrary to the proper exercise of the Royal prerogative and constituted an act of contempt for the House of Representatives. It is improper that your representative should continue to impose a Prime Minister on Australia in whom the House of Representatives has expressed its lack of confidence and who has not on any substantial resolution been able to command a majority of votes on the floor of the House of Representatives.

It is my belief that 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 and will damage the standing of your representative in Australia and even yourself.

I would ask that you act in order to restore Mr Whitlam to office as Prime Minister in accordance with the expressed resolution of the House of Representatives . . .

On 17 November the Queen's Private Secretary, at the command of Her Majesty, replied that¹⁴⁰:

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

The election was held on 13 December 1975 and the Liberal-Country Party coalition gained a majority of seats in both Houses and the question of a joint sitting did not therefore arise. The result of the election was:

- House of Representatives—
 - Liberal Party 68
 - National Country Party 23
 - Australian Labor Party 36
- Senate—
 - Liberal Party 27
 - National Country Party 8
 - Australian Labor Party 27
 - Liberal Movement 1
 - Independent 1

139 H.R. Deb. (17.2.76)5.

140 H.R. Deb. (17.2.76)6.

A full time-table of events of the 1975 parliamentary crisis in a precise form follows:

**TABLE 2 CHRONOLOGY OF PARLIAMENTARY EVENTS
AUGUST-DECEMBER 1975(a)**

19 August	Appropriation Bills (Nos 1 and 2) 1975-76 introduced into House of Representatives.
20 August	Loan Bill 1975 introduced into House.
27 August	Loan Bill 1975 passed House and introduced into Senate.
3 September	Queensland Parliament chose to fill Senate casual vacancy with Albert Patrick Field who was not a nominee of the same political party as former Senator.
9 September	Senator Field sworn in.
8 October	Appropriation Bills (Nos 1 and 2) passed House.
14 October	Appropriation Bills (Nos 1 and 2) introduced into Senate.
15 October	Senate resolved not to proceed with Loan Bill until the Government agreed to submit itself to the judgment of the people, etc. Resolution communicated to House.
16 October	Senate resolved not to proceed with Appropriation Bills (Nos 1 and 2) in the same terms as adopted in respect of the Loan Bill the previous day. Resolutions communicated to House. Motion of confidence in the Government and the role of the House of Representatives agreed to by the House.
21 October	House resolved that the Senate's action on the Appropriation Bills was not <i>contemplated within terms of the Constitution and was contrary to established constitutional convention</i> , etc. House resolved that the Senate's action in delaying the Loan Bill was contrary to the accepted means of financing a major portion of the defence budget, etc. Resolutions communicated to Senate.
22 October	Senate resolved that its action in delaying the Appropriation Bills was a lawful and proper exercise, within the terms of the Constitution, of the powers of the Senate, etc. Resolution communicated to House. Bills identical to original Appropriation Bills and entitled Appropriation Bills (Nos 1 and 2) 1975-76 [No. 2] introduced and passed by House and introduced into Senate. Loan Bill 1975 [No. 2] introduced and passed House.
23 October	Senate resolved not to proceed with Appropriation Bills [No. 2] until the Government agreed to submit itself to the judgment of the people, etc.
28 October	House further denounced the Senate's actions in relation to original <i>Appropriation Bills</i> . Resolution communicated to Senate. Senate considered resolution of House relating to original Loan Bill. Further resolution proposed and negatived. Loan Bill [No. 2] introduced into Senate.
29 October	Motion of want of confidence in the Government moved in House and negatived. Bills identical to original Appropriation Bills and entitled Appropriation Bills (Nos 1 and 2) 1975-76 [No. 3] introduced and passed House.
5 November	Senate rejected House's claims of 28 October in relation to original <i>Appropriation Bills</i> . Resolution communicated to House. Appropriation Bills [No. 3] introduced into Senate.

