

The Case of the Missing Premier — A Strange Parliamentary Practice

Victor Isaacs*

Ministerial By-elections, ie, the necessity for incoming Ministers to seek re-election, were once a significant feature of British-derived Parliaments. This article traces the history of the practice, and its political effects in various countries. A case study is provided of the strange consequence the practice had in the Victorian Parliament in 1913.

Ministerial by-elections were formerly a widespread practice in Westminster-style parliaments. They influenced the course of politics, affected the formation of governments, and led to political downfalls — Premiers and Ministers alike sometimes being victims. Today, the practice has been abolished worldwide — Western Australia being the last place to apply the practice. This constitutional practice is now largely forgotten, although an understanding of it sometimes remains necessary to understand political history.

In most (not all) British-derived Parliamentary systems, any elected Member of Parliament appointed as Premier or Minister, other than following a general election, was required to forthwith resign his seat, and seek re-election through a by-election. The theory was that this enabled the electorate to exercise a judgment on the appointment.

The practice had originated in seventeenth century **Britain**. After the restoration of the Monarchy in 1660, King Charles II sought to manage the House of Commons by distributing offices and places of profit. Parliament reacted by making the holding of a Crown office incompatible with membership. The *Succession Act* of 1700, which determined the Monarchical succession in the Protestant line, also prohibited those in receipt of payments from the Crown from membership of the

* Victor Isaacs has interests in political, newspaper and railway history. His prior article in the *Australasian Parliamentary Review* was 'Parliament in Exile: The Victorian Parliament at the Exhibition Building, 1901 to 1927' in the Autumn 2002 issue.

House of Commons.¹ (The texts of relevant Statutes are in *Appendix 1*.) However, within a few years, a realization that complete separation was undesirable led to a requirement that offices could be accepted and membership retained — but only after that membership was tested in a further election.² This requirement was formalised with the *Succession to the Crown Act* of 1707.³

As so often happened in British Parliamentary practice, over time the justification of the practice changed. By the late nineteenth / early twentieth centuries, the practice was defended on the grounds that by-elections provided a good opportunity for the electorate to pass judgments on governments — not a silly idea, considering that British Parliaments then lasted for seven years. On the other hand, the requirement meant that sometimes Ministers were selected not for their ability but because they held a safe seat, or conversely, talented Members were overlooked because of the danger of a by-election in their constituency. It was also argued that, just at the time when a newly-appointed Minister had to get on top of his portfolio, he was distracted by the local politics of his by-election; and that local issues were sometimes brought to bear on his new Ministerial responsibilities.⁴

By the early twentieth century, although by-elections were still required, they often resulted in Ministers being returned unopposed. However, in this period there were some notable exceptions. No less a personality than Winston Churchill was a casualty. In 1908, when appointed to his first Cabinet position, President of the Board of Trade, the Conservatives saw an opportunity for revenge for his recent defection to the Liberal Party. After a hard-fought by-election, Churchill was defeated in his constituency of Manchester North West. A new seat had to be hastily found for him in distant Dundee.⁵ Perhaps if Churchill had failed in the second by-election, world history would have been very different. In 1914 Mr C.F.G. Masterman, believed to be at the beginning of a promising political career, was appointed Chancellor of the Duchy of Lancaster. Unfortunately for him, the Government was then undergoing a period of unpopularity. Masterman subsequently had the misfortune to lose two successive by-elections in different constituencies in the space of three months and his political career was over.⁶

¹ An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject, 12 & 13 William III, c. II, s. III.

² Churchill, R., *Winston S. Churchill*, Volume II *Young Statesman 1901–1914*, Heinemann, London, 1967, p.252.

³ UK Act, 6 Anne, chapter 7.

⁴ Butler, D., and Sloman, A., *British Political Facts 1900–1979*, Macmillan Press, London, Fifth edition 1980, ISBN 0-333-25591-7, p. 226.

⁵ Churchill, *op cit*, pp. 252–65.

⁶ *Times*, London, various dates 8 January to 25 May 1914, but particularly 25 May 1914 pp. 34–5; <http://www.election.demon.co.uk/defminis.html>, 5/3/04.

During the First World War, the requirement was suspended in Britain.⁷ In 1919, when the post-war British Coalition government found that four newly appointed Ministers would have to face by-elections, it attempted to hastily repeal the practice.⁸ The resulting lengthy debate in the House of Commons⁹ brought forward many defenders of the practice. The proposed legislation was consequently amended to remove the necessity only in the first nine months after the summoning of a new Parliament, thus solving the government's immediate problem.¹⁰ In 1926, a private member's bill abolishing the requirement completely had the unusual attribute of obtaining government support. After another long debate, partially overlapping the tumultuous Canadian events referred to below,¹¹ this passed as the *Re-election of Ministers Act*.¹² From the passing of the Reform Act of 1832 until the *Re-election of Ministers Act* 1926 there had been 677 Ministerial by-elections in Britain.¹³

The practice was inherited by the Parliaments of most Australian Colonies and remained until well into the twentieth century. Occasionally, it produced startling events.

The **New South Wales** Constitution¹⁴ assumed the continuance of this inherited practice in the Colonial legislature. It nonetheless specifically exempted five named Ministerial positions (Colonial Secretary, Colonial Treasurer, Auditor General, Attorney General and Solicitor General) and allowed five additional positions to be declared exempt. The Constitution also permitted Members holding an office to accept an additional office without facing a by-election.¹⁵ Most other newly-appointed Ministers were returned safely in by-elections and the practice arose of not opposing them in many cases.

However some NSW Ministers did lose seats in by-elections including two Premiers: Stuart Donaldson, NSW's first Premier in 1856 and James Martin in 1863. Both were however subsequently re-elected in other electorates. James Robertson, upon his Ministerial appointment in 1866, lost the ensuing

⁷ UK *Re-election of Ministers Act* 1915, 5–6 George V, c. 50 and *Re-election of Ministers (No. 2) Act* 1916, 6–7 George V, c. 56.

⁸ Butler, D., *The Electoral System in