

**THE
OFFICE OF
GOVERNOR-GENERAL**

PAUL HASLUCK

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The Right Honourable Sir Paul Hasluck was Governor-General of Australia from 1969 to 1974. Born in Fremantle in 1905 and educated at the University of Western Australia, he led a vigorous official life in the public service and parliament and was a Cabinet minister for eighteen years in three portfolios.

Throughout his public career he maintained his deep interest in history, literature and learning. He is the author of two monumental volumes in the Australian Official War History and has published poetry and other books including *Black Australians*, *Workshop of Security* and *The Poet in Australia*. *A Time for Building* has been acclaimed as a distinguished and scholarly account of Australian administration in Papua and New Guinea between 1951 and 1963.

He now lives in retirement in Perth where he is engaged in writing and other pursuits. *Mucking About*, his autobiography of his first thirty-five years, throws new light on the youthful influences at work on his subsequent career.

Sir Paul was created a Privy Councillor in 1966 and was appointed a Knight of the Garter by the Queen in April 1979.

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Foreword

This lecture was delivered in Adelaide on 24 October 1972 as the William Queale Memorial Lecture established by the South Australian branch of the Australian Institute of Management. Up to that time little had been published about the office of Governor-General except in learned commentaries on the Australian Constitution not widely available to the public. Soon after taking up my appointment as Governor-General in 1969 I found that large numbers of young Australians asked the question: 'What does the Governor-General do?' They asked it when they were encouraged to visit Government House on school tours and they wrote to me from all parts of Australia for information to use in social studies projects. I thought the stock answers hitherto given to such enquiries were incomplete. So I set out to write the text for an illustrated booklet that might be distributed to young people in the upper levels of secondary schools. Unfortunately that project lapsed. Then I received an invitation to deliver the Queale Memorial Lecture — a serious offering to a serious audience — and expanded my popular description of the work of Governor-General into a more careful discussion of the nature and functions of the office.

I am not a constitutional lawyer but have studied British and Australian constitutional history. A better qualification for giving the lecture was that, as public servant and parliamentarian, I had watched Australian Governors-General at work for nearly thirty years and by 1972 had two years' experience in the office itself.

My aim was to describe this part of Australian government. On the completion of the draft I asked a friend eminent in the law to read the manuscript lest I had made any gross errors. He pointed out two or three places where, from a lawyer's point of view, the text might be tightened and he expressed general agreement with my views on the Governor-General's powers and functions. Otherwise the work is my own. I had no consultation with any ministerial or Crown Law adviser and no assistance from any official staff and so the lecture is to be read as my personal study of the subject and not as a governmental pronouncement.

At the time of the lecture the subject was not a matter of controversy nor even of public discussion and I had no purpose other than to give information. Subsequently, as the result of the events culminating in November 1975 in the dismissal of a Prime Minister by a Governor-General, keen debate on some of the issues was aroused. Frequent reference was made to my lecture and many requests made for the full text.

In republishing the lecture, I do not think it is proper for me to enter into political controversy or to express any opinion on the actions of my successor in office. I will not do so.

Two observations might be offered. One is that, as it seems to me, the real point at issue in, the controversy is not whether a Governor-General has power to dismiss a Prime Minister. The fact that the power was exercised is proof that the power exists. The point at issue in the public controversy — and on this

point I make no comment of any kind, nor should any inferences be drawn about my views — is not whether the Governor-General had the power but whether he was justified by the facts as he saw and interpreted them, and if he were justified by the facts whether he was wise to use the power. Any debate on his political wisdom will necessarily take into account whether or not any other practicable courses of action were open to him.

Furthermore I question whether, as a result of this incident, anyone should go so far as to regard the dismissal of Prime Ministers as one of the main functions of the office of Governor-General. There is a difference between an extreme situation and a customary action. One outcome of the controversy over the dismissal of a Prime Minister has been to focus attention on one spot. Persons who had not previously thought much about the subject tended to find only one answer to the question: What does a Governor-General do? They reached an opinion whether the office of Governor-General is a good thing or a bad thing according to the view they held about the events of November 1975. Thus the controversy did not really add much to public understanding about the office of Governor-General and its place in Australian life. Indeed it may have brought misunderstanding. The hope I have in republishing the Queale Memorial Lecture is that it might reveal to more Australians the wide range of the Governor-General's duties and the place of the office in the whole structure of Australian government.

The lecture is printed exactly as delivered. I have added to it some brief commentaries on the text and some new material about the way in which I myself worked when I was Governor-General. I saw a need to make this addition because in various books and newspaper articles published concerning the events of November 1975 statements have been made which reveal either ignorance by the writers of how things were done or faulty memory or false gossip about what was done.

The Queale Memorial Lecture

(The numbers in the text refer to the notes)

The William Queale lecture was established to be delivered each year on a topic related to management. Most of the lectures have been on some phase of management in commerce or industry. I have no knowledge or experience in that field. So that I can enter more familiar ground, I hope that you may stretch a point and allow me to interpret 'management' as extending over all human endeavour and thus bring public administration and government within bounds, even if 'management' is not a term favoured for the work of those who are engaged in government either as politicians or as public servants. Then perhaps you will bear with me if I speak about the work of a Governor-General so far as it is involved in Australian government.

There is certainly no person in the whole structure of government and public administration who has less of the appearance of a 'manager' than the Governor-General. His powers and his functions are of a kind wholly unlike those of anyone who 'runs' a business enterprise. Yet he has some part to play in the handling of the nation's affairs and in shaping both what is done and the way in which it is done.

One question is often asked: 'What does the Governor-General do?' It is sometimes asked in a way that implies other questions: 'Is the Governor-General necessary? Is he of any use? Why do we have one at all?'

One cannot answer these questions without first glancing at some aspects of constitutional theory.

The Governor-General is the direct representative in Australia of Her Majesty the Queen. Hence, to answer the question: 'What does he do?' we should try to understand first the place of the Crown in Australian life and government. I emphasize at the outset that he is not the representative of the Queen of England. He is the representative of the Queen of Australia.

Our form of government in Australia is a government 'according to law'. No servant of the government, whether it be the Prime Minister or a traffic inspector, can do anything except what the law allows him to do and the question of what the law allows is not one that he can decide for himself. Under this rule of law the Crown has the supreme place — in Parliament, in the Courts and in the Executive.

THE HEAD OF STATE

Before we look more closely into these matters, however, we need to appreciate the fact that all nations in modern times have what is called a head of state. The position of head of state in a modern nation is, in part, a recognition of a practical necessity in the handling of a nation's affairs. There are numerous occasions when a head of state is needed to act in the name of the whole nation — and to act in such a form that the action will be recognized

by all concerned, including foreign governments, as having been done legally and properly on behalf of the nation.

There is also a need to have a head of state so that on those occasions when a citizen comes into relationship as an individual with the nation as a whole that relationship can be expressed clearly. To take a simple example: on those occasions when a citizen accepts high office and has to take an oath to serve faithfully in that office, the idea in his mind is that he is making his promise to the whole nation, not just to an officer in charge of a department or to a Minister, who may lose office at any time. The oath is taken to the head of state.

Similarly, to choose another simple illustration, when the nation requires one of its citizens to carry out a solemn duty, the head of state gives the order, or the request, in the name of the whole nation, thus expressing the fact that the citizen is being called on by the nation as a whole to fulfil an obligation or to carry out a duty to the nation and is not simply being told by someone in temporary authority to do what an official wants him to do.

Thirdly, in those circumstances when the nation has to act as a nation someone has to perform the action. Perhaps a familiar example of this is a proclamation calling Parliament together. Another is a declaration of war.

A head of state is an essential and integral part of modern national government.

Various methods are followed for filling the position of head of state. We ourselves fill the position of head of state from a hereditary Royal family. The throne is always occupied and there is always an heir to the throne, so that there is no contest, no uncertainty and no inconstancy about whom the head of state will be and the head of state is clearly above political strife. Side by side with this we have a Prime Minister, to be the head of the government, and occupying office only so long as a majority of the members of the House of Representatives support him.

We in Australia have a hereditary monarch as head of state because of the way in which our own form of democratic government has been developed historically, because of our form of the parliamentary system with all Ministers sitting in Parliament and because the principles on which the rule of law is established in Australia make the Crown an essential and desirable part of that system. The hereditary monarchy gives to us a head of state who has the qualities and is able to perform the functions of that high office in the way that our own system requires. Furthermore, in addition to these practical arguments, a wealth of tradition and patriotism helps the Crown to attract to itself the loyalty and affection of the people in a way in which an elected leader, backed by little more than half the voters, and opposed by the others, may not be able to do.

