Chapter One

The Exercise of the Reserve Powers of the Governor of Tasmania

The Honourable William Cox

The American humorist, S. J. Perilman, once observed, "I am no coward; but when World War II broke out, I made goddam sure I was 12 thousand miles away from the fighting and only three years old at the time." With respect to controversial constitutional issues such as the exercise of the Governor's reserve power, were I to make a similar disclaimer of cowardice, I would probably be forced to make an analogous concession; for in the nine years during which I was Lieutenant Governor and periodically administering the Government, and in the three years plus that I was Governor, I was in the fortunate position of not being presented with any constitutional dilemma, and no controversy surrounded the two occasions when advice that the House of Assembly should be dissolved was accepted by me. In talking, therefore, on the exercise of that power, I will make some observations on that well-travelled ground unencumbered by personal experience or by any unconscious desire to defend myself from potential criticism.

The first instance of the controversial use of the Governor of Tasmania's reserve powers to which I will advert is that by Governor Ellison-Macartney in 1914. In April of that year, after being re-elected in April 1913, the Solomon Government was the subject of a vote of No Confidence. The Premier sought a dissolution which was refused by the Governor who thereupon sent for the Leader of the Opposition, Mr Earle, to form a Government. The Governor required of Earle as a condition of his acceptance of a Commission that he should advise a dissolution. Mr Earle acquiesced but subsequently refused to counsel dissolution. The Secretary of State for Colonies directed that the Governor's imposition of this condition was unwarranted. Forsey commented on the case:

> It is noteworthy that in the discussions which resulted from the Governor's attempt to insist on the condition he had imposed on Mr Earle's taking office (namely an immediate dissolution), Mr Earle re-affirmed the classic doctrine that 'two of the cases' in which dissolution should be refused were: (a) when an alternative government is possible in the existing Parliament, and (b) where there is no important political question directly at issue.[1]

It would appear, however, that although the Secretary of State re-stated the constitutional doctrine that all the Governor's actions must be clothed with ministerial responsibility, no mention was made of the fact that the Governor had refused to grant the request of the outgoing premier for a dissolution.[2] Perhaps the silence of the Secretary of State implies acceptance of Forsey's "classic doctrine."

Nearly 10 years later a dissolution was refused the Premier, Sir Walter Lee, some 15 months after the commencement of the 21st Parliament in July 1922 and to which 12 Nationalists led by Lee, 12 Labor members, five Country Party members and one Independent had been elected. Lee's ministry had been the subject of a vote of No Confidence after the defection of some Nationalists. The Administrator, Sir Herbert Nicholls, in a document dated 24 October 1923 stated:

> Ministers have not tendered their resignations as a result of that declaration, but have asked for a dissolution. It is not my duty to grant a dissolution, if Ministers can be replaced by other Ministers who are prepared to accept full responsibility for my act, and can also command the support of a majority in the House of Assembly. The Leader of the Opposition, Mr Lyons, has given me assurances that he is prepared to accept the necessary responsibility, and that he has the necessary majority. I believe that his assurances are well founded. I have therefore declined to grant a dissolution. Thus the matter is left in the hands of the House of Assembly.[3]

Although Lee protested that Lyons's assurances were insubstantial, he conceded that the Administrator's enquiry into the latter's ability to form a government was "obviously in accord with the usual practice."[4]

In the General Election of 1948 the Labor Government was returned with 15 seats; the Liberals held 12 and there were three Independents. After appointing the Speaker the Government was reliant upon the vote of at least one Independent. In September 1949 the Labor Speaker died and an Independent, Mr Wedd, accepted the Speakership, thereby restoring the Government to possession of a majority of votes in the House. In January 1950, however, Mr Wedd resigned the Speakership, forcing the Government, then in recess, again to find a Speaker when Parliament resumed and hence returning it to minority. The Premier sought a dissolution and submitted to the Governor that this made the Government's position in the House untenable and that no alternative government was possible. Furthermore, he assured the Governor that no censure motion was pending.

