

The reasons of the Governor of Tasmania, the Honourable Peter Underwood AC, for the commissioning of the Honourable David Bartlett to form a government following the 2010 House of Assembly election.

The Principles

As the Queen's representative in Tasmania, the Governor's primary duty is to protect and maintain the Constitution and the State's representative parliamentary democracy. It is the Governor's duty to see that elections are conducted in accordance with the law and that there is an orderly transition of government that reflects the will of the people of the State of Tasmania as expressed at the ballot box. This duty has to be discharged after every House of Assembly election, after the passage in the House of a vote of no confidence in the Premier and after the passing of a motion that blocks supply. The duty obliges the Governor to find the person who can form a stable government; that is, a person who is able to advise the Governor of the names of persons, elected to the Assembly or the Legislative Council, who, if appointed as Ministers, will have the confidence of the House of Assembly. This is a straight forward task in the event of one party having more seats in the Assembly than any other party, or parties that have agreed to form a coalition.

The person who can satisfy the Governor that he or she can form a government that will have the confidence of the House is almost invariably the leader of a party. He or she will receive a commission from the Governor to form that Government. It is established practice that the person commissioned to form a government is also sworn in as Premier or the Governor's Chief Minister. The commission to form a government continues until it is relinquished or withdrawn by the Governor. The appointment as Premier continues until it is relinquished or until more than seven days after the return of the electoral writs to the Governor.

In the exercise of the duty to commission a person who can form a stable government the Governor will take formal advice from the current holder of that commission but is not bound to act on that advice. The Governor may also consult such academics, legal practitioners and the like as he or she thinks fit.

The duty arising from the 2010 election.

The electoral writs were returned to me on 7th April 2010. In the 25-Member House 10 seats were won by Labor, 10 seats were won by the Liberal Party and the remaining 5 seats were won by members of the Greens Party. In those circumstances it was my duty to act in accordance with constitutional conventions that have been built up over the years in the same way as the common law has been built up over the years through the cases that have been decided in the Courts, and choose and commission a person whom I was satisfied could form a stable government.

Irrelevant matters.

In view of certain public statements made by some candidates in the lead up to the election I express my view that the commissioning of a person to form a government is entirely the Governor's prerogative and it is not within the gift of any political leader to hand over, or cede to another political leader the right to form a government, whatever the result of the election. For the same reason it is also appropriate to express my view that the total number of votes received by the elected members of a political party is constitutionally irrelevant to the issue of who should be commissioned to form a government.

The relevant events.

On 7th April after the return of the writs, I asked Mr Bartlett, as the holder of the commission to form a government and my Chief Minister, to call and see me. I asked him if he would exercise his commission and form a government. He gave me written advice to the effect that he did not think it was appropriate for him to advise me "at this time" that he should retain his commission and that I should approach Mr Hodgman, the Leader of the Opposition, to see if "he is willing and able to accept a commission to form a government." A copy of this letter of advice is appended to these reasons.

In accordance with constitutional convention, had Mr Bartlett, as the holder of a commission to form a government, advised me that he could form a stable government, I would have invited him to do so in order to test his claim in the House of Assembly which is the ultimate body to determine who should form government.

Mr Hodgman called on me about 2:45 pm on the 7th April. He told me that he could form a government that would enjoy the confidence of the House of Assembly and handed me his written advice. It referred to statements said to have been made by Mr Bartlett on divers occasions in the past to the effect that "his party would not vote against legislation appropriating supply, nor would they (*sic*) wantonly move or support a no-confidence motion in the government." This document is also appended to these reasons. Mr Hodgman contended that those statements made by Mr Bartlett should persuade me that he, as the Leader of the Liberal Party, could form a stable government and accordingly, he should be commissioned to do so. I advised Mr Hodgman that Mr Bartlett would have to make any commitment to me before I could place any weight on it. We parted on the basis that Mr Hodgman would ask Mr Bartlett to give me the commitments that Mr Hodgman said Mr Bartlett had given prior to the election.

Later the same afternoon I received from Mr Hodgman a copy of a letter he had written to Mr Bartlett in which Mr Bartlett was asked to give me the assurances that Mr Bartlett had made prior to the election. A little later that day Mr Bartlett responded in a letter to me. This letter joined issue with Mr Hodgman's claims that Mr Bartlett had made the claimed pre-election commitments. The material part of the letter provided:

"My commitment to the Tasmanian people was, in the light of Labor failing to win a plurality of seats or a plurality of votes [*which I understood to mean an overall majority*] to advise your Excellency that Mr Hodgman should have the opportunity to form a Government in the first instance. I have honoured this commitment in full in the advice I have provided to Your Excellency today. I offer Mr Hodgman no more support than that and have never done so."

Mr Hodgman received a copy of that letter and called on me again in the afternoon of the 8th April. He handed me a letter dated that day together with a CD & transcript of a Press conference that Mr Bartlett held on 1 April 2010. Mr Hodgman contended that from that material I should draw the inference that Mr Bartlett had made promises not to block supply and not to move a vote of no confidence in a Liberal government except in extreme circumstances.

I considered the material and the contention and concluded that even if I was able to determine from the material given to me that Mr Bartlett had made the commitments Mr Hodgman said he made, his present intention is clearly expressed in the letter set out above.

The conclusion

In these circumstances I came to the conclusion that Mr Hodgman was not in a position to form a stable government. Consequently, I was obliged to send for Mr Bartlett. I told Mr Bartlett that I had come to the conclusion that in the light of his letter to me, Mr Hodgman was not able to form a stable government. I also told him that as he was still the holder of my commission to form a government and the Premier of the State he had a constitutional obligation to form a government so that the Parliament could be called together and the strength of that government tested on the floor of the House of Assembly. Mr Bartlett accepted that he had this obligation and said that he would advise me of the names of his Ministers as soon as he could.

I wish to add that I did not send for Mr McKim, the leader of the Greens Party, as it was clear to me that his Party could not form a stable government without the support of either the Liberal or the Labor party. Mr Hodgman advised me on 8th April that he did not seek the support of the Greens Party. My failure to be satisfied that Mr Hodgman had the support of the Labor party not to block supply and not to move a vote of no confidence except in extreme circumstances gave rise to a constitutional obligation on the part of the holder of the commission to form government. This obligation arose regardless of whether Mr Bartlett had the support of the Greens party or not, for it was the only way to move the issue into the Parliament to enable the members of the House of Assembly to make the ultimate decision of who should govern.

9th April 2010

Government House

Hobart - Tasmania