

Kerr's word play masked his reasons behind Whitlam's dismissal

EXCLUSIVE

TROY BRAMSTON

AS the 1975 constitutional crisis edged towards its dramatic conclusion, governor-general John Kerr wanted Malcolm Fraser to accept "full political responsibility" for his decision to terminate Gough Whitlam's government.

Kerr was also planning to commission Mr Fraser as prime minister with the clear undertaking: "provided he guarantees supply". In Kerr's public statement justifying the dismissal, the wording was amended to be less definitive, stating it was "desirable that he should

guarantee supply". In a letter Kerr handed to Mr Fraser in his Yarrulmla study to sign on November 11, 1975, Mr Fraser was required to give only "an assurance" that he would "seek" passage of supply.

Kerr's handwritten annotated draft statement, and a further unsigned letter to Mr Whitlam, is published in full for the first time in a new book of essays, *The Whitlam Legacy*, to be released next week.

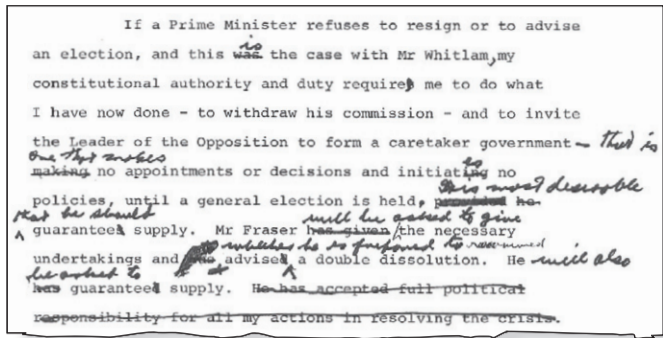
In the handwritten letter from Kerr to Mr Whitlam, drafted on the day of the dismissal, the governor-general reveals his concern over the government's attempt to borrow \$US4 billion to invest in minerals and energy projects.

"At the time of the public debate

about the loans issue and the Executive Council meeting of 13th December, 1974, it was asserted I had the power to decide whether the attorney-general's opinion was correct or not," Kerr wrote.

"I did of course consider that matter when the minutes of the meeting came to me for signature on 14th December after the decision was made on 13th December," he wrote. "(I) signed the minute irrespective of any views of my own and the law because it seemed to me that if the minutes were acted upon, any action taken could be challenged in the courts."

In the unsigned letter, Kerr made it clear to Mr Whitlam that the dismissal could not be challenged in court.



From John Kerr's draft statement of reasons for the dismissal, November 1975

Source: National Archives

"I have had to make up my own mind," he said. Kerr was concerned about the approval process for the loan,

which later developed into a major scandal and led to the resignation of minister Rex Connor and the sacking of treasurer Jim Cairns.

Kerr's draft public statement outlining his reasons for the dismissal is located among his papers in the National Archives.

Struck out from the final version is the statement regarding Mr Fraser: "He has accepted full political responsibility for all my actions in resolving the crisis." This could imply that Mr Fraser had prior knowledge of Kerr's intended actions.

Knowing also that the government's chief law officers had raised questions about the exercise of the reserve power, Kerr originally acknowledged their concerns in the statement. "Even if the law officers were of the opinion that the governor-general has no such reserve power — this is a matter

upon which I must make up my own mind," the draft says.

In the final version, however, Kerr did not indicate he was aware of their concern. "I should be surprised if the law officers expressed the general view that there is no reserve power," he wrote.

Secret notes of talks between Kerr, solicitor-general Maurice Byers and the head of the Attorney-General's Department, Clarence Harders, on November 11 reveal, however, that they felt the dismissal was not justified.

As revealed in *The Weekend Australian* in October last year, Byers and Harders questioned Kerr's authority to dissolve the House of Representatives given the lower house had voted no-

confidence in Mr Fraser. In April this year, Mr Fraser told *The Australian* Kerr told him he feared being sacked if he did not authorise the Whitlam government's attempt to borrow \$US4bn.