To sum up: The Australian nation has to have a head of state. Because of our history and tradition we have a constitutional monarch as head of state. The Queen of Australia as head of state fits in with both the principles and practices of our form of government and any change in our method of having a Queen

as head of state would also require us to make basic changes in our form of government, as well as major amendments of the Commonwealth Constitution.

Australia is, at one and the same time, a constitutional monarchy, a parliamentary democracy, and a federation. Let us look at each heading in turn.

A CONSTITUTIONAL MONARCHY

In a constitutional monarchy, the acts done by the monarch or in the name of the monarch are done in accordance with the Constitution, and on the advice of Ministers, not by the self-will of the monarch.

One great difference between a constitutional monarchy and the presidential system as understood in such a nation as the United States of America is that while a President, being elected from time to time, is also the head of a political party, the Queen is above party and outside politics. Both a Queen and a President have to act according to the Constitution but the Queen has no obligations to any other source of power or influence, nor does she owe her position to the support of any group or party. Another difference is that, while a presidential head of state is directly and personally involved in political controversy, the Crown, being outside politics, attracts the same loyalty from all subjects all the time and stands for those matters on which the nation is undivided. Perhaps this is best expressed by the convention that the party or parties out of office are referred to as Her Majesty's Opposition, just as those in office are referred to as Her Majesty's Government. It is also expressed by the fact that persons who take oaths of office, whether as Ministers, judges, members of parliament, public servants, sailors, soldiers and airmen or citizens undertaking public duties, pledge their loyalty to the Queen, that is to someone who stands for the whole nation. They do not pledge themselves just to serve the government of the day; they pledge themselves to serve the Queen, who stands for the whole nation. Political parties may rise or fall but the duty to the nation remains and there is no need to change all office-holders every time a ministry changes.

These facts are seen as advantages over the presidential system.

A PARLIAMENTARY DEMOCRACY

In a parliamentary democracy, parliaments are formed as the result of elections in which all the adult citizens take part. The Government is formed by the party which has the support of a majority of members in the popular House of Parliament, and the Ministers are responsible to Parliament — that is they have to gain and keep the support of Parliament for what they do.

Combining the ideas of a constitutional monarchy and of a parliamentary democracy, we have as head of state a Queen, who is herself above party and outside politics. The actions of government done in her name are done by Ministers or on the advice of Ministers who have the support of a majority in Parliament. We have a people who express their will at elections and, as a result of those elections, they decide who shall be the Ministers who advise the Queen or who act in the name of the Queen.

A FEDERATION

I will not enter into close discussion about the Federation. There is an area for argument by constitutional lawyers about the executive power of the Crown and the exercise of the prerogatives of the Crown in the States severally and in the Federation. These arguments need not concern us. It may be noted, however, that when the Queen succeeded to the throne, her accession was proclaimed for the whole of Australia by proclamation of the Governor-General in the Federal Executive Council; that the royal style and titles in Australia are declared by an act of the Commonwealth Parliament and that such international acts as a declaration of war, appointment of Australian ambassadors and signing of treaties, done in the Queen's name, are done by the Commonwealth and not by States.

The Queen in Australia is not Queen of six separate States but of the Commonwealth of Australia. In national matters her representative acts on the advice of Commonwealth Ministers. In matters within the powers of a State Parliament her representative in each State acts with the advice of State Ministers.¹

THE AUSTRALIAN CONSTITUTION

So the first short answer to the question: 'What does the Governor-General do?' is that he represents the Queen, our own head of state, and exercises on behalf of the Queen the powers and functions of the Queen in a constitutional monarchy, a parliamentary democracy and the Australian Federation.

The Constitution of the Commonwealth of Australia in Clause 2 recognizes the fact that, as the Queen cannot be in Australia all the time and as the governing of Australia is a continuous business, she needs to appoint a Governor-General to represent her and to act for her. Later chapters of the Constitution set out with care the part that the Governor-General plays in government.

Following the Proclamation of the Commonwealth of Australia, Queen Victoria, by Letters Patent dated 29th October, 1900, constituted the office of Governor-General, entrusted the Great Seal of the Commonwealth to him and gave him the powers necessary to his office. Each Governor-General, on his appointment, receives a commission from the Queen to 'authorise, empower and command' him to exercise the duties and powers in these Letters Patent.

The Governor-General is appointed by the Queen on the recommendation of the Australian Prime Minister. Over the years the convention has been recognized that the Prime Minister, before making his recommendation, discusses a name, or names, with Her Majesty. This convention flows from a resolution of the Imperial Conference of 1930 that Dominion Ministers should only make their formal submissions 'after informal consultation with His Majesty'.

The duties of the Governor-General are of various kinds. Some are laid on him by the Constitution, some by the Letters Patent and his Commission. Others are placed on him by Acts of the Commonwealth Parliament. Others come to

him by conventions established in past centuries in Great Britain or by practices and customs that have developed in Australia.²

Let us look first at those duties, mostly connected with the government of the nation, which he is required to do by law.

Some of his duties relate to the functioning of Parliament. The Governor-General may: appoint times for holding sessions of Parliament; prorogue Parliament; dissolve the House of Representatives. Proposed laws (that is Bills passed by both Houses of Parliament) are presented to the Governor-General for assent. In the case of a disagreement between Senate and the House of Representatives, he may convene a joint sitting to resolve the deadlock.

Some of his duties relate to the functioning of the Executive. Clause 61 of the Constitution reads as follows: 'The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.' In performing this duty the Governor-General is advised by the Federal Executive Council.

Some of his duties relate to the functioning of the courts. The justices of the courts are appointed by the Governor-General-in-Council and cannot be removed from office except by the Governor-General-in-Council. This is part of the way in which the independence of the courts from popular pressure or from political direction is safeguarded. The prerogative of mercy is exercised by the Governor-General and under certain statutes the Governor-General may reduce the penalties imposed for offences. It should be made clear that the Crown cannot change the law, or interpret it or decide whether or not a law is valid, or cancel a conviction but, after the law has taken its course, the Crown can take into account special circumstances or special hardship and extend clemency.

Some of his duties relate to the day-by-day functioning of administration. Only a few examples can be given. A wide range of appointments are made by the Governor-General-in-Council. Acquisition of property by the government can only be done by the Governor-General-in-Council. Changes in the structure and the size of establishment of the Commonwealth Public Service are made by the Governor-General-in-Council. Most of these duties are explicitly laid on the Governor-General-in-Council by Acts of the Australian Parliament.

Some of his duties relate to the armed services, for under Clause 68 of the Constitution the command-in-chief of the naval and military forces of the Commonwealth is vested in the Governor-General as the Queen's representative.³

All of these duties have a common characteristic. The Governor-General is not placed in a position where he can run the Parliament, run the Courts or run any of the instrumentalities of government; but he occupies a position where he can help ensure that those who conduct the affairs of the nation do so strictly in accordance with the Constitution and the laws of the Commonwealth and with due regard to the public interest. So long as the Crown has the powers which our Constitution now gives to it, and so long as the Governor-

General exercises them, Parliament will work in the way the Constitution requires, the Executive will remain responsible to Parliament, the Courts will be independent, the public service will serve the nation within the limits of the law and the armed services will be subject to civil authority.

PARLIAMENT

Let us now look in a little more detail at some of those duties he performs in relation to the functioning of Parliament. Section of the Constitution says that Federal Parliament 'shall consist of The Queen, a Senate and a House of Representatives'. The Queen is part of Parliament and actions by the Queen (in practice by the Governor-General acting in her name) are an integral part of the functioning of Parliament and of the procedures and practices of Parliament.

For example, when a Bill proposes that expenditures be made, a message has to be sent to Parliament by the Governor-General asking for the grant of money. This procedure is in part traditional and a reminder that Parliament keeps the power of the purse. It also helps to focus attention on the Bill as a 'money Bill' that requires the attention of members and the observance of procedures by both Chambers of Parliament in a different way from other Bills. The Governor-General sends the message on the advice of his Ministers and it is difficult to imagine the situations in which he might refuse to take that advice. Theoretically, he could do so. If, inadvertently or by ill intention, the message contained a false statement or asked for a grant of money that was unrelated to the purpose of the Bill, he could draw the attention of his advisers to the fact. Presumably they would have second thoughts.

Another example concerns the assent to Bills. After a Bill has been passed by both Chambers of Parliament it is presented for the Governor-General's assent and the legislative process is not complete until the Governor-General has signed two copies of the Bill and returned them to both Chambers with a message informing them of his assent. When the Bills are presented to him they are accompanied by a certificate from the appropriate officer of the Parliament that the text presented is the text passed by each House. Normally, on this certificate, the Governor-General gives his assent without delay.