The Premier acknowledged that he was "under the strongest obligation to ensure that [he] did not improperly advise [the Governor] in this matter, for under no circumstances must any advice [he] might tender be such that if acted upon it would bring the Crown into political controversy."[5] The reasons advanced by the Premier were these:

1. Because of the Resolution of the Imperial Conference of 1926 the Governors of Australian States now stood in relation to a State Parliament as the Sovereign did to the Imperial Parliament. Although the Resolution in terms applied only to the Governor-General of a Dominion it was contended that it was of equal application to the Governor of a State.
2. That being the case, the practice stated by Chalmers & Hood should be followed namely: "It has been the uniform practice for more than a century that the Sovereign should not refuse a dissolution when advised by his Ministers to dissolve. Anson, while affirming this to be a settled convention of the Constitution, points out that it is also a convention that dissolution should not be improperly advised, and that the first rule might not have become established if the second had not been uniformly observed. Hence, if a dissolution were requested improperly the Sovereign might in an extreme case be justified in refusing the request."[6]
3. This was not an extreme case and there was no prospect of an alternative Government being formed.

Having satisfied himself by an interview with the Leader of the Opposition that no alternative Ministry was possible, the Governor granted the dissolution.

In respect of the 1950 dissolution I think it can be said to have been inevitable given the circumstances that the Government was clearly in an unstable situation and that the Governor had satisfied himself that no alternative Government was possible. The contention that the Governor's relationship to a State Parliament is equivalent to that of the Queen to the United Kingdom Parliament, whatever the situation may have been prior to 1986, seems to have been confirmed in the minds of most constitutional lawyers by the passage of section 7 of the *Australia Act* of that year.

The practice enjoined by that relationship is reflected in the letter of Sir Alan Lascelles, the Private Secretary to King George VI, which was published in *The Times* in 1950 under the *nom de plume* of *Senex*:

> [I]t can be properly assumed that no wise Sovereign – that is one who has at heart the true interest of the country, the constitution, and the Monarchy – would deny a dissolution to his Prime Minister unless he were satisfied that: (1) the existing Parliament was still vital, viable, and capable of doing its job; (2) a General Election would be detrimental to the national economy; (3) he could rely on finding another Prime Minister who would carry on his Government, for a reasonable period, with a working majority in the House of Commons.[7]

A more controversial grant of dissolution occurred in 1956. For many years the Tasmanian Parliament had been plagued by the risk of deadlock in the Lower House, then a House of 30 seats. In late 1954 an Act was passed to provide that in the event of two parties obtaining the same number of seats the party having the greater number of primary votes could call upon its opponents to nominate the Speaker thereby ensuring it of a majority of one. In the event that the Opposition declined to do so, provision was made for the majority party to nominate a Speaker from its own ranks and to gain another party member from the electorate from which the Speaker came. In the election of February 1955 the Labor Government secured 15 seats and the Liberals the same number. Labor won a majority of primary votes and called upon the Opposition to provide the Speaker, which it did.

Just 17 months into a three-year term, a member of the Ministry, Mr Bramich, resigned from it and from the Labor Party, and the next day joined the Liberal Party. The Opposition thereupon moved a motion of No Confidence in the Government which was carried with a majority of one. Among the reasons advanced by the Premier to the Governor for a dissolution were the following:

1. The Governor should act upon the principles and practice of the Sovereign and accept his Ministers' advice.
2. He conceded that in extreme circumstances, the Governor of a State may reject that advice but claimed that nothing remotely resembling extreme circumstances existed in the present situation.
3. The Leader of the Opposition had a majority only by virtue of Mr Bramich's defection. This, he claimed, would be the complete frustration of the will of the latter's constituents and of the majority of the electorate.
4. The deadlock provision inserted in the *Constitution Act* 1934 in 1954 (sec 24A) was designed, he claimed, to ensure that the party with more primary votes would be able to govern. Under that section no provision was made for a change of party. Once, as here, section 24A was invoked, the life of the Parliament had been reduced from five years to three years. "That the Law requires an early dissolution where section 24A operates leads to the inference that there should be an earlier dissolution when the Government it was designed to sustain would otherwise be overthrown by a change for which it makes no provision."8
5. Specifically, with respect to the issue whether the Governor should seek to find an alternative Ministry, he cited L. F. Crisp:

   > Since the parliamentary struggle has been effectively reduced to a contest between Labour and anti-Labour Australian practice appears to have followed the British pattern which Berriedale Keith sums up in these terms – 'The practice in the United

> Kingdom in this regard is perfectly clear. The Crown expects not lightly to be asked for a dissolution; but it will grant a dissolution when advised by Ministers, without seeking to find an alternative Ministry.'[9]

He also quoted Dr H. V. Evatt's comment in the *Canadian Bar Review*:

> The mere fact that some sort of alternative Ministry is possible does not, and should not, prevent the grant of a dissolution by the King's representative. Presumably the Governor would never lose sight of the popular 'mandate' possessed by the existing Assembly. Again, it might be disastrous to democratic feeling to permit the continuance of an Assembly if (say) the alternative Ministry would have little or no popular backing or if it proposed to act, or was dependent upon the support of members who were proposing to act, in flagrant disregard of pledges to the electors.[10]

The Governor accepted the Premier's advice "notwithstanding that the Leader of the Opposition has assured me that he is able … to form an alternative Government."[11]

The circumstances in 1956, in my opinion, certainly argued strongly for the Governor to accept the advice of the Premier. The Government was unstable, the electorate had elected a finely balanced Parliament with the Government gaining a greater number of primary votes than the Opposition, the equality of votes had brought about a foreshortening of the normal term to a period of three years half of which had been served, and the balance in numbers had been upset by the defection of one member of the governing party. In these circumstances there was much to be said for giving the electorate the opportunity to declare its will by a general election. On the other hand, the mere facts that the Government had been censured mid-term and the Opposition had gained a majority of one making an alternative Government viable, at least in the short term, could not, without more, be said to be circumstances so extreme as to justify the Governor in refusing to accept the Premier's advice.

In 1959 the Premier relied for a dissolution in part on "the constitutional practice common to the U. K. and this State that the Queen would graciously permit her Prime Minister to choose a day for a general election in the last year of a Parliament."[12] The House was due to expire a fraction over six months after the Premier's request. I know of no U. K. nor Tasmanian case where a request for a dissolution made in the 12 months before the expiration of a Parliament has been refused and I would submit that it can now be taken as a settled convention that such a request should be granted save in circumstances where a censure motion is actually pending. Forsey accepts the proposition that "If a Government asks for a dissolution while a motion of censure is under debate it is clear the Crown's duty is to refuse";[13] see also Dr H. V. Evatt.[14] The Administrator granted the request.

In 1972 the Government lost the support of a coalition partner and its majority. The Premier argued that if the Opposition were to provide a new Ministry it was only to be expected that the Governor would be confronted by a similar request from it for a dissolution thereby placing him in a most embarrassing position. The Premier quoted from Wade & Phillips:

> The dilemma is that, if a new Prime Minister took office, he might himself have to seek an early dissolution. If this was granted to him after it had been refused to his predecessor, the political impartiality of the Sovereign would be endangered.[15]

The Governor's decision was made easier by the expressed desire of the Opposition to go to an election which they in fact won.

In 1981 the Premier, Mr Holgate, sought to have Parliament prorogued for a period of nearly six months. Late in that year the then Premier, Mr Lowe, was replaced as Leader of the Labor Party by Mr Holgate who then assumed the premiership. By 14 December, when formal advice was tendered,

two former members of the Government were sitting on the cross-benches and the situation in the House of Assembly was described by the new Premier as volatile and unstable. He relied on this fact as "not conducive to proper consideration of the legislative programme." Second, he claimed that prorogation would give the Government necessary time to consider and analyse the results of a referendum recently carried out in respect of a power development scheme in Tasmania's South West and third, time was said to be needed to clarify the overall funding situation with respect to the total works programme including energy development.

He therefore sought prorogation to 26 March 1982.