TABLE 2 CHRONOLOGY OF PARLIAMENTARY EVENTS
AUGUST-DECEMBER 1975(a)—continued

	Senate resolved not to proceed with Loan Bill [No. 2] in the same terms as adopted in respect of original Loan Bill on 15 October. Resolution communicated but not considered by House.
	House considered Senate resolution of 5 November in relation to original Appropriation Bills and again denounced actions of Senate. Resolution communicated to Senate.
6 November	Governor-General provided with an opinion of the Solicitor-General, dated 4 November, concerning the deadlock and the constitutional position.
	Leader of the Opposition gave a notice of motion of censure of the Government.
	Senate resolved not to proceed with Appropriation Bills [No. 3] in same terms as adopted in respect of original Appropriation Bills. Resolution communicated but not considered by House.
10 November	Chief Justice, by letter, advised Governor-General as to his 'constitutional rights and duties'.
11 November	
9.00 a.m.	Prime Minister, Leader of the Opposition and their senior colleagues met to discuss crisis.
10.00*	Leader of the Opposition telephoned Prime Minister and informed him that Appropriation Bills would not be passed. Opposition parties meeting scheduled for this time delayed while opposition leaders continued talks.
	Prime Minister telephoned Governor-General to make an appointment for 1 p.m. and informed him that he would then advise a half-Senate election.
10.10	Labor Caucus met and endorsed Prime Minister's decision to ask the Governor-General for a half-Senate election.
10.30	Opposition parties met.
11.45	House met.
11.46	Government allowed precedence to motion of censure of the Government.
12.00 noon	Senate met.
12.10	Prime Minister moved amendment to censure motion, censuring Leader of the Opposition.
12.50*	Prime Minister arrived at Government House to advise Governor-General of a half-Senate election.
12.55	House sitting suspended for lunch.
1.00	Senate sitting suspended for lunch.
1.01*	Governor-General determined Mr Whitlam's commission as Prime Minister.
1.30*	Governor-General swore in Mr Fraser as 'caretaker' Prime Minister.
2.00	House and Senate resumed sitting.
2.05*	Government House issued press release announcing Prime Minister had been dismissed.
2.23	Appropriation Bills (Nos 1 and 2) 1975-76 passed Senate.
2.24	Senate sitting suspended until ringing of bells.
2.33	Mr Whitlam's amendment to censure motion agreed to by House.
2.34	Mr Fraser informed House that the Governor-General had commissioned him to form a Government. Mr Fraser unsuccessfully moved adjournment of House.
2.49	Standing orders suspended to enable Mr Whitlam to move a motion without notice forthwith.

TABLE 2 CHRONOLOGY OF PARLIAMENTARY EVENTS
AUGUST-DECEMBER 1975(a)—continued

3.01	Mr Whitlam moved motion expressing want of confidence in the Prime Minister and requesting Mr Speaker forthwith to advise the Governor-General to call Mr Whitlam to form a Government.
3.14	Mr Whitlam's motion agreed to. Speaker stated he would convey resolution of the House to Governor-General at the first opportunity.
3.15	Messages from Senate reported returning Appropriation Bills without amendments or requests. House sitting suspended.
*	Speaker made appointment with Governor-General for 4.45 p.m.
3.40*	Mr Fraser, together with Secretary of Attorney-General's Department, met Governor-General and advised that the Appropriation Bills had been passed and were being presented to him for assent, and recommended that the Governor-General dissolve both Houses.
3.50*	Appropriation Bills arrived at Government House and assented to by Governor-General.
4.30*	Governor-General dissolved House and Senate which did not resume sitting.
4.35*	Speaker arrived early at gates of Government House and kept waiting.
4.40*	Speaker met with Governor-General.
4.45*	Dissolution of both Houses proclaimed on steps of Parliament House.
12 November	'Caretaker' Ministry sworn in. Mr Fraser provided Governor-General with a formal opinion of the Solicitor-General in respect of 21 bills that satisfied requirements of section 57 of Constitution. Speaker communicated House resolution of 11 November to the Queen requesting her to intervene and restore Mr Whitlam to office.
17 November	Writs for elections issued with exception of South Australia and Western Australia Senate elections.
18 November	Chief Justice's advice of 10 November published.
21 November	Writs for South Australia and Western Australia Senate elections issued.
24 November	Reply of Queen's Private Secretary dated 17 November received by Speaker.
13 December	Elections for both Houses held.

(a) For terms of resolutions see pp. 53 ff. The timetable was mainly compiled from parliamentary records. Reference was also made to Gough Whitlam, *The Truth of the Matter* and John Kerr, *Matters for Judgment*.

* Denotes approximate time.

SIGNIFICANCE OF THE CONSTITUTIONAL CRISIS OF 1975

The political upheavals of 1975 add up to the most significant constitutional developments in this country since federation. They resulted in a fundamental redistribution of power between the two Houses of the national parliament and between Parliament and the executive. Owing to the result of the election [13 December 1975] the more important effects of the change are unlikely to become obvious for a while yet, but it would be unrealistic to hope that they will remain quiescent for more than a few years at most.¹⁴¹

¹⁴¹ Colin Howard, 'The constitutional crisis of 1975', *Australian Quarterly* 31, 1, 1976, p. 5.