What would happen if, on reading the Bill, he found some fault in it? There was in fact a recent case of this kind in one of the States. The Governor of the State detected an error in the text and drew the attention of the officers of the House to the fact that the Bill, as drawn, contained a sentence that did not make sense, although it was undoubtedly what the two Chambers had passed. On further examination, his opinion was confirmed. The solution was for the Governor to return the Bills to Parliament, with a message in which he himself requested an amendment to rectify the error — an interesting illustration that the Queen is part of Parliament and of the whole legislative process.

Although it may be highly unlikely to arise in practice, it is theoretically possible that if the Governor-General were presented with a Bill, agreed to by a majority in both Houses, that was clearly contrary to some provision of the Constitution, he could return it to Parliament pointing out the conflict. To give

a wholly imaginary and very extreme illustration, let us suppose that at a general election one party received a huge majority in both Houses and immediately (in spite of all objections that might have been raised by their draftsmen or their political opponents and in contempt of a possible appeal to the High Court) put through Parliament a Bill saying that no more elections should be held until the Minister for the Interior decided to hold them. A Governor-General could properly withhold assent to such a Bill on the ground that this was an action that could only be done by Parliament in accordance with the provision of the Constitution for the amendment of the Constitution. Undoubtedly a crisis would be precipitated.

Such an extreme illustration underlines an important point. In normal times when customary practices and procedures are being followed and the Constitution and laws of the Commonwealth are being scrupulously observed, the role of the Governor-General in Parliament would seem to be a matter of unbroken routine. In abnormal times or in case of any attempt to disregard the Constitution or the laws of the Commonwealth, or even the customary usages of Australian government, it would be the Governor-General who could present the crisis to Parliament and, if necessary, to the nation for determination: It is not that the Governor-General (or the Crown) can over-rule the elected representatives of the people but in the ultimate he can check the elected representatives in any extreme attempt by them to disregard the rule of law or the customary usages of Australian government and he could do so by forcing a crisis.

DISSOLUTION OF PARLIAMENT

The Constitution gives to the Governor-General certain powers and duties in respect of the meeting of Parliament and its dissolution. Let us return now to discuss, not as any extreme or imaginary cases, but as the more normal pattern of political life in Australia, the provisions in respect of the dissolution of Parliament.

Under the Constitution, the term of the House of Representatives is fixed at three years. As the end of that term approaches, the Governor-General knows that there is a date beyond which the House cannot continue to function, for the Constitution says (Clause 28): 'Every House of Representatives shall continue for three years from the first meeting of the House, and no longer, but may be sooner dissolved by the Governor-General.' When the end of the three years approaches the question in his mind is not whether Parliament shall be dissolved but what the date of dissolution will be. In due course the Prime Minister will call on him to discuss the date. Before reaching an opinion about a suitable date the Prime Minister himself has had to consider such questions as when the business of Parliament can be completed, whether the electoral rolls and the administrative plans for conducting an election can be ready in time, and what is a convenient period for an election campaign (for example, an election held either a few days before or a few days after Christmas and the New Year would be inconvenient for everyone). After this discussion, the dates may be announced tentatively for the convenience of all parties and, in due course a formal proposal will be made by the Prime Minister, in writing, for the dissolution of Parliament. In that case the sort of

matters on which the Governor-General needs to be assured before granting the dissolution are that Parliament has voted supply or taken any other necessary legislative measures to enable the services of government to be carried on until the new Parliament meets after the election and that the suggested timetable will not cause any difficulty in obeying the stipulations of the Constitution regarding the summoning of Parliament. Having obtained such assurances he will see the way clear to grant the dissolution and sign the necessary proclamation.

If a situation arises, however, in which it is proposed that the House be dissolved sooner than the end of its three-year term, the Governor-General has to reassure himself on other matters. This is an area for argument among constitutional lawyers and political historians and is a matter where the conventions and not the text of the Constitution are the chief guide. It is the function of the Prime Minister to advise that the House be dissolved. The most recent practices in Australia support the convention that he will make his proposal formally in writing supported by a written case in favour of the dissolution. It is open to the Governor-General to obtain advice on the constitutional question from other quarters — perhaps from the Chief Justice, the Attorney-General or eminent counsel — and then a solemn responsibility rests on him to make a judgment on whether a dissolution is needed to serve the purposes of good government by giving to the electorate the duty of resolving a situation which Parliament cannot resolve for itself.

If a Prime Minister were to advise a mid-term dissolution simply because 'he would like to have an election', a Governor-General would quite reasonably ask for additional reasons to support a general argument that Parliament had become unworkable or that some exceptional and unforeseen situation had arisen which could not be resolved by Parliament itself.

There is precedent, too, that in the event of a mid-term dissolution, Parliament may subsequently ask for the publication of the correspondence between the Governor-General and Prime Minister. Hence there is need for both of them to set out their views in writing, and to take care that what they say and do will stand the test of historical and political scrutiny. They should know that they should have good and sufficient reasons for taking an unusual course.

One cannot discuss with propriety what would be considered 'good and sufficient reasons' for a mid-term dissolution of Parliament but, without doing so, I can give some illustrations of the sort of questions that might arise.

In crude terms, the case for dissolving Parliament in midterm is that Parliament has become 'unworkable'. Among various reasons for this may be a conflict between the two Chambers (Senate and House of Representatives), the defeat of the Government on a major issue on the floor of the House, or difficulty of a Prime Minister with his own supporters. The key question is whether in fact Parliament has become 'unworkable'. Have all the proper steps been taken to resolve the conflict between the two Chambers; can an alternative Government be found without an election; can the Government party or parties find a new leader behind whom a majority will rally? There are good authorities to support a view that Parliament should not be dissolved and

an election held simply to help a party leader or a party get out of their own difficulties but that the electorate should only be asked to overcome difficulties which Parliament itself cannot overcome.

The dissolution of Parliament is an example of one of the matters in which the Constitution requires the Governor-General to act on his own. In most matters, the power is exercised by the Governor-General-in-Council, that is with the advice of the Federal Executive Council (in everyday language, with the advice of the Ministers meeting in Council).

THE EXECUTIVE COUNCIL

Business comes before Executive Council in the form of a recommendation by a Minister, and is accompanied by an explanatory memorandum which is expected to anticipate any questions that might reasonably be asked by members of the Council and to establish the legal authority for the proposed action.

The Ministers have to take responsibility for the advice they give; the Governor-General-in-Council tries to ensure that the advice has been framed with a full regard for all relevant factors and that the action recommended is in conformity with the Constitution, the laws of the Commonwealth and the established and recognized practices of Australian government.

A decision in Executive Council is the final executive action. When statutes say that certain actions may be done by the Governor-General-in-Council they are saying in effect that the action is of a kind that cannot be left to a single minister or to a functionary of government, but has to be done more solemnly and in the knowledge that this is a final action.

One of the main responsibilities of the Governor-General as President of the Executive Council is to make sure that all actions of the Government are constitutionally correct and lawful. This is not a matter of relying on his own opinion but, in case of any doubt (and, as most minutes have been drawn up by senior officers of the Government, doubt seldom arises) of referring the matter to the Attorney-General for considered advice. Another responsibility is to make sure that decisions are consistent with what is known of Government policy. In most cases policy is known to him beforehand because the Governor-General receives regularly the minutes of Cabinet decisions. In other cases any doubt can usually be cleared by asking the senior Ministers present at the Council meeting whether they are satisfied that the recommendation accords with Cabinet views. A third responsibility concerns the conventions that have grown up around Executive Council. For example, a convention has grown up that after the issuing of writs for an election for the House of Representatives — that is an election which may result in a change of government — no new decisions of matters of major policy should be taken and no appointments to high office should be made. The commonsense of this convention is to avoid a situation in which an expiring government may do something which, a month or so later, an incoming government may immediately try to cancel. The philosophy of it is that if a question on major policy is being put to the electorate at an election, a government should not make final decisions on that

question before the electorate has given its answer. Of course the business of the country cannot be wholly suspended and there may be emergencies in which action should be taken at once, but, if a single Minister overlooks the convention, it is customary to defer his recommendation and draw the attention of the Prime Minister to the fact so that it becomes a matter for the Prime Minister or his Cabinet to decide whether the urgency is so great that action must be taken at once.

In presiding in Executive Council in this way a Governor-General is both a watchdog over the Constitution and laws for the nation as a whole and a watchdog for the Government considered as a whole (whatever Government may be in power). He does not reject advice outright but seeks to ensure that advice is well-founded, carefully considered, and consistent with stable government and the established standards of the nation.