"He told me, after the event, that he only countersigned the Executive Council minute because he knew it was justiciable if any money was raised under it and he believed he would be dismissed if he did not sign it," Mr Fraser said.

The draft letter to Mr Whitlam underscores Kerr's concern over the loans affair at the penultimate moment of the constitutional crisis, as he prepared to dismiss the Labor government.

Tomorrow: Whitlam on his legacy

Abortion protest ban faces challenge

EXCLUSIVE

MATTHEW DENHOLM
TASMANIA CORRESPONDENT

THE nation's first laws banning protests within 150m of abortion clinics, passed by the Tasmanian parliament yesterday, face a High Court challenge some experts say would succeed.

Christian groups outraged at the restriction on the right to protest yesterday told *The Australian* they would consider a legal challenge.

Constitutional law expert Michael Stokes believed the protest ban was an infringement of the Constitution's implied right to political communication.

As well, the Catholic Church attacked provisions compelling doctors to give patients information about abortions, claiming they violated the UN Covenant on Civil and Political Rights.

"This bill has decriminalised abortion, but criminalised opposition to abortion," said the Catholic Archbishop of Hobart, Julian Porteous. "It puts Catholic hospitals and all Catholic medical practitioners in an invidious position."

The Labor MP who introduced the legislation, Michelle O'Byrne, believed the measures would survive a challenge and defended them as "incredibly important" in allowing women to obtain abortions without "intimidation".

Under Ms O'Byrne's Reproductive Health (Access to Terminations) Act, passed by both houses, protests — even silent vigils — are banned within 150m of clinics, while doctors who refuse to facilitate an abortion must provide patients with material outlining where they can obtain information about terminations.

"We will be considering our options," said Mark Brown, Tasmanian director of the Australian Christian Lobby. "This does set a precedent and there is a concern about free speech, particularly for those who have a very strong belief abortion is something that they need to speak out about."

Anti-abortion activists said protests outside clinics were rare in Tasmania, and that the legislation went way too far. "That 150m is enormous and could take in churches, cafes and a lot of the CBD," said FamilyVoice Australia spokesman Jim Collins.

Mr Collins said the penalty — up to a year's jail and a \$65,000 fine — applied whether the protest intimidated and harassed

Fetus law MP hurt by gender criticism

IT was offensive to suggest a parliament in which fewer than one in four MPs were female could not pass laws recognising a fetus in the criminal code, said the man behind legislation that women's groups worry will impinge on abortion laws.

The member for The Entrance, Chris Spence, who sponsored "Zoe's law", which was passed in the NSW lower house yesterday on a conscience vote, rejected the idea that men could not represent women's views.

"It's offensive to suggest that I'm incapable of making a moral, just decision on this matter by virtue of my gender," he said.

Zoe's law was passed with a huge majority despite the protests of legal, medical and women's groups that it will endanger women's reproductive rights.

The amendment to the Crimes Act is named after Brodie Donegan's unborn child. Ms Donegan lost the baby in a car accident on the NSW central coast when she was 32 weeks pregnant. The driver responsible was charged with grievous bodily harm for Ms Donegan's injuries but was not charged with harming Zoe as the law did not recognise a fetus as separate from the mother.

MARK COULTAN

someone or was merely holding a prayer vigil or handing out pamphlets. Mr Stokes, an expert in constitutional and administrative law at the University of Tasmania who gave evidence to parliament on the legislation, said he believed the protest ban was likely to be struck out.

"I think that blanket ban on protest is likely to fail if challenged in the High Court," Mr Stokes said. "Abortion is a political issue and this is a restriction (on communication)."

Ms O'Byrne said: "This is an Australian first and it is incredibly important because a woman must be able to access a medical procedure without being subject to intimidation, stigmatisation, vilification or any other form of harassment. This is not about impeding on anyone's right to free expression; it is about protecting women facing an incredibly difficult and complex decision."

Murdered kids forgotten by all except families



SAM MOOY

Protesters gathered at the NSW parliament in Sydney yesterday to express frustration that the killings of three Aboriginal children remain unsolved 20 years later

MITCHELL NADIN
MARK COULTAN

FAMILIES of the victims in the infamous Bowraville murders rallied in Sydney yesterday to demand a judicial inquiry into the killings more than 20 years ago of three Aboriginal children.