The foregoing comment from Professor Colin Howard, Hearn Professor of Law, University of Melbourne, reflects the view of a wide spectrum of academic and political thought in Australia.

The significant departure from constitutional conventions which occurred in 1975 naturally calls for reflection on the intention of the framers of the Constitution. *Quick and Garran*, who were intimately involved in the development of the Constitution, made pertinent commentaries in their classical treatise which they described as a 'minute and impartial analysis of every fundamental word, phrase, and enactment of the Constitution'.¹⁴²

The eminent authors referred to the possible differences which could emerge over time between the Houses and commented on the way in which it was foreseen that the concept of responsible government and majority rule (as seen in the House) and State representation (as provided for in the Senate) would operate in the Federal Parliament.

First, the role of the Crown in relation to the Cabinet was set out:

Whilst the Constitution, in sec. 61, recognizes the ancient principle of the Government of England that the Executive power is vested in the Crown, it adds as a graft to that principle the modern political institution, known as responsible government, which shortly expressed means that the discretionary powers of the Crown are exercised by the wearer of the Crown or by its Representative according to the advice of ministers, having the confidence of that branch of the legislature which immediately represents the people. The practical result is that the Executive power is placed in the hands of a Parliamentary Committee, called the Cabinet, and the real head of the Executive is not the Queen but the Chairman of the Cabinet, or in other words the Prime Minister. (Dicey, *Law of the Const.* p. 9.) There is therefore a great and fundamental difference between the traditional ideal of the British Constitution, as embodied in sec. 61, giving full expression to the picture of Royal authority painted by Blackstone (*Comm. I.* p. 249) and by Hearn (*Gov. of Eng.* p. 17), and the modern practice of the Constitution as crystallized in the polite language of sec. 62, "there shall be a Federal Executive Council to advise the Governor-General in the Government of the Commonwealth".¹⁴³

Then, the reason for the establishment and maintenance of the relationship between the Crown and the Ministry was set out with some clarity by Sir Samuel Griffith, later to be the first Chief Justice of the Australian High Court:

There are perhaps few political or historical subjects with respect to which so much misconception has arisen in Australia as that of Responsible Government. It is, of course, an elementary principle that the person at whose volition an act is done is the proper person to be held responsible for it. So long as acts of State are done at the volition of the head of the State he alone is responsible for them. But, if he owns no superior who can call him to account, the only remedy against intolerable acts is revolution. The system called Responsible Government is based on the notion that the head of the State can himself do no wrong, that he does not do any act of State of his own motion, but follows the advice of his ministers, on whom the responsibility for acts done, in order to give effect to their volition, naturally falls. They are therefore called Responsible Ministers. If they do wrong, they can be punished or dismissed from office without effecting any change in the Headship of the State. Revolution is therefore no longer a necessary possibility; for a change of Ministers effects peacefully the desired result. The system is in practice so intimately connected with Parliamentary Government and Party Government that the terms are often used as convertible. The present form of development of Responsible Government is that, when the branch of the Legislature which more immediately represents the people disapproves of the actions of Ministers, or ceases to have confidence in them, the head of the State dismisses them, or

¹⁴² *Quick and Garran*, p. ix.

¹⁴³ *Quick and Garran*, p. 703.

accepts their resignation, and appoints new ones. The effect is that the actual government of the State is conducted by officers who enjoy the confidence of the people. In practice they are themselves members of the Legislature . . . The 'sanction' of this unwritten law is found in the power of the Parliament to withhold the necessary supplies for carrying on the business of the Government until the Ministers appointed by the Head of the State command their confidence. In practice, also, the Ministers work together as one body, and are appointed on the recommendation of one of them, called the Prime Minister. And, usually, an expression of want of confidence in one is accepted as a censure of all. This is not, however, the invariable rule; and it is evidently an accidental and not a fundamental feature of Responsible Government.¹⁴⁴

In continuing the description of the relationship of the Crown's representative and the Cabinet, *Quick and Garran* states:

In the formation of a Cabinet the first step is the choice and appointment of its President or spokesman, the Prime Minister; he is chosen and appointed by the Crown or by its representative. In the choice of a Prime Minister, however, the discretion of the Crown is fettered; it can only select one who can command the confidence of a majority of the popular House. The other members of the Cabinet are chosen by the Prime Minister and appointed by the Crown on his recommendation.¹⁴⁵