Various steps are open to him. He can ask questions. He can seek full information. He can call for additional advice on any doubtful issue. In a matter of major importance he may suggest to the Prime Minister that an augmented meeting of Executive Council be held to consider all aspects of a question or, perhaps better still, suggest that perhaps the matter be discussed in Cabinet, if there has been no discussion already, so that the recommendation to Executive Council is certain to be the agreed view of his Executive Councillors.

A Governor-General, acting in Executive Council on advice, has to be sure that he has only one set of advice and he certainly cannot allow the Crown to be put in the position of acting and then finding its actions are unacceptable to its advisers or are the subject of further controversy among its advisers. This is the obverse side of the doctrine of Cabinet responsibility. A Governor-General, presiding over the Executive Council, would not, customarily, allow Ministers to have an argument in Council about any differences of opinion among themselves on policy but suggest that they go away and settle their differences in Cabinet and come back to him when Cabinet is able to express or convey a single view. Similarly, it has been argued that a Governor-General might hesitate to do what a Prime Minister urged him to do if there were reason to believe that the Prime Minister were at odds with his own Cabinet or his own party; and in such a case the Governor-General-in-Council might seek further assurances that he was acting on clear advice and not taking sides in an unresolved argument. In the case of a coalition government if there were any substantial doubt about the unity of the coalition partners he might find it advisable to seek assurances from the leader of the coalition party as well as from the Prime Minister.

The Executive Council provides regular and close association between the Governor-General and his Ministerial advisers. In addition, opportunities arise and can be made from time to time for direct and personal conversation in private. The Governor-General may ask a Minister to call to discuss matters of current interest. Such discussion may provide an opportunity for comment and question and undoubtedly a Governor-General may have some influence even if it is only to ensure that matters are broadly considered. Some discretion is needed, however, for the point made about Cabinet responsibility in the previous paragraph also means that a Governor-General cannot separate one

Minister from another Minister or enter into arguments that should properly be carried out between Ministers in Cabinet or inside a party room and not with the Governor-General. He may give some counsel to Ministers and even give them the solace of the confessional but, in my view, he would stray beyond his functions if he took sides in any argument between his advisers or preferred one Minister to another, or tried to intervene in the domestic arguments of any political party. The integrity of a Government is one of his over-riding concerns. Another is his own freedom from partisanship.⁴

With the Prime Minister the Governor-General can be expected to talk with frankness and friendliness, to question, discuss, suggest and counsel. The role of the Crown in the Executive is to ensure that decisions are made with care and in accordance with the law. This is ensured, not by the exercise of a veto, but by the influence on Ministers and public servants of the fact that the final scrutiny of a proposal for executive action will be a thorough scrutiny maintaining both law and principle. So long as the Crown is part of the Executive, it will be difficult for any elected Government to act in a wilful and high-handed way in disregard of the law or the public interest unless it is prepared to expose itself as deliberately choosing to disregard the law and the public interest; and it will be impossible for any bureaucracy to do unobtrusively anything other than what Parliament has empowered it to do.

ACTING ON ADVICE

The Governor-General acts on advice, whether he is acting in his own name or as Governor-General-in-Council. He has the responsibility to weigh and evaluate the advice and has the opportunity of discussion with his advisers. It would be precipitate and probably out of keeping with the nature of his office for him to reject advice outright but he is under no compulsion to accept it unquestioningly. He has a responsibility for seeing that the system works as required by the law and conventions of the Constitution but he does not try to do the work of Ministers. For him to take part in political argument would both be overstepping the boundaries of his office and lessening his own influence. He can himself question a conclusion, seek to know the reasons for it, draw attention to relevant considerations to ensure they are taken into account, and satisfy himself that the proposal does express the single mind of his advisers, but he himself, while influencing the outcome of discussion in this way, needs to be careful not to be an advocate of any partisan cause. In doing this he has two dominant interests — one is the stability of government (no matter from which political party it is drawn) and regard for the total and non-partisan overall interests of the people and the nation.

Throughout this discussion I have used the term 'advisers'. I want to be precise on this. There is a journalistic misconception that the Governor-General has some sort of bureau of his own and depends on it for advice. This is not so. Neither in its membership nor in its functions is the staff at Government House designed to advise the Governor-General on the decisions he should take or to act as his own team of experts. The Governor-General's only advisers are his Ministers. His only experts are those whom he chooses to consult in the whole of the Commonwealth structure of Government. If he wishes for guidance on any legal or constitutional points that may arise he will

seek it from the Attorney-General or from eminent authorities of his choosing, and not from any staff of his own. Nor will he make any personal pretension to be an expert himself. I say this explicitly to ensure that there is no misunderstanding. There is no such thing as a 'Government House view' or 'Government House policy', or 'Government House advisers'.

The Government House staff, co-operating with the appropriate officers of the Ministry and Parliament, may assist in seeing that the proper forms and procedures are used, that precedents are not overlooked, and business is presented in the prescribed manner, but they have no part in decision-making or in preparing 'briefs' or 'cases' for the Governor-General.

In my view, it would be a wholly undesirable state of affairs in Australian government if a Government House staff were ever to make the pretension of giving a Governor-General advice on what to do separately from the advice given to him by Ministers. Personally, I do not allow such a pretension. Government House staff have no influence in forming my opinions nor do I discuss political questions with any of them. I discuss these questions with my Ministers.

THE GOVERNOR-GENERAL'S ROLE

It will be plain from what I have said that the part played by a Governor-General in Australian government may vary with the personality and the qualifications of the Governor-General and on the way each occupant of the office chooses to interpret his role. Conceivably, a Governor-General could be a cipher, do whatever he was told to do without question and have little influence on what happened. I have spoken on the assumption that Governors-General will be active and I fervently hope that Australia in the future will never have the misfortune to have an inactive one. It will also be plain that an active Governor-General would need to have some knowledge of both the theory and practice of government and the more he knows of Australian usage and of the Australian constitutional background and the Australian administrative structure the better he will be able to do his job. I fervently hope that Australia in the future will always have the good fortune to have Governors-General with some experience of the working of government. To be an eminent citizen is not a full enough qualification for this post. That does not mean that I suggest that every Governor-General has to be a specialist or an expert in public administration. His role requires qualities that would enable him to consider wisely advice given to him, rather than to try to tell others what to do. He could cause mischief and have little hope of doing good if he tried to be a ruler or if he tried to manipulate politicians. He has to be free of partisanship. He cannot start promoting particular causes, for his dominant role is as one who uses his influence to ensure that there is care and deliberation, a close regard both for the requirements of the law and the conventions of the Constitution and for the continuing interests of the whole nation, and that the government which the Australian people choose should be a stable government acting consistently and responsibly.

In such a system the influence of the Governor-General in the government of Australia will vary a good deal according to the degree of respect in which he is

held. If he is thought to have some depth of experience, to have some degree of wisdom, some measure of tolerance and understanding of various points of view and to be worthy of confidence and trust and able to keep his own counsel and the confidences of others, his influence will be much greater than if he were held in a lesser degree of respect. His influence would disappear altogether if he were thought of as one who would do whatever he was told without asking the reasons why.

HIS PUBLIC APPEARANCES

In this memorial lecture I have talked only of that part of the Governor-General's duties directly related to what, by stretching the meaning of the word, might be considered to be 'management'. He has many other duties to perform both in public and private. Some involve ceremonial occasions arising from his place in Australian government — the opening of Parliament, the administering of oaths of office, the receiving of credentials from foreign ambassadors, the holding of investitures, the taking of parades, the receiving of heads of states of other countries. Some involve public duties on behalf of national and international institutions and societies, such as the opening of conferences, attendance at major public gatherings, presentation of awards and so on. As patron of many organizations, as Prior of the Order of St John, as Chief Scout and in similar capacities he has regular demands on his time.

All of these duties take him to all parts of Australia, for his jurisdiction extends over the whole Australian Commonwealth and his presence is both required and sought in all parts of the Continent. For example, the presentation of Queen's Colours to a regiment in Perth or to a regiment in Townsville is no less a duty than to take the Queen's Birthday Parade at Duntroon. A Governor-General could not completely do his duty by staying all the time in Canberra. In Government House, the Governor-General and his wife are hosts at many functions large and small and receive numerous callers.

I mention these other activities simply to put what I have said about government into a broader framework. One easy answer to the questions about whether a Governor-General is necessary and whether he is of any use is that a great number of people in Australia clearly think so because they are always asking him to do something and they keep him fully employed. I have received encouraging indications, too, that Australians both expect and appreciate statements by a Governor-General on matters of current concern at a level different from that of party political controversy. I also receive repeated evidence that there are many national and international occasions when, in all parts of Australia, the organizers seek the presence of the Governor-General in order to mark the high-level character of the observance.⁵

May I digress a moment to say that in the acceptance of invitations I try to observe closely certain established courtesies and conventions. In national events or in functions of an Australia-wide interest and in matters clearly under Federal administration it is customary for a Governor-General to accept an invitation on his own responsibility. If an event is clearly a State event or arises from a function of a State Government, before accepting the invitation, it is customary to refer the matter both to the Government House and to the

Premier's Office of that State to ensure that the invitation is one that both the State Governor and the Premier think it appropriate for a Governor-General to accept.