In a file note signed by the Governor, Sir Stanley Burbury, he noted that the Premier saw him on 4 December following the referendum and requested a prorogation until May 1982. The Governor's note reads in part:

> I told the Premier that while I felt he had made out a case for prorogation for a limited period, my strong view was that it would not be in the public interest to prorogue Parliament for a period exceeding 3 months. He readily accepted the force of this view and accordingly in his subsequent letter (dated 14 December 1981) his request was for prorogation until 26 March 1982.
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> Although ordinarily the Governor acts on the advice of his Ministers in relation to prorogation or dissolution of Parliament, it is a fundamental constitutional convention under the Westminster system that he is not in all circumstances bound to accede to that advice. Two examples occur to me:
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> 1. Advice to grant prorogation when a motion of No Confidence is before the House;
> 2. Advice not to dissolve Parliament after a Government has been defeated in the House.[16]

While Sir Stanley did not specifically refuse to accede to the Premier's initial request he exercised his right to counsel him, admittedly somewhat forcibly, thereby achieving a reduction in the duration of the prorogation, and so the matter was not put to the acid test. The Premier did, however, extract a further fortnight's prorogation beyond the limit of three months suggested by the Governor. Parliament, in due course, resumed, the Government was defeated, the House dissolved and a fresh election resulted in victory for the Liberals.

The most controversial occasion for the exercise of the reserve power in Tasmania confronted the Governor, General Sir Phillip Bennett, in 1989. In the previous House of Assembly, the Liberals had a majority and formed government. In the May election of 1989, however, the numbers in the House were 17 Liberal, 13 Labor, and five Independents who had in common environmental policies and were labelled "Greens" although they were not members of any Green party.

The Liberals also attained a greater number of primary votes than either the Labor Party or the Greens. In this situation the first decision to be made was who should be commissioned to form a Government. On the day the result of the election was officially declared, the Governor received a letter from the Leader of the Opposition urging that a minority Labor Ministry be commissioned based on an alliance with the five Independents. The letter was referred to the Premier who tendered advice that, as no formal coalition arrangement was in place, his commission as Premier should continue and that, as his party had the greatest number of seats in the House, the Government should remain in office as a minority Government.

Later that day a copy of a "Tasmanian Parliamentary Accord" signed by the Leader of the Opposition and one of the five Independents, Dr Brown, was delivered to the Governor who referred it to the Premier. On 30 May the Premier advised that the Accord was deficient in a number of important procedural and policy areas. The Governor accepted this advice and, on the following day, swore a Liberal Ministry to office. In my submission this course was unassailable and the Premier had

every right in the circumstances to have the Government's strength tested on the floor of the House when Parliament resumed on 28 June.

On 27 June the Leader of the Opposition forwarded to the Governor a copy of a more detailed Accord signed by himself and each of the five Independents. The Premier advised that the Government had sought a number of legal opinions as to the constitutional alternatives available to the Governor. He stated that these opinions supported advice that the House be dissolved and that such advice would be within the proper limits of constitutional convention. The Governor indicated that, subject to developments when the House met, he was unlikely to accept such advice, if given. The Premier forwarded the opinions to the Governor. The authors of the various advices were Sir Maurice Byers, QC, the Honourable R. J. Ellicott, QC, the Honourable T. E. F. Hughes, QC, Professor R. D. Lumb and Professor P. H. Lane. Next day Parliament was opened and sat for the despatch of business.

On the morning of 29 June the House expressed "no confidence" in the Government. Being acquainted with the No Confidence vote the Governor, with the Premier's acquiescence, summoned the Leader of the Opposition to explore his capacity to form a minority Government and thereafter consulted with each of the five Independents as to their undertakings to support that Government for a reasonable period. He then informed the Premier of the results of the discussions and, on receipt of the latter's resignation, commissioned the Leader of the Opposition to form a Government.

While some commentators have criticised the Governor for imposing on the tentative alternative Ministry tests of its potential stability which were too heavy and suggested that he had been too inquisitive,[17] the fact remains that, when he informed the Premier of the results of the discussions with the Leader of the Opposition and the Independents, and asked the Premier for his advice, the latter resigned and advised the Governor to call on the Leader of the Opposition to form a Government. To follow that advice was the Governor's only proper course.

