AUSTRALIA OWNS ITS HISTORY

In an article in The Australian on 10 November 2015 Paul Kelly and Troy Bramston assert that letters sent from the Governor-General, Sir John Kerr to the Queen in October and November 1975 must remain unavailable to Australian historians because of an agreement reached between Government House and Buckingham Palace in 1978.

Kelly and Bramston report that the current Prime Minister Malcolm Turnbull will advise Buckingham Palace and Government House to agree to release of the material because it forms an important part of Australian History.

Kelly and Bramston have themselves failed to have regard to an important aspect of Australian history that demonstrates that Australian historians already have the legal right to access Sir John Kerr's letters sent in his official role.

The availability to Australian historians of correspondence between Government House and the Queen after 30 years was expressly considered and addressed by Australia's Parliament in enacting the *Archives Act* in 1983.

Prior to 1983 the Australian Archives operated through administrative arrangements within the Government. The arrangements meant Government House could, but was not required, to provide its records to the Archives; and for Government House to specify the conditions upon which it made any records available.

The first Archives Bill was introduced in 1978. The Bill contained provisions which reflected the administrative practice then in place. As the then Attorney-General, Senator Durack said in the Explanatory Memorandum:

> "Special provision has been made for the records of the Governor-General, the Parliament, the Courts, Cabinet, the Federal Executive Council, and Royal Commissions. These records may be transferred to the custody of the archives on terms and conditions agreed on between the archives and those responsible for their custody."

The Bill was referred to the Senate Standing Committee on Constitutional and Legal Affairs along with the Freedom of Information Bill. The Committee noted the British practice that Royal documents were not made available until 60 years had elapsed since the date of their creation. The Committee accepted that because of that 60 year period there was a case for a special provision to be made in the legislation for correspondence between the Governor-General and the Queen; but otherwise rejected the approach proposed in the Bill for dealing with the Governor-General's records.

Following the Government's consideration of the Committee's report, the Attorney-General, Senator Durack introduced an amended Bill, the *Archives Bill 1981*. No

changes were made to the proposed provisions dealing with the documents of the Governor-General.

When the Bill came on for debate in the Senate, Senator Tate, who had been with Senator Gareth Evans a senior opposition member of the Senate Standing Committee, moved an amendment to subject all records of the Governor-General to the open access provisions without making any special provision for any of those records.

Senator Missen who was a Government Senator and had chaired the Senate Standing Committee spoke early in the Third Reading Debate to make clear that he would support the opposition amendments. As a result, and not surprisingly, the Bill did not proceed to be enacted by the Parliament in 1982.

In 1983 following a change of government Lionel Bowen, the new Attorney-General introduced a further Archives Bill which was ultimately passed and became the *Archives Act* of 1983.

That Act required that all records of the official establishment of the Governor-General be transferred to the archives and be made available through the open access provisions of the *Archives Act*. Special provisions were made in that Act for records of the Parliament and Courts. No special provisions were made for records of the official establishment of the Governor-General.

In the Second Reading Speech it was stated that:

> "The provisions of the legislation will apply to the records of the official establishment of the Governor-General, but not to his private or personal records."

There is nothing in the legislation, and nothing in the Second Reading Speech or the Explanatory Memorandum which provided for any recognition of the British practice of withholding Royal records for 60 years.

In their article Paul Kelly and Troy Bramston refer to Sir John Kerr's own writings which make clear that his letters to the Queen were official, and not personal. They were records of the official establishment of the Governor-General within the meaning of the *Archives Act* and Australian law has been clear since 1983 that they were to be made publicly available pursuant to the open access provisions of the *Archives Act* 30 years after their creation.

Paul Kelly and Troy Bramston report that the Prime Minister, Mr Turnbull, is determined that all proprieties will be observed in any approach to Buckingham Palace.

Those proprieties require that Mr Turnbull not seek the agreement of the Palace to release of documents, the release of which is required now by Australian law.

It would be polite for Mr Turnbull to let the Queen know that as a result of the efforts of Senators Missen and Tate and their colleagues in the Australian Parliament in 1983, Australian historians now have a right to access Sir John Kerr's letters. Those Parliamentarians understood and secured the principle that Paul Kelly and Troy Bramston rightly identify as important: that Sir John Kerr's letters are an important part of Australia's history and should therefore be available to historians.

We Australians do not need to ask the British Monarch for her consent to our accessing that history: our Parliament secured that for us in 1983.

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