A further question on which I will not enlarge concerns the changes that are taking place in the position of Governor-General. The office was created by the Australian Constitution in over seventy years ago. Since that time Australia has risen to nationhood. In 1901, even the status of Dominion was unknown. Today we have grown into a stage of independence and international recognition that was never envisaged in 1901. The Queen herself is now Queen of Australia and in matters concerning Australia acts solely on the advice of her Australian Ministers. Australia in her own right and identity as a nation appoints and receives Ambassadors. Her treaty-making power is exercised freely. Australia goes to war by her own decision and makes other decisions in her relations with foreign countries independently of any decisions made or not made on the same subjects by other members of the Commonwealth of Nations. What an Australian Government might advise our head of state to do on many subjects is in some cases quite different from what some other government in the Commonwealth of Nations might advise the Queen to do. We have international interests today which were not known in 1901. In practice this means that an Australian Governor-General, representing and acting on behalf of the Australian head of state, the Queen, in 1972, is not the same as an Australian Governor-General performing his functions in the early days of Federation.

Beyond suggesting that the nature of the office of Governor-General of Australia may need re-examination and reinterpretation in the light of the great changes of the past seventy years I leave the further discussion of this topic to the lawyers and the students of our modern political institutions. Two recent precedents established both in Canada and Australia are that a Governor-General can travel outside his country and be recognized while overseas as Governor-General of his country and that at great international gatherings, as at the Iranian celebrations, in the absence of the Queen herself, he was accorded a status similar to that of a head of state.

My final word is a plea that my present address be seen in perspective. I have tried to be discreet and non-controversial and to confine myself very narrowly to a description of one phase of the Governor-General's work. Nothing I have said should be taken as a direct reference to any transaction that has been handled in my own term of office, or to my own relationship with any of my advisers. I have tried to give a straight description of the theory and practice and certainly not to recount anything that has happened in the recent past or to declare any intentions about what would be done in the near future and only ignorance or malice would report what I have said as having any application to current political events.

Notes

¹ Since this lecture was written it has become plainer than ever that in the mind of the Palace and of the British Government the only advisers of the Queen on matters concerning Australia are her Australian Ministers, namely those responsible to the Australian Commonwealth Parliament. There is no direct access by the Premiers of the States to the Queen and if access is sought either direct to the Palace or through the British Government, the question raised will be referred to the Australian Prime Minister for advice. Two minor exceptions are that the States still submit recommendations for honours and for the appointment of a State Governor to the British Secretary of State for Foreign and Commonwealth Affairs. These seem to me to be anachronistic survivals from the colonial period but have little or no bearing on the theory or practice of Australian government.

² If I were writing this lecture today, having in mind some of the public discussion on recent political events, I would emphasize the point that a number of powers and functions are given to the Governor-General explicitly by the provisions of the Australian Constitution and statutes of the Australian Parliament. In such cases, while he acts in the name of the Queen, the powers and functions are exercised by him as part of the duties of the Governor-General of Australia. The point can be illustrated by recounting that he reports to the Queen that he has appointed such-and-such a person as Prime Minister, that he has appointed new Ministers of State or that he has dissolved Parliament, but the Queen is not-directly involved in the decision to do these acts. I can think of no occasion in which the Sovereign, has intervened in the past or is likely to intervene in the future in the making of such decisions. The question of whether the Governor-General had acted with the specific prior approval of the Sovereign would not be likely to arise in any challenge to the validity of such acts. I find it hard to conceive any situation in which the Sovereign would have either the wish or the opportunity to countermand what the Governor-General had done.

³ The exercise by the Governor-General of the 'command-in-chief' of the armed forces is qualified by a number of statutes of the Australian Parliament and the regulations made under them. The constitutional provision means, however, that unless the Constitution is amended the command-in-chief of the armed forces cannot be placed elsewhere. Parliament can legislate to provide for the administration of the defence system and for making military appointments in the defence forces but it cannot vest the command-in-chief in any other person or body. This ensures that civil administration and civil control of those forces will remain and be exercised by a Governor-General acting with the advice of Ministers. The Governor-General is nominated to the command-in-chief not simply for ceremonial purposes nor as the focus of loyalty but also to ensure civil authority over the armed services. Among the many illustrations that might be given of the importance of this point and the way in which a Governor-General might play his due part, I select only one — the use of members of the armed services in cases of civil emergency of any kind. Sometimes both politicians and the press talk rather loosely about 'calling in the troops'. The procedure is not as simple as the phrase would suggest. In

following the statutory procedure, as in so many other areas of government, the Governor-General is the final check against ill-considered or precipitate action. If we assume a situation in which a Prime Minister had made up his mind to place troops in readiness to deal with an expected outbreak of civil disorder, it would be the Governor-General (either in Executive Council or in private conversation) who could ask the necessary questions or seek the necessary assurances before he accepted the advice to take the action which he alone can take. Does the Minister for Defence concur? Has the chief-of-staff of the service concerned been consulted on such points as what troops and armament are required to handle the prospective situation and has he been asked for an assurance that the forces available have the capacity to handle it effectively? Is the Prime Minister convinced that this extreme action is required? Are there no alternatives? The Governor-General would also be the one to seek assurances about reporting the measure to Parliament and the termination of the use of troops.

⁴ In my experience, several Ministers in successive governments welcomed an opportunity of talking with me, as an independent person, about one difficulty or another they had encountered. Some Ministers talked of difficulties between themselves and their own departments. Some talked about the best way to approach a particular administrative problem. Some talked about difficulty in their own position as a member of Cabinet. A few, but not many, were ready to discuss prospects in the electorate. All would readily give information about the state of various matters they were handling. I think they respected the fact that I had long experience as a Minister of similar problems, that my advice might be worth having and that I kept confidences. I never thought it the business of the Governor-General to act as an intermediary or 'honest broker' but only to make suggestions to the Minister how he himself might face his own problem. In two or three particular cases I said direct to one Minister or another that I had an obligation of office to respect the position of Prime Minister. The proper course for a Minister who had a doubt or a grievance was to seek a private talk with the Prime Minister. If he wanted to differ from the Prime Minister the proper place to do it was in Cabinet or, better still, in the Prime Minister's own office.

⁵ After five years in retirement following five years in office I wish to enlarge these references to the public appearances made by the Governor-General. More than ever I am convinced of the importance of the office of Governor-General in its influence, either for good or ill, on the structure of Australian society and the outlook of the Australian community. Many people engaged in public affairs in Australia take politics and their daily occupations far too seriously and make foes of neighbours quite unnecessarily. Facing such a lack of urbanity I believe that one of the highly useful roles a Governor-General can play is in ignoring divisions and trying to set up an idea that we are all Australians even if we differ in our views on economic policy, wage fixing, the relative merits of private enterprise and state socialism and many similar issues. The office of Governor-General as the representative of the Queen is the highest single expression in the Australian governmental structure of the idea that Australians of all parties and all walks of life belong to the same nation. In affairs of state the Governor-General takes his advice from those

Executive Councillors whose party has a majority in Parliament, no matter which party it is, but in his public engagements, in his own guest lists and in moving about in the Australian community he is careful to make it plain that he is not the possession of any section, social group or political faction but is in the service of the whole nation. This interest in the whole community and the unifying effect of a head of state who 'meets the people' in the broadest sense of the term has been well exemplified by Queen Elizabeth the Second. The work she has done with singular devotion is a model of what a Governor-General of Australia might hope to do in his public activities in the Australian community, bringing to it the distinctive touch that he can add because he himself is an Australian and proud of it.

Additional Information

My method of working

Each Governor-General does his job in his own way and nothing I write about the way I worked should be taken as a criticism of the way in which any of my predecessors or successors carried out his duties.

First, to contradict flatly some accounts that have been published as 'inside stories', let me make it plain that I never discussed affairs of state on social occasions. Any story that represents me as having said something on an official matter to a Prime Minister or to anyone else at a reception or a dinner party, or any story that I left a dinner table to fetch a paper from my study is false. I did not work that way.

Any private conversation between a Prime Minister and myself on an official subject took place when only the two of us were in the room, or, on rare occasions, with another Minister or the Secretary of the Prime Minister's Department present. I never told anyone what passed between a Prime Minister and myself in private unless, by agreement between us, some formal action was to follow our conversation and then I told only the official who had to attend to the matter.