Incompatibility of the system of Cabinet government in a State-represented federal system

At the time of federation Quick and Garran were alert enough to discern problems in the constitutional provisions relating to the powers of the 2 Houses. They recorded the following difficulties foreseen by some eminent federalists and illustrated with dramatic effect in 1975:

The Cabinet depends for its existence on its possession of the confidence of that House directly elected by the people, which has the principal control over the finances of the country. It is not so dependent on the favour and support of the second Chamber, but at the same time a Cabinet in antagonism with the second Chamber will be likely to suffer serious difficulty, if not obstruction, in the conduct of public business.

This brings us to a review of some of the objections which have been raised to the application of the Cabinet system of Executive Government to a federation. These objections have been formulated with great ability and sustained with force and earnestness by several Australian federalists of eminence, among whom may be mentioned the names of Sir Samuel Griffith, Sir Richard C. Baker, Sir John Cockburn, Mr. Justice Inglis Clark, and Mr. G.W. Hackett, who have taken the view that the Cabinet system of Executive is incompatible with a true Federation. (See "The Executive in a Federation", by Sir Richard C. Baker, K.C.M.G., p. 1.)

In support of this contention it is argued that, in a Federation, it is a fundamental rule that no new law shall be passed and no old law shall be altered without the consent of (1) a majority of the people speaking by their representatives in one House, and (2) a majority of the States speaking by their representatives in the other house; that the same principle of State approval as well as popular approval should apply to Executive action, as well as to legislative action; that the State should not be forced to support Executive policy and Executive acts merely because ministers enjoyed the confidence of the popular Chamber; that the State House would be justified in withdrawing its support from a ministry of whose policy and executive acts it disapproved; that the State House could, as effectually as the primary Chamber, enforce its want of confidence by refusing to provide the necessary supplies. The

144 Sir Samuel Griffith, *Notes on Australian Federation*, 1896, pp. 17-18, quoted in *Quick and Garran*, pp. 703-04.

145 *Quick and Garran*, p. 705.

Senate of the French Republic, it is pointed out, has established a precedent showing how an Upper House can enforce its opinions and cause a change of ministry. On these grounds it is contended that the introduction of the Cabinet system of Responsible Government into a Federation, in which the relations of two branches of the legislature, having equal and co-ordinate authority, are quite different from those existing in a single autonomous State, is repugnant to the spirit and intention of a scheme of Federal Government. In the end it is predicted that either Responsible Government will kill the Federation and change it into a unified State, or the Federation will kill Responsible Government and substitute a new form of Executive more compatible with the Federal theory . . .

. . . the system of Responsible Government as known to the British Constitution has been practically embedded in the Federal Constitution, in such a manner that it cannot be disturbed without an amendment of the instrument. There can be no doubt that it will tend in the direction of the nationalization of the people of the Commonwealth, and will promote the concentration of Executive control in the House of Representatives. At the same time it ought not to impair the equal and co-ordinate authority of the Senate in all matters of legislation, except the origination and amendment of Bills imposing taxation and Bills appropriating revenue or money for the ordinary annual services of the Government.¹⁴⁶

Impact of the 'supply' provisions

As the position now stands the sovereignty of the people, and majority and responsible government as generally conceived, may be threatened in the Australian federal context through the power of the Senate to reject appropriation and supply bills, that is, bills which are required by the Government to carry on its day-to-day business.

The rejection of bills other than appropriation and supply bills would seem to present no insuperable hurdle to constitutional democratic government. Certainly it may hinder a Government's legislative program but if such hindrance is considered as serious it will be reflected in public opinion which will, in turn, eventually influence Senate action on the legislation. This process may take some time to work out; meanwhile the Government has the task of convincing the people of the correctness of its policy. This is a normal requirement of democratic government.

On the other hand a rejection of supply by the Senate resulting in the fall of a Government strikes at the root of the concept of representative government. The House of Representatives was designed and has always been recognised as the House of government—the people's House. Its method of election is broadly on the 'one vote one value' system. In theory, each vote has equal weight, each enfranchised member of the community has an equal say in electing the party he favours to govern. The clear impression of the voter at the poll is that he is electing a Government to serve for a term of 3 years. The possibility of some shorter period of Government procured by the intervention of the Senate is never seriously contemplated.