Many of the protesters expressed frustration that the still-unsolved case appeared to have attracted less interest than other, more prominent ones.

"How can John Singleton get a judicial inquiry on Gai Waterhouse about horse races but the families of three Aboriginal chil-

dren murdered in an Aboriginal community be waiting 23 years for justice?" asked 15-year-old Elijah Duroux, who is related to one of the victims.

Greens MP David Shoebridge later moved a motion in parliament's upper house for an inquiry into the murders.

He said the government had given in-principle support for the move and would take the matter to a vote next week.

However, the outcome is unlikely to appease yesterday's protesters, with a previous attempt by Mr Shoebridge for an inquiry into double jeopardy laws and the Bowraville case already having

been rejected by both the Coalition and the Labor Party.

Labor says it will support a new inquiry into the impact of the case, as long as it is not an attempt to prosecute it.

Mr Duroux bitterly accused Attorney-General Greg Smith of treating the Bowraville families without compassion.

"What gives the Attorney-General the right to tell our families to walk away?" Elijah said.

"Go through the things we've been through and lift the weight on our shoulders Greg Smith, I bet your legs would shudder."

"I guarantee if it was three white kids on the north shore or

some other posh place around Sydney, justice would've been served on a silver platter."

Colleen Walker, 16, and her 4-year-old cousin, Evelyn Greenup, went missing in late 1990, just months before 16-year-old Clinton Speedy-Duroux also went missing in 1991.

"It is heartbreaking not knowing what happened to my auntie," said Walker's nephew Deakin Walker. "We want our auntie to lay her to rest. She deserves a proper burial."

Thomas Hart stood trial for the deaths of Greenup and Speedy but despite strong evidence he was acquitted.

The body of Walker was never found.

Earlier this year, Mr Smith ruled out a retrial.

Speedy's cousin Jasmin Speedy, 29, said the Attorney-General told the families several months ago it was "time to move on" and "get grief counselling".

Ronella Jerome, Clinton Speedy's aunt, said yesterday the initial police investigation was mismanaged, a judgment highlighted by a subsequent coroner's inquest.

"Police failed our children, the legal system failed our children... we deserve our day in court and we will never give up," she said.

Obesity blowout spurs call for policy support

SEAN PARNELL
HEALTH EDITOR

AUSTRALIA needs to watch its weight, according to an international report that draws attention to our rapidly rising obesity rate.

The report by the OECD, released yesterday, puts Australia third in global rankings for the largest increase in adult obesity. Between 2000 and 2011, our increase was overshadowed only by the US and Mexico.

While our waistlines are expanding faster than those in New Zealand, which ranks fourth, our neighbours across the Tasman have a greater proportion of adults and children who are already obese.

Australia's health system is still regarded as one of the best in the world, but the obesity epidemic raises the risk of more

chronic disease. Without more being done to keep Aussies fit and healthy, diabetes and other problems will become a greater burden on the health system.

The OECD report comes after a study by Diabetes Queensland found most GPs in the state spent almost half their time dealing with obesity-related conditions and illnesses.

"In fact, seven out of 10 GPs said Queensland's obesity epidemic impacted their work and their capacity to treat patients," Diabetes Queensland chief executive Michelle Trute said.

Amid suggestions GPs had switched their attention to preventing obesity in children, after finding they were unable to reduce the rate in adults, the chairman of the Greater Metro South Brisbane Medicare Local, John Kastriassis, called on governments to provide broader policy support.