Any telephone calls I made to a Prime Minister were made direct without using any intermediary such as a secretary or a switchboard operator. I could dial direct from my study table to the Prime Minister's desk and he could dial direct to me. With each of the three Prime Ministers with whom I worked I also made an arrangement to use the Secretary of the Prime Minister's Department as a liaison. I could dial direct to him and he could dial direct to me on the Prime Minister's behalf. These calls were usually to pass a message or to arrange a further talk at times when the Prime Minister was travelling. Luckily I had a long-standing relationship with both Sir John Bunting and Sir Lenox Hewitt, having worked closely with them in various official capacities over a long period of years, and I had complete confidence in each of them. They facilitated close and constant communication between the Governor-General and Prime Minister without presuming to play the role of either of them.

This tightness of confidence and ready communication seemed to me an essential part of the way in which I did my job. Any claim that may be made by other persons to have been privy to our conversations or to have arranged them is false. At the same time, following advice given to me by Lord Casey, I was scrupulous to announce in the daily vice-regal bulletin issued by the Official Secretary the name of every person who had called on me. If there was no reference in the vice-regal news to a call at Government House then no call took place. The only exceptions to this rule were personal callers, such as a

physician, or someone rendering a personal service unrelated to any official duties.

In general I used the direct telephone link to inform a Prime Minister of any matter on which I was concerned and to mention points on which I needed further advice and to arrange a mutually convenient time for the Prime Minister to call. I understand that the practice in Britain is that the Prime Minister makes a regular weekly visit to the Palace to be received by the Queen and to keep her informed on matters of state. So far as I am aware there has been no similar practice in Australia. It seems to me that there might be some value in establishing such a routine in Australia in order to maintain the necessary closeness of the relationship between Governor-General and Prime Minister and their dependence on each other. In my own experience I found easiness of communication but there might be advantages in certain circumstances if meetings took place without special request.

As I have said, all my conversations with a Prime Minister were private and no one other than our two selves and occasionally another Minister was present, except if and when, as the result of a conversation, the point might be reached when action might have to be taken and Bunting or Hewitt or the Official Secretary at Government House would be called in either to advise on procedure or to be informed of the steps to be taken.

After any conversation on questions of substance I made a hand-written note in a personal journal of the subjects discussed and any points of which I might need an exact record. No other record of these conversations was made and no one else saw my journal. If we had dealt with any matter which required to be dealt with on an official file at Government House I would dictate a minute to the Official Secretary confined to that matter alone. All else that passed between a Prime Minister and myself was kept in strict confidence. With all three Prime Ministers our talks were marked by frankness and trust, and the Prime Ministers discussed with me their difficulties and their plans and the political outlook and gave information as well as their advice on particular proposals and I never found any difficulty with any of them in discharging the conventional role of the Crown to discuss, counsel and warn.

I regard the maintenance of a close relationship between Governor-General and Prime Minister with mutual respect, trust and confidence, as an essential element in good government. Having said that I wish it to be clearly understood that I pass no judgment and, in ignorance of the facts, have no capacity to pass judgment on either of the parties on any occasion when this condition did not exist. It was my own happy experience to have enjoyed a relationship of trust and confidence with each of three successive Prime Ministers.

Besides talking to a Prime Minister, I had frequent conversations with Ministers at Government House. Sometimes a Minister would come at my request to discuss a particular matter that had arisen. On a small number of occasions a Minister asked if he might call to see me on a particular matter. Mostly the conversations took place when a Minister had come to Government House for an executive Council meeting or for some special purpose (for example,

administering an oath to someone appointed to a statutory office) and stayed behind for a private talk.

I would also ask occasionally for the permanent head of one of the departments to call but, in protection of the public servant, would inform his Minister beforehand both of my wish to see his permanent head and the reason for doing so. As I saw it the function of the public servant was only to give information to the Governor-General and not to proffer advice except perhaps on matters of procedure or practicability. For example on several occasions, with the prior agreement of the Attorney-General, I received much valuable assistance from the Secretary of the Attorney-General's Department. He did not advise me what to do but examined what I proposed to do and made comments on the way in which it could be done, or perhaps suggested changes in the text of a draft document or indicated points on which I might need further advice. He never presumed to be my adviser and knew that I left the way open for him to take up any further points with the Attorney-General. I believe a Governor-General has to be very careful to maintain the position of his Ministers as his advisers in the strict sense of the term. The public servants can help him a great deal in his examination of the advice given to him but should not themselves be allowed to advise. If they have any doubts or disputation about the advice given they should settle that with their own Ministers.

I took a similar view regarding the functions of the Official Secretary at Government House. I could use his experience and knowledge of procedures. He could be useful in setting in motion the machinery. But he was neither privileged to be an adviser himself nor a screen through which the advice of Ministers would come.

Another rule I observed in my method of working was to give a high priority to the Governor-General's duties in respect of the functioning of Parliament and the business of the Executive Council. In planning my programme for a year I always blocked off those periods, such as the meetings of Parliament and the pre-session series of Cabinet meetings, on which my presence close to my Ministers might be required. I also blocked off those annual functions such as Australia Day, Anzac Day, Queen's Birthday and any prospective Royal visits or visits by heads of state which would require my presence in Canberra. Then I used this as a guide in accepting commitments elsewhere in Australia. I suggest that the prime obligation of the Governor-General is to discharge the duties placed on him by the Australian Constitution and for that purpose he should be accessible to his advisers. This calls for some intelligent guesswork based on experience in government.

Nowadays the telephone, teleprinter and the aeroplane have simplified the problems and there are few places in the continent where Governor-General and Ministers cannot be instantly in touch with each other, so in many cases the Governor-General can be readily accessible even when not in Canberra.

In accepting engagements I took the view that the Governor-General's vice-regal duties cover the whole of Australia. In the case of functions which clearly had a national character, whether it were a conference, a sporting contest or

some public celebration, I had no hesitation in making my own plans. In the case of functions which had a local character or which clearly came within the province of any of the State Governments I thought that courtesy required that I should inform the Governor and the Premier of the State concerned.

My experience was that a Governor-General has to be prepared to spend a lot of time at his desk. Much of the routine work can be delegated to the appropriate members of the Government House staff, but he cannot delegate the reading of official papers and the signing of official documents which come to Government House in a steady stream both from Parliament and from the Executive. Beyond the mastery of papers placed before him officially he also has the need to keep himself informed about a wide range of subjects. Diligence in business is required of Governors-General no less than of Ministers if they are to be anything more than figure-heads on leaky ships. The public appearances and the ceremonial and social functions are only the part of his duties visible above the surface.

The Executive Council

Some description of the way in which the Executive Council functions is necessary for a full understanding of the term Governor-General-in-Council. Section 63 of the Constitution says that the provisions of the Constitution referring to the Governor-General-in-Council shall be construed as the Governor-General acting with the advice of the Federal Executive Council, which is created by Section 62.

During my term meetings of the Executive Council were held weekly at Government House, Canberra, when Parliament was sitting. During the parliamentary recess they were held as required either in Canberra or at Admiralty House, Sydney, and occasionally at the Governor-General's office in Melbourne. If necessary a meeting could be held anywhere in Australia.

Customarily the Governor-General and two Ministers attend. With the Governor-General's permission a meeting can be held with the Vice-President of the Executive Council (or his deputy) and two other Ministers present. From time to time when the nature of the business requires it, additional Ministers may be present. Often I used to ask that the Attorney-General should attend when any question requiring his advice might arise. Sometimes, when a question of high policy was under consideration, I asked that the Prime Minister, Foreign Minister and Defence Minister should be present. Either the Governor-General or the Prime Minister may suggest an augmented attendance. It was also open for a Minister with a special interest in an item of business to ask to be present. But I only remember two occasions when this happened. I always tried to ensure that one of the two Ministers rostered to attend was among the senior ranks of the Ministry.

In the formation of a Ministry and in any rearrangement of portfolios each of the three Prime Ministers always did me the courtesy of asking whether the

person he proposed to nominate as Vice-President of the Executive Council would be acceptable to me. Similarly, although the Secretary of the Executive Council is customarily an officer of the Prime Minister's Department, the appointment is made by the Governor-General and whenever a change was in prospect the permanent head of the department submitted to me the names of those available for appointment and left the choice to me.

The Secretary of the Executive Council always worked through the Official Secretary to the Governor-General in obtaining approval for calling a meeting and the submission of business. No meeting of the Executive Council was ever held in my absence without my express permission. Before giving permission I had to know what business was to be placed before the meeting and what Ministers would be attending. If I thought it necessary I would suggest that major matters be deferred to a meeting at which I was present or would rearrange my own programme in order to preside.