The 1989 crisis is interesting for the stark contrast in views expressed by the undoubtedly eminent constitutional lawyers relied upon by the Liberal Premier and those engaged by the Governor. Among the latter were the Right Honourable Sir Harry Gibbs, the Tasmanian Solicitor-General, Mr W. C. R. Bale, QC, and Professor Colin Howard. Professor James Crawford, engaged by the Greens, also sided with those engaged by the Governor. All were agreed that the Governor had a discretion to grant or refuse the advice of the incumbent Premier in circumstances variously described as "exceptional" or "extreme" or "in extreme cases" or "an extreme crisis"; where they differed was in their perception of whether the instant circumstances could be so described. Sir Harry Gibbs in his opinion wrote:

> The Governor is entitled to expect that a defeated Premier will act responsibly in advising a dissolution and will give proper weight to the public interest and to the necessity of doing everything possible to avoid placing the Governor in a position where he may be thought to have become involved in political controversy. The Governor is entitled to remind the Premier of his obligations in this regard and would be entitled (if it seemed to him proper) to attempt to dissuade the Premier from advising a dissolution. However if the Premier nevertheless advises a dissolution the Governor is not entitled to reject that advice for the sole reason that he considers that the Premier has not acted responsibly in giving it.
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> The question what circumstances are so exceptional as to render it proper for the Governor to refuse to act on the Premier's advice to dissolve the House has not been clearly answered by existing convention. However, since the fundamental principle is that the person commissioned to form a Government should enjoy the confidence of a majority of the House, it would in my opinion be proper to refuse a dissolution if he were satisfied (1) that since the general election the results of which were declared on 29 May 1989 the Premier had never commanded a majority of seats in the House; (2) that at the first session of the House the Premier was defeated on a motion of no confidence

> or on a motion of similar significance; and (3) that the Leader of the Opposition could form a Government which would enjoy the confidence of the House and would be likely to continue to enjoy that confidence for a reasonable period.
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> If the Governor were minded to refuse a dissolution in these circumstances, it might be wise for him to take all practicable steps to satisfy himself that an alternative Government could be formed and to obtain public assurances from the members concerned to that effect.[18]

Professor Howard's advice was that it would not be constitutionally improper for the Premier to advise a dissolution but that the Governor would not be bound to act upon it in the current circumstances.[19] The Solicitor-General wrote that should the Premier advise dissolution, the fact, if established, that the Government had lost the confidence of the House early in the first session of the new Parliament (particularly if there were someone else willing and apparently able to form a stable Government – "in other words, asserting that he is able to give effect to the expressed will of the people")[20] might properly be regarded as exceptional.

I note that Sir Harry Gibbs's advice counters the suggestion referred to above that Governor Bennett imposed too heavy an onus on the Leader of the Opposition as to the stability his Ministry could guarantee. Indeed, as the vice-regal office could be embarrassed should the latter's assurances prove illusory, I suggest that Sir Phillip had every right to make the enquiries he did. Professor Howard also advised enquiry into potential defects in the Accord such as the absence of any undertaking that any of the Independents would not vote for a No Confidence motion in a minority Labor Government. It is perhaps only in a Lower House consisting of members all of whom belong to one or other of two parties that the assurance of the Leader of the Opposition can be taken at face value, the discipline of the party system being sufficient to preclude the need for further enquiry.

Mr Ellicott, having been asked the question, "whether it would be within the proper limits of constitutional convention for the Premier to advise the Governor to dissolve the House and what issues are relevant to that advice in the present situation?", answered the first part of the question in the affirmative and said that if the Premier were to advise a dissolution:

> [T]he Governor, in accordance with the applicable constitutional convention, should follow that advice unless he considers, contrary to what I consider to be the facts, that this is an extreme case which requires that that advice be not followed.
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> There is very little guidance as to what an 'extreme case' or an 'extreme crisis' means. I have instanced the case of a Premier acting quite improperly, irrationally or irresponsibly. Jennings has said it would be difficult to say what those circumstances would be. Chalmers & Hood Phillips instance a case where a Government having been defeated in the House, has been granted a dissolution, is defeated at the ensuing general election and then advises another dissolution. Such advice would clearly be improper. It would be a clear case where the popular will was manifest. The circumstances here are quite different. The circumstances are unfortunate but they are not so extreme as to warrant the Governor's departure from a Premier's advice.[21]