The strength of the Westminster system of government depends on a clear line of representation—from the people through the Parliament to the Executive Government. This in turn results in a clear line of responsibility in reverse order from the Executive to the Parliament to the people. Once this clear line of responsibility is destroyed (as with the intervention of the Senate which is not an equitably representative body) the powerful concept of representative and responsible government is destroyed. Electors naturally may feel that they no longer control the Government through their vote. A situation similar to 1975 is a natural consequence. The media at that time reported public confusion and anxiety, an inclination for many people to want to take things into their own hands, even a fear that the Government of the country could

¹⁴⁶ *Quick and Garran*, p. 706-07.

break down. It is a situation which, for constitutional or strong conventional reasons, would not happen in other comparable countries such as Canada or India.¹⁴⁷

Media, academic and political argument has been advanced pressing for a solution of the 'supply' problem in the Australian Parliament. The *Sydney Morning Herald* put the case clearly in its editorial of 20 July 1979:

. . . there is a strong case for reforming the Senate's powers so that there can be no repetition of the events which so wounded the nation in 1975. There is no constitutional issue which deserves greater attention than this. It is clear now that the ability of the Senate to force a duly elected Government to an early election by blocking supply poses a threat to political and social stability. The Herald does not believe that a Government enjoying the confidence of the House of Representatives should again be subjected to this threat.

JOINT SITTING

After a double dissolution has been granted, elections are held for both Houses. In the new Parliament the House of Representatives may again pass the proposed law which was the subject of the double dissolution with or without any amendments which have been made, suggested or agreed to by the Senate. If the Senate rejects the proposed law, passes it with amendments to which the House will not agree or fails to pass it, the Governor-General may convene a joint sitting of Members of the House of Representatives and the Senate.¹⁴⁸

When a joint sitting is held Members and Senators deliberate and vote together on the proposed law in the form it was last proposed by the House of Representatives. Any amendments which have been made by one House and not agreed to by the other are considered and if affirmed by an absolute majority of the total members of both Houses, are taken to have been carried.¹⁴⁹ The proposed law as a whole is voted on by all members of both Houses and if it is affirmed by an absolute majority then it shall be taken to have been duly passed by both Houses of Parliament and is presented to the Governor-General for assent.¹⁵⁰

Only one such joint sitting has been held and this followed the 1974 double dissolution. When the 29th Parliament sat, following the double dissolution and election of 1974, the 6 proposed laws which were the subject of the double dissolution were again passed by the House of Representatives and again rejected by the Senate.¹⁵¹

Following the Senate rejection, the Governor-General issued the following proclamation on 30 July 1974¹⁵²:

PROCLAMATION

Australia
JOHN R. KERR
Governor-General.

By His Excellency the
Governor-General of
Australia.

WHEREAS a Proclamation made on 11 April 1974 by the Governor-General of Australia then holding office recited that the conditions upon which the Governor-General is

¹⁴⁷ For further information and argument on the conflict of principles of responsible government and federalism see Australian Constitutional Convention 1977, Standing Committee D, *Special report to Executive Committee on the Senate and Supply*, 23 June 1977 (especially pp. 39-45); Sir Billy Snedden, *The Constitution, Parliament and the Westminster Heritage*, 20 October 1979, House of Representatives, Canberra; and see Bibliography.

¹⁴⁸ Constitution, s.57.

¹⁴⁹ In respect of the 1974 joint sitting, bills were not amended by either House prior to the joint sitting.

¹⁵⁰ Constitution, s.57.

¹⁵¹ See Appendix 22.

¹⁵² Gazette S62B(30.7.74).

empowered by section 57 of the Constitution to dissolve the Senate and the House of Representatives simultaneously had been fulfilled in respect of the several proposed laws intitled:—

Commonwealth Electoral Act (No. 2) 1973
Senate (Representation of Territories) Act 1973
Representation Act 1973
Health Insurance Commission Act 1973
Health Insurance Act 1973
Petroleum and Minerals Authority Act 1973:

AND WHEREAS, by the said Proclamation, the said Governor-General dissolved the Senate and the House of Representatives accordingly:

AND WHEREAS, since that dissolution and the election of the Twenty-ninth Parliament, the conditions upon which the Governor-General is empowered by section 57 of the Constitution to convene a joint sitting of the members of the Senate and of the House of Representatives have been fulfilled in respect of each of the said proposed laws:

NOW THEREFORE I, Sir John Robert Kerr, the Governor-General of Australia, do by this my Proclamation convene a joint sitting of the members of the Senate and of the House of Representatives, to commence in the House of Representatives Chamber at Parliament House, Canberra at 10.30 o'clock in the morning on 6 August, 1974, at which they may deliberate and shall vote together upon each of the said proposed laws as last proposed by the House of Representatives:

AND all members of the Senate and of the House of Representatives are required to give their attendance accordingly.