Each item of business came before the Executive Council in the form of a minute signed by a Minister. Each minute was accompanied by an explanatory memorandum initialled by the Minister who made the submission. The Secretary of the Executive Council collated the items with an identifying number for each and prepared a schedule of them. At the end of a meeting the Governor-General and the Ministers who were present signed a covering document to the effect that the numbered items in the attached schedule had been approved by Council. If any item had not been approved or a decision on it had been deferred it was deleted from the schedule. Following the meeting the Governor-General signed each of the separate minute papers thus certifying that the Governor-General-in-Council had approved that particular recommendation. No action to give effect to a decision of the Governor-General-in-Council could be taken if the Governor-General had not counter-signed the minute paper in this way. After each meeting the Secretary of the Council notified the Ministers and departments of decisions taken and, in those cases where gazettal of a decision was required, informed the responsible officers that Publication in the Gazette could proceed.

If and when a meeting of Executive Council was held in the absence of the Governor-General, all the minute papers had to be returned to him and a decision of the Executive Council was not effective until he had counter-signed the covering document and each minute paper.

My practice was to require that the full set of minute papers and the schedule were delivered to the Official Secretary at Government House in time to allow me to read them before a meeting was held. In the case of routine weekly meetings, which were held in the morning, this meant that they had to be on my desk by the late afternoon of the preceding day. Sometimes, by reason of an unforeseen urgency, this routine was broken but the exceptional meetings held at other times at short notice were usually limited to one or two subjects. In that case I would only require that the set of papers should reach me in time for me to read them before the meeting commenced, or that the meeting itself was prolonged to allow time for detailed examination of the papers and any matters arising from them.

At the routine Executive Council meetings it was assumed that the Governor-General and the Ministers in attendance had already studied all the papers. Accordingly the usual procedure was for the meeting to refer to the schedule page by page, pausing long enough to allow any member of the Council to draw attention to an item on that page on which he sought further discussion. Then, at the end of the discussion, the schedule as a whole was put to the meeting for approval.

Many items on a schedule would cover familiar ground. As one example, under the National Health Act variations are made from time to time in the table of benefits and for that purpose a table running into two hundred pages of print may be submitted. The Executive Council does not pretend that it is competent to scrutinize every treatment and service covered by the table of benefits but satisfies itself from the explanatory memorandum that the recommendations are made by competent authority and on the required professional advice.

In my own study of Executive Council papers, I tried to satisfy myself first that the Council had the power under the Constitution or a statute to make the decision recommended, that the recommendation was made by competent authority and that any preliminary enquiry or other steps required by law had taken place. After it became known that this enquiry would always be made by me, it was customary for the explanatory memorandum in support of each minute to make an explicit statement on these points, with exact reference to the section of an Act or the Regulations bearing on the matter. On a great number of routine procedures this was the only question to be asked.

On matters which might be more controversial I would seek to satisfy myself that there was no conflict between the action recommended and any agreements, commitments or decisions of the government, and that respect had been paid to the convention of the Constitution and the established procedures.

Usually, if the originating department and Minister had done their work well the same point would have occurred to them. They would have cleared their recommendation with the Attorney-General's Department and the explanatory memorandum would say so. Some occasions did arise, however, in which the Executive Council meeting found a need to refer some questions for further advice by departments such as the Attorney-General, Foreign Affairs or Treasury.

Beyond this early concern that everything the Governor-General-in-Council did should be done properly according to law, and with due regard to precedent and obligation, I was also concerned with ensuring that there was no conflict among my advisers. Recommendations were made by a single Minister. If the subject matter obviously was of interest to several Ministers and departments I required an assurance that there had been interdepartmental consultation and that the recommendation was supported by all those directly concerned in that area of administration. I was also watchful for possible conflicts in policy. The Governor-General becomes aware of the policies of his government both from discussions with Ministers and especially with the Prime Minister and because he also receives the minutes recording Cabinet decisions. In the light of this

knowledge, it sometimes might appear that a recommendation made by a single Minister to Executive Council should be further considered for its possible effect on policy. The Governor-General-in-Council is the executive instrumentality and is not the policy-making instrumentality of government. Hence, if I saw a possible conflict of policy, I would ask whether or not a recommendation had been considered by Cabinet and, if not, would suggest that the Prime Minister should be asked for his direction whether it should go before Cabinet.

As my own experience grew and as the Secretary of the Council, the Official Secretary and the various departments became familiar with my working habits, it was possible to save time by clearing up any such doubts before the Council actually met and the Secretary of the Council could obtain further explicit information to supplement the explanatory memorandum. If the doubt remained I would put direct to the Ministers in attendance such questions as: Is this proposal in accordance with the Government's policy? Does it conflict in any way with what you are doing in another area of administration? Is there likely to be any political repercussion? Has it been before Cabinet? Does the Prime Minister, himself know of the proposed action? Is the action subject to any agreement or understanding with the State governments? Is it in keeping with the established conventions? If their answers to such questions warranted delay I would suggest that an item might be deferred so that the Prime Minister could decide whether or not the advice given to the Governor-General by Executive Council should be reconsidered or confirmed.

In my own approach to the work of the Executive Council I held the view — and I expressed this view plainly to Ministers at the time of the swearing-in — that part of the value of the work of the Executive Council was in protecting the government and especially the Prime Minister from the carelessness or precipitate action either of neglectful Ministers or self-willed departments. One of the prime interests of the Governor-General is in the stability of the government and in the consistency of its policies. The Governor-General-in-Council cannot be placed in the position of having to contradict or cancel his decisions because his advisers have been divided among themselves. This means that, in the Cabinet system of government, he should uphold the authority of the Prime Minister and insist that any conflicts of opinion or arguments among Ministers must be settled inside the Cabinet and not in Executive Council. The Governor-General-in-Council should not reject outright any Ministers' recommendation but he should be able to defer it or suggest reconsideration of it so as to ensure that his advisers have fully examined all aspects of the matter and are of one mind. I asked Ministers in attendance at any Meeting to approach recommendations in a similar way.

I will respect the secrecy of Executive Council proceedings and not discuss any of the matters placed before it during my term of office. Broadly speaking my experience was that in the course of five years under three different Prime Ministers there were four or five occasions on which a major issue arose in Executive Council and, as a result of discussion in the Council, a government eventually acted more wisely than was at first proposed. In the usual routine of business dealing with a variety of matters I found that possibly two or three

items out of every hundred were deferred for reconsideration on one point or another and the standard of government was improved by the adjustments made after reconsideration of the recommendation. The knowledge that Executive Council was taking its work seriously and was closely attentive to detail had a good effect in making departmental officers careful, in the submissions they made to their own Ministers and I hope that it made all Ministers more watchful and diligent in this part of their duty.

The great value of strict attention to Executive Council business is that it corrects a tendency in the public service and in the less efficient members of a Ministry to regard the Council as only a rubber stamp. I had a brief experience of some Ministers early in my term who obviously had scrawled a signature on a recommendation without reading it. Once it became known that a badly-prepared recommendation would not go through Executive Council much more care was taken to make sure that the minutes were soundly based and the explanatory memoranda were complete.

Shortly after my term commenced there were two occasions when a Minister, presumably on departmental advice, made a public announcement of a decision before the matter had reached Executive Council. Immediately I pointed out that the decision had not yet been validly made. On a third case, having read about an item in a newspaper on the morning it was to come before the Council, I deliberately deferred it, causing panic in the department, the necessary withdrawal of a gazette notice and some hedging with the press. The lesson was learnt and it was recognized that executive action by the Governor-General-in-Council had not been taken until all the processes of the Executive Council had been completed.

On perhaps five or six occasions in five years, when I was not immediately available at the same place as a Cabinet meeting, a Prime Minister personally asked me if a meeting could be held in my absence to deal with a single matter. On each of these occasions the reason for the approach was that Cabinet had reached a decision but Executive Council approval would be required before it became effective. To scotch a rumour or circumvent a leak to the press a prompt public announcement was needed and so, having explained the effect of the proposal and the reason for it, the Prime Minister himself sought my approval both for a quick meeting of the Council in my absence and for an announcement before I had placed my counter-signature on the Council's decision. I found no difficulty in co-operating in this way when I had a Prime Minister's personal assurances on the nature of the proposal and the procedure proposed to be taken. Strictly speaking the decision was not valid until the counter-signature had been given by the Governor-General and what I did was to permit an announcement after my acceptance of the advice but a few hours in advance of the physical act of signing the minute.

Never in my time was a meeting of the Executive Council held without my knowledge. If one had been held, the Secretary of the Council would have been called to account and I would have asked for another meeting in my presence. I might also have asked for another Secretary of the Council. In all cases the Executive Council action is not completed until the Governor-General has counter-signed the minutes. Before doing so he has the opportunity of

studying all the documents and I always considered it within my power to seek information and explanations before signing and, if I thought necessary, to withhold a signature until satisfactory explanations had been given.