This week in WEEKEND AUSTRALIAN

TOMORROW

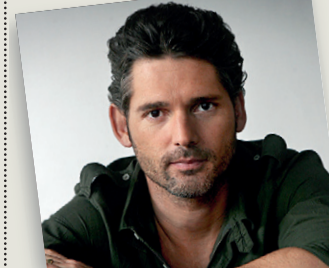
WEEKEND A PLUS

Ruth Ostrow
I'll be honest with you, I lost my way



MAGAZINE

The secret to Eric Bana's success



TRAVEL & INDULGENCE

Cruising around Cuba

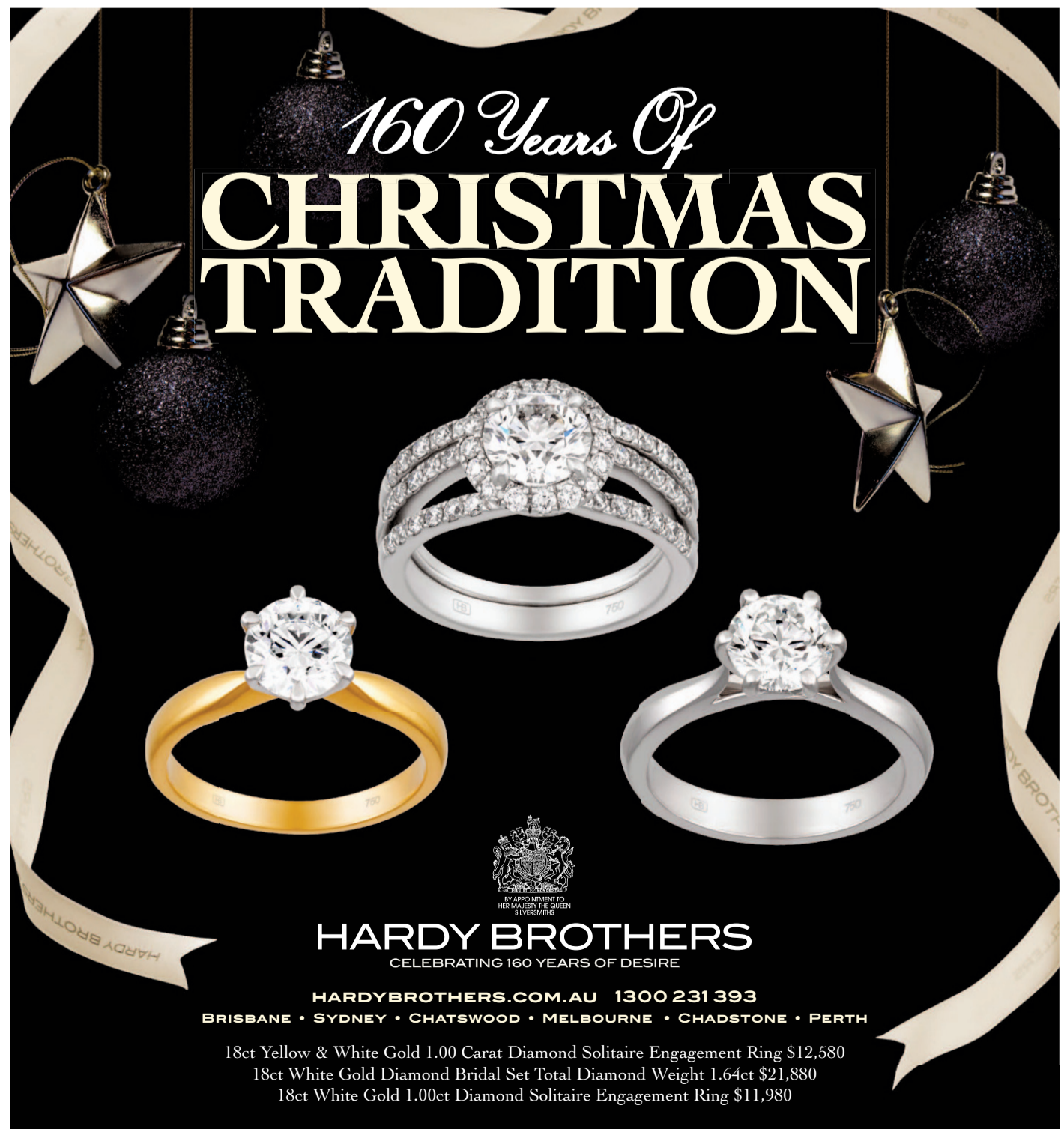


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