(L.S.) Given under my hand and the Great Seal of Australia on 30 July 1974.

By His Excellency's Command
E. G. WHITLAM
Prime Minister

The Constitution provides for each House to make rules for the order and conduct of business either separately or jointly with the other House.¹⁵³ The Joint Standing Orders of the Houses contain only 2 standing orders applying to a joint sitting, namely:

II. The Members present at the joint sitting, under section 57 of the Constitution, shall appoint by ballot a Member to preside, and until such appointment the Clerk of the Senate shall act as chairman.

III. The Member chosen to preside shall present to the Governor-General for the Royal Assent any proposed law duly passed at such joint sitting.

It was therefore necessary that special rules for the joint sitting be drawn up following discussions between the leaders and officers of the 2 Houses. These rules were adopted by both Houses on 1 August 1974.¹⁵⁴

Certain legislation touching on proceedings in Parliament was amended to cover the joint sitting.¹⁵⁵ The Evidence Act was amended to provide for judicial notice to be taken of the official signature of the member presiding at the joint sitting and for copies printed by the Government Printer of the formal record of proceedings to be admitted in court as evidence.¹⁵⁶

The Parliamentary Papers Act was amended to extend to the publication of the proceedings, or documents laid before the joint sitting, the same protection against actions for defamation or other legal proceedings as applied with ordinary sittings.¹⁵⁷

¹⁵³ Constitution, s.50.

¹⁵⁴ VP 1974-75/118-21; J 1974-75/117-20. See Supplement to Standing Orders.

¹⁵⁵ The 3 amending Acts concerned were assented to on 1 August 1974, VP 1974-75/121.

¹⁵⁶ Evidence Act 1974 (Act No. 31 of 1974).

¹⁵⁷ Parliamentary Papers Act 1974 (Act No. 33 of 1974).

The Parliamentary Proceedings Broadcasting Act was amended to permit the broadcasting of the proceedings of the joint sitting. It enabled the Parliamentary Joint Committee on the Broadcasting of Parliamentary Proceedings to make determinations covering such broadcasts, and afforded the broadcasts the same protection as applied to normal parliamentary broadcasts. It also provided that the proceedings could be telecast direct to air or recorded for telecasting at a later time.¹⁵⁸

The Joint Committee on the Broadcasting of Parliamentary Proceedings made a number of determinations under the amending Act. These included¹⁵⁹:

- The Australian Broadcasting Commission was to make a complete colour video tape and sound recording of the joint sitting which was to remain the property of the committee and be converted to film for preservation and showing as authorised by the committee;
- Radio broadcasts of the joint sitting were to be made by ABC stations which normally broadcast Parliament and a permanent sound record kept;
- The ABC was to carry live telecasts of the joint sitting on 6 and 7 August from 10.30 a.m.—1.00 p.m., 4 p.m.—6 p.m., and 8 p.m.—8.40 p.m., and
- The ABC was to prepare a one-hour composite program to be shown nationally at about 10 p.m. on 11 August.

On 31 July the House resolved:

... that it be a rule and order of the House of Representatives that, at a joint sitting with the Senate, the proceedings are proceedings in Parliament, and that the powers, privileges and immunities of Members of this House shall, *mutatis mutandis*, be those relating to a sitting of this House.¹⁶⁰

The Senate passed a similar resolution on 1 August.¹⁶¹

The joint sitting commenced at 10.30 a.m. on 6 August 1974 in the House of Representatives Chamber.¹⁶² The Governor-General's proclamation convening the joint sitting was read by the Clerk of the Senate (Mr J.R. Odgers). The Clerk of the Senate then proceeded to conduct proceedings for the appointment of Chairman. The Speaker of the House (Mr J.F. Cope) being the only Member proposed, was accordingly declared appointed as Chairman and was conducted to the Chair by the Leader of the House (Mr F.M. Daly) and the Manager of Government Business in the Senate (Senator D. McClelland).