He then went on to consider what issues were relevant to the Premier's advice. He mentioned the question whether an alternative ministry would reflect the will of the people. As to this he said that relevant factors would include whether the Labor Party presented itself to the electorate as only being willing to govern in its own right, disavowing any coalition or joining of forces with the Independents, and whether the Accord was inconsistent with this. The Independents had given similar disclaimers. This was a factor stressed in other opinions given to the Liberal Government.

Mr Hughes advised:

> A very important consideration must be whether, if the present Government were to resign, the formation of the new ALP Government which would come into office with the organised and united support of the Green members pursuant to the Parliamentary Accord would be an outcome congruent with the expectations of the electorate engendered by statements or pledges made during the election campaign. As against this consideration there must be set the fact that it would be possible for an alternative Government to be formed in the House as presently constituted.[22]

Sir Maurice Byers commented: "If the Premier is of the view that the electorate was not informed of the possibility of the arrangements embodied in the Accord, he may, with appropriate documentation, inform the Governor that the alternative Ministry does not enjoy popular support and a dissolution is the Governor's appropriate choice."[23]

In Professor Lane's view:

> [T]he Crown cannot be sure that it is giving effect to the wishes of the electorate – viz. did the electorate want the ALP and the Independents, each with its separate promised policies, unencumbered by an alliance with the other? Or was it prepared to accept the ALP and the Independents, even in alliance and with the inevitable alterations in the six policies of these several parties, if thereby the ALP with the support of the Independents would constitute the Government?[24]

Finally, Professor Lumb contended:

> To give formal recognition to the Accord by commissioning a new minority Government would be a condonation of a breach of faith on the part of the members of the Opposition and Independents arising from promises or pledges made to the electors before the election. Those promises or pledges affect the very nature of Government. Evatt has suggested that the Governor ought to consider whether an alternative Ministry would enjoy a popular 'mandate' or whether it might be acting 'in flagrant disregard' of electoral pledges.[25]

Sir Harry Gibbs rejected these considerations as irrelevant. He said:

> Notwithstanding contrary views expressed by learned commentators (particularly Dr Evatt and Senator Forsey) it would not seem to me to be right for the Governor, in exercising his discretion, to give weight to a suggestion that a Government formed by the Leader of the Opposition would lack popular backing or that the members supporting it would be acting in breach of their pledges. It would . . . be inappropriate for the Governor to investigate controversial questions of that kind. So far as the Governor is concerned, the wishes of the people have been expressed by electing the members who have gained seats in the House.[26]

Likewise Professor Howard advised:

> [A]ny inconsistency between the conduct of the parliamentary parties after the election and campaign declarations made before the election are not circumstances which the Governor should take into account. He is not required to be a censor of political morality or a crystal ball in which the persuasiveness of electoral rhetoric may be divined. The

> evidence of the opinion of the electorate to which he should have regard is the result of the election in terms of seats won in the House of Assembly, not, in the absence of any suggestion that the election was not conducted according to law, anything said or done in the course of the electoral campaign or to statistical analyses of the vote.[27]

My own view is that these considerations are relevant and may properly be taken into account by the Governor. In a paragraph of his opinion with which Sir Harry Gibbs expressed his agreement,[28] Mr Ellicott wrote:

> The Premier in formulating his advice to the Governor . . . in broad terms, should, in my opinion, have regard, not only to the state of the parties in the House of Assembly and the possibility of an alternative ministry, but also to the more general question whether the alternative ministry would reflect the will of the people of Tasmania. If the proper view is that it would not, or if there is real doubt about it, that is a strong reason, consistent with constitutional authority, for advising in favour of dissolution.[29]