The Executive Council cannot act without the Governor-General any more than the Governor-General-in-Council can act without the advice of the Council. The executive power of the Commonwealth of Australia is not vested in Cabinet or any group of Ministers but in the Queen, the Governor-General and the Governor-General-in-Council.

I have recounted these details about the Executive Council because I believe that close attention and regularity in the conduct of its business is vital to Australian government. In one sense it is the point of no return beyond which action cannot be stopped. In another sense it is the confluence of all administrative channels at which the consistency and compatibility of various proposals for executive action can best be seen. It is also the last point at which judgment can be made on whether or not anything is being done in disregard of established conventions or the lessons of political experience.

Procedures for selecting and appointing a Governor-General

The Governor-General of Australia is appointed by the Queen on the advice of the Prime Minister of Australia. The convention, which was accepted after discussion at the Imperial Conference of 1930, is that the Prime Minister has informal consultation with the monarch before he tenders formal advice and, as far as I know, this convention has been faithfully observed by successive Prime Ministers up to the present time.

When I was a Cabinet Minister under Menzies four appointments were made — Slim, Dunrossil, De Lisle and Casey. In each case the procedure was the same. In due course, at a Cabinet meeting Menzies informed his senior Ministers that he had had some discussion with the Sovereign and had it in mind to give formal advice for the appointment of a person he named. He said that he had made soundings without final commitment and the person he named was willing to accept. The Prime Minister's formal advice to the Queen and the public announcement followed in a day. He did not seek formal Cabinet approval of what he had done.

After Mr Whitlam became Prime Minister he sought my guidance on procedure. I told him of the convention and advised him to make his own decision and keep it to himself. So far as I was aware, he followed this advice and, though consulting one or perhaps two of his senior colleagues, took the responsibility for the choice. This is one matter in which I believe a Cabinet and a party have to leave the discussion to their own Prime Minister and the Sovereign. It would damage the office and increase the difficulties of the occupant if appointment were preceded by factional contention or personal rivalry.

Newspapers sometimes write loosely of 'candidates' (as though it were an election) and of a 'short list' (as though this were an advertised vacancy). In the case of the appointment made in 1974 at the end of my term some writers have also purported to recount my part in the selection of my successor and have mentioned various names.

With due regard to propriety and respect for confidences I shall recount what came under my own notice. After the change of government on 5 December 1972, there was some curiosity among pressmen whether the new Prime Minister would seek to have a new Governor-General. In one of his earliest conversations with me Mr Whitlam referred to the situation in 1949 when Sir William McKell continued in office after Menzies became Prime Minister. He said he would follow this precedent. It had never crossed my mind that he would do otherwise. At a private conversation in the middle of May 1973 I mentioned to the Prime Minister that, although a Governor-General does not have a fixed term, I would have completed five years in April 1974. Before I had accepted nomination my wife had stipulated that we should not stay in office longer than five years. Because of this and health reasons she wished to leave Government House in the coming April. Mr Whitlam and I then discussed the general problem of finding a successor. I summarized the ground covered in this conversation in a personal and confidential letter addressed to the Prime Minister on 18 May. This letter concerned the duties of the office and the principles that might be observed in making any nomination. On 8 June 1973, in the course of a long conversation on a wide range of topics, we had another discussion about the Governor-Generalship. Mr Whitlam asked me if I could continue in office for an extra two years until mid-1976 and I expressed my regret that, having regard to the views of my wife, I could not stay for more than a month or two after April 1974. He confirmed his agreement with the general principles set down in my letter of 18 May and I suggested that he should start looking at names and be prepared to speak to the Queen during her visit to Canberra in October. Up to this time no names had been mentioned between us and the Prime Minister said he was at a loss where to look. In order to help him I said I would jot down some names in various categories. My note of the conversation in my hand-written journal, made on the day the conversation took place, reads: 'They were intended only to be suggestive of various classes of persons who might be considered and were offered as examples of the way he might look around rather than as nominations.' The categories I discussed were: Ministerial; judiciary; academic; big business and men prominent in public movements; trade unions. In our previous conversations any idea of making an appointment from among the Governors of the States or from military circles had been discarded so those two categories were omitted.

On the late afternoon of 27 August 1973, we had another long conversation on a wide range of topics and again the Prime Minister asked me if I would stay in office. He said he had no name in mind as my successor. He had sounded out one ministerial colleague but he was not yet available. We discussed dates and agreed that the best time for a changeover might be in July 1974. I promised to stay until then. At the end of another long conversation on 27 November the Prime Minister told me that he had had

some discussion with Sir John Kerr about the office of Governor-General but Kerr was hesitating and wanted to know more about the terms and conditions of appointment. He asked me if I would have a private conversation with Kerr to give him information. On 10 December Kerr called at Admiralty House and we talked for an hour in my study. The Prime Minister called on me again on 19 December in connection with other business and I told him of my talk with Kerr. He said that he also had had another talk with him. As far as I was aware the matter was still open at that stage.

I have set this out with some care because I believe quite clearly that a Governor-General should not try to nominate his successor and I should not like it to be thought that I had tried to do so. The choice of a Governor-General is a matter for confidential discussion between the Sovereign and the Prime Minister. So far as I was concerned the name of Sir John Kerr was only one of a dozen or so names which had been jotted down by way of illustration and it was given in the category of 'judicial' simply because he was Chief Justice of New South Wales and not because of any personal knowledge I had of him. I had met him on several occasions but knew nothing of his qualifications or personal circumstances.

It seems to me that the pattern has been clearly laid down for appointing an Australian as Governor-General. The Australians who have already held the post — Isaacs, McKell, Casey, Hasluck, Kerr — and the present Governor-General had an experience in law or politics which qualified them for the constitutional duties of the office and it may well be that this has also set a pattern of appointing persons with a similar background. As I indicated in my original lecture I believe that this sort of qualification is needed for the Office. It is not enough to have a distinguished citizen who does not have some experience or training in the theory and practice of Australian government. I would also suggest that, there has been wisdom in the past in appointing persons who, though still mentally and physically fit enough to carry out onerous duties, are old enough to be at the end of their public career. The appointment of an Australian as Governor-General creates a problem of what happens to him when he retires. A vice-regal representative from Britain could virtually disappear by returning home. Normally an Australian will retire in Australia. Retirement sets a problem of comparison with his successor and what a former Governor-General does after retirement may affect the reputation of the office itself. In giving my own views on these points I do not presume to make judgments on what anyone else may do or may have done in different circumstances. My own exemplars were Sir William McKell, who was Governor-General when I first became an Executive Councillor, and Lord Casey, who was my immediate predecessor.

After retirement Lord Casey virtually separated himself from public life. He declined invitations to take public offices of any kind, refused to comment on public affairs, and he limited his public speaking engagements to those occasions with which he had a close and long-standing personal association. He did this, I know, in fairness to his successor. I did the same thing and was strict in limiting my acceptance of invitations. I followed the example of Casey's consideration for me and left the public stage clear for the next

incumbent. As for further appointments after retirement I take a narrow view that for an Australian the Governor-Generalship is the apex. There is no office higher than it and one should not go below it. An apex is the wrong shape to be a stepping stone. Furthermore, as in the case of a person like a Chief Justice, a Governor-General would imperil the reputation for detachment and independence necessary for his office if it were to appear that he was under an obligation to anyone or was inclined by his own hopes to seek special consideration in the future. While I take this strict view about appointment to new offices after retirement, it would not seem to me to be either inappropriate or improper for a retired Governor-General to accept public engagements which do not place him under an obligation or make him subject to the direction of another authority. For example, the distinguished contribution which a former Prime Minister, Sir Robert Menzies, made to constitutional studies in his lectures in the University of Virginia on 'Central Power in the Australian Commonwealth' is the sort of engagement which a former Governor-General equally qualified might properly undertake.

The events of November 1975 sparked off lively debate as to what the Governor-General does. The real point at issue in that controversy was not whether a Governor-General has the power to dismiss a Prime Minister. The fact that the power was exercised is proof that the power exists. The question to be asked is whether the Governor-General was justified by the facts as he saw and interpreted them, and, if he were justified, whether he was wise to use the power.

There is a difference between an extreme situation and a customary action. The controversy over the dismissal of a Prime Minister concentrated attention on one aspect, but in this lucid essay Sir Paul Hasluck sets out the wide range of the Governor-General's duties and the place of the office in the whole structure of Australian government.

No citizen who is interested in how he is governed will fail to read this account of the role of the Head of State written, as it were, 'from the inside'.