The Chairman read Prayers and, after making a statement on the constitutional significance of the joint sitting, called on the first proposed law. The question put to the joint sitting was 'That the proposed law be affirmed'. The Commonwealth Electoral Act (No. 2), Senate (Representation of Territories) Act and the Representation Act were affirmed by an absolute majority on 6 August 1974 and received assent on 7 August.

The Health Insurance Commission Act, Health Insurance Act and Petroleum and Minerals Authority Act were affirmed by an absolute majority on 7 August and received assent on 8 August.

All members of both Houses attended the sitting on each day, a total of 66 members participating in the debates. It was essential for every member of the Government to be

158 *Parliamentary Proceedings Broadcasting Act 1974* (Act No. 32 of 1974).

159 H.R. Deb. (1.8.74)1007-08.

160 VP 1974-75/106.

161 J 1974-75/117.

162 The record of the joint sitting can be found in the following parliamentary records: (a) Minutes of Proceedings of Joint Sitting, 6-7 August 1974, and (b) H.R. Deb. (6 and 7.8.74)1-175.

present to ensure that the 6 proposed laws were affirmed. Total government membership was 95—66 Members of the House of Representatives and 29 Senators; and the Constitution required an absolute majority, that is, 94 votes, for the passage of each of the measures. All 6 proposed laws were affirmed by votes ranging between 95 and 97.

On 7 August, before consideration commenced on the sixth proposed law, the Member for Mackellar (Mr Wentworth) moved that so much of the standing orders be suspended as would prevent him moving forthwith:

That this joint sitting of the Houses should not be finally adjourned until either it has adequately discussed the present economic and industrial situation in Australia, or else the Government has indicated that both Houses will meet next week to discuss these matters.

The Chairman ruled that:

The Proclamation by the Governor-General on 30 July 1974 convened a joint sitting of the Members of the Senate and of the House of Representatives for the purpose of deliberating and voting upon each of 6 proposed laws and, in his opinion, neither section 57 of the Constitution nor the Proclamation authorised the consideration of any other matters by the joint sitting—

and ruled the motion out of order. Mr Wentworth moved dissent from the Chairman's ruling, the motion being negatived on the voices after the closure of the debate was agreed to.

As the Chairman was calling on the next proposed law—the Petroleum and Minerals Authority Bill—the Member for Lowe (Mr McMahon) took a point of order, and began to refer to part of a judgment in the High Court by the Chief Justice the day before. The Chairman ruled there was no point of order involved, as a point of order could only relate to the standing orders (Senate) and the rules governing the joint sitting adopted by both Houses. Mr McMahon protested that the Chair was acting on proclamations which the Chief Justice had said were improper but did not proceed further with the matter on being again called to order by the Chair.

During the joint sitting Members of the House of Representatives were called by electoral division and name, Senators by name, Ministers by portfolio and name, and Leaders of the Opposition by office and name.

High Court cases related to joint sitting

The validity of the joint sitting and the validity of certain laws passed by the joint sitting were the subject of a number of cases brought before the High Court.¹⁶³ For a brief period there was some doubt as to whether the joint sitting itself would take place.

The Governor-General's proclamation of Tuesday, 30 July 1974, convened the joint sitting for 10.30 a.m. the following Tuesday, 6 August 1974. On Thursday, 1 August 1974, a writ was filed in the High Court by 2 opposition Senators, Senator the Hon. Sir Magnus Cormack and Senator James Webster, challenging the legality of the joint sitting and seeking an interlocutory injunction to prevent it being held.¹⁶⁴

On 2 August writs were served on the Speaker (Mr J.F. Cope), the President of the Senate (Senator J. O'Byrne), the Prime Minister (Mr E.G. Whitlam), the Clerk of the House (Mr N.J. Parkes), the Attorney-General (Senator L. Murphy), the Governor-General (Sir John Kerr) and the Clerk of the Senate (Mr J.R. Odgers) to appear before the High Court of Australia. On 2 August the Speaker informed the House that writs had been served on the Clerk and himself and tabled certain papers.¹⁶⁵ The High Court heard evidence on Friday, 2 August, and Monday, 5 August, and dismissed the action on the very eve of the joint sitting.

¹⁶³ Many aspects of the wording of section 57 were discussed.

¹⁶⁴ *Cormack v. Cope* (1974) 131 CLR 432.

¹⁶⁵ VP 1974-75/127.