I agree that the Governor is not required to be a censor or a crystal ball. Whether campaign rhetoric was perceived by the electorate as underhand or dishonest, those engaging in it would have to accept responsibility for it at the ballot box whenever the next election occurred, but I agree with Mr Ellicott's supplemental comment on that of Sir Harry's rejection of the relevance of prior pledges. Mr Ellicott said: "These issues are part of the political situation which faces the State. To ignore them would be to ignore reality. Judging the likely will of the people is part of the political decision to be made on dissolution and these factors are clearly relevant to that judgment."[30] While fresh issues may engage the electorate's attention in the event of a dissolution, another election, where the readiness of the alternative ministry to make alliances was now known, would give a far clearer indication of the will of the people.

Merely because the members of an Appeal Court may individually have adopted a different course, a judicial discretion will not be interfered with on appeal if the primary judge correctly applies the law, does not take into account irrelevant material and does not misdirect himself as to the facts. So, too, the vice-regal discretion does not miscarry in similar circumstances merely because others may have exercised it differently. Had the Governor been advised to dissolve the House, my opinion is that there was a stronger case for him to do so than to reject the Premier's advice. Even if the circumstances confronting him can be said to be exceptional or extreme and brought the exercise of the discretion unequivocally into play, he was still not obliged to exercise it in favour of rejecting the advice given. To my mind, the added fact that promises of no coalition or deal had been made was likely to have created a real doubt as to the mandate to govern of those giving them and justified a further appeal to the people.

There will always be different views as to how such a discretion should be exercised in any given situation. It must be always remembered, however, that it is a necessary discretion and one which we entrust to the impartiality, good sense and integrity of our vice-regal representative.

Endnotes

1. E. A. Forsey, *The Royal Power of Dissolution of Parliament in the British Commonwealth*, 1943, 34.
2. W. A. Townsley, in F. C. Green (ed.), *A Century of Responsible Government in Tasmania 1856*

to 1956, 253-254.

3. Cited in Parliamentary Paper No 59 of 1956, 10.
4. Premier's Office File 75/6/23.
5. Parliamentary Papers No 10 of 1950, 4.
6. *Ibid.*, 5, citing Chalmers & Hood, *Constitutional Law*, 1946, 51-2.
7. J. W. Wheeler-Bennett, *King George VI, His Life & Reign*, 1958, 51-2.
8. Parliamentary Paper No 59 of 1956, 7.
9. L. F. Crisp, *The Parliamentary Government of the Commonwealth of Australia*, 229.
10. Dr H. V. Evatt, "The Discretionary Authority of Dominion Governors", *Canadian Bar Review*, vol. 18, 1, 9.
11. Parliamentary Papers No 59 of 1956, 14.
12. Parliamentary Papers No 6 of 1959, 2.
13. E. A. Forsey, *op. cit.*, 269.
14. Dr H. V. Evatt, *The King & His Dominion Governors*, 1936, 61.
15. Parliamentary Papers No 16 of 1973, citing Wade & Phillips, *Constitutional Law*, 6th ed., 114.
16. Sir Stanley Burbury, Undated Memorandum made December 1981, Government House, Hobart.
17. Ian D. Killey, "Comment – Tasmania: A New Convention?" *Public Law Review*, vol. 2, 1991, 221.
18. Sir Harry Gibbs, Opinion dated 18 June 1989, para 4-6.
19. Colin Howard, Opinion dated 23 June 1989, para 42.
20. W. C. R. Bale, Letter to Official Secretary dated 16 June 1989, para 7.
21. R. J. Ellicott, Opinion dated 27 June 1989, 8.
22. T. E. F. Hughes, Opinion dated 15 June 1989, 1-2.
23. M. H. Byers, Opinion dated 21 June 1989, 5.
24. P. H. Lane, Opinion dated 22 June 1989, 4.
25. R. D. Lumb, Opinion dated 24 June 1989, 5.
26. Gibbs, *op. cit.*, para8.
27. Howard, *op. cit.*, para 4.
28. Gibbs, *op.cit.*, para 16.
29. Ellicott, *op. cit.*, 8-9.
30. Ellicott, Memorandum dated 27 June 1989, 4.