The suit principally sought to:

- invalidate the proclamation for the joint sitting;
- declare that the joint sitting was not empowered to vote on all the proposed laws referred to in the proclamation;
- declare that the joint sitting may only vote on one proposed law, and
- declare that the Petroleum and Minerals Authority Bill did not fulfil the requirements of section 57 and could not be voted upon at the joint sitting.

The case was heard before Chief Justice Barwick and Justices McTiernan, Menzies, Gibbs, Stephen and Mason. The Court refused to grant an interlocutory injunction to prevent the joint sitting being held. The Court ruled that more than one proposed law could be dealt with in a double dissolution and at a joint sitting. In his judgment Chief Justice Barwick stated that there is nothing in the section, or in the evident reasons for its enactment, which requires that only one proposed law should be so discussed and voted upon.

On the question that the listing of the 6 bills in the joint sitting proclamation went beyond what was required by the Constitution the Chief Justice stated that it is no part of the Governor-General's function to determine what shall occur at the joint sitting or to direct what proposals may be discussed or what not discussed at such a sitting or what is the purpose of the joint sitting; that is determined by the Constitution in the third paragraph of section 57.

Menzies J stated that the power given to the Governor-General is simply to convene a joint sitting and it is not for the Governor-General to prescribe what may occur at such sitting.

McTiernan J was of the opinion that neither proclamation (that is, double dissolution and joint sitting) upon its proper construction contravened section 57. He saw no reason for declaring either of the proclamations to be invalid.

Gibbs J stated that, in his opinion, the Governor-General had no power to direct the members present at the joint sitting upon what proposed laws they may deliberate and should vote, but that the inclusion of a direction of that kind did not affect the validity of the proclamation assuming it to be otherwise valid.

Stephen J stated that the section itself prescribes what is to be the business of the joint sitting and the terms of the proclamation cannot affect this one way or another.

Mason J stated that, if the proclamation is effective to convene a joint sitting, 'as I happen to think it is', so long as there is at least one proposed law which answers the description contained in section 57, it does not follow that it has conclusive effect so far as its recitals assert that, in relation to each of the 6 bills, the provisions of the section have been satisfied.

The opinions expressed by the Chief Justice and other Justices in respect of the Governor-General's proclamations, and submissions made by the Attorney-General to the Court, would seem, in retrospect, to throw doubt on some of the procedures at the joint sitting. This applies particularly to the putting from the Chair (without motion moved) the question 'That the proposed law be affirmed' and to the refusal of the Chair to permit other matters to be debated at the joint sitting. Certainly consideration will need to be given to these aspects in the event of another joint sitting.

In view of the doubt as to whether or not the proposed law(s) should be listed in the proclamation, should any future proclamation convening a joint sitting not list the proposed laws to be considered, it may be necessary to devise a procedure to initiate the consideration of the proposed laws. This may be done, say, by motion by a Minister, and for this purpose some suitable provision may be necessary in the rules.

On the question of whether the Petroleum and Minerals Authority Bill had fulfilled the requirements of section 57, the Court ruled that a declaration should not be made in

the interlocutory proceedings but that once the proposed law had been affirmed at a joint sitting it would then be appropriate for the Court to pronounce on its validity.

The validity of some of the bills passed at the joint sitting was in fact later challenged by several of the State Governments. In one judgment the High Court ruled by a majority decision that the Petroleum and Minerals Authority Bill was not one within the meaning and scope of section 57 of the Constitution upon which the joint sitting could properly deliberate and vote, and that it was not a valid law of the Commonwealth. The Court held that the interval of 3 months had to be computed from the date of rejection of or failure to pass the bill by the Senate and not from the date of the passing of the bill by the House. The Court also held that the Senate had not 'failed to pass' the bill on 13 December 1973.¹⁶⁶

In a separate judgment the High Court ruled by a majority decision that the *Commonwealth Electoral Act (No. 2) 1973*, the *Senate (Representation of Territories) Act 1973* and the *Representation Act 1973* were Acts duly passed by both Houses of the Parliament within the meaning of section 57 of the Constitution and that the *Senate (Representation of Territories) Act 1973* was not invalid, in whole or in part, as being beyond the legislative powers of the Commonwealth Parliament.¹⁶⁷

166 *Victoria v. Commonwealth* (1975) 134 CLR 81 (Petroleum and Minerals Authority Case).

167 *Western Australia v. Commonwealth* (1975) 134 CLR 201 (Territories Representation Case); see also *Queensland v. Commonwealth* (1977) 139 CLR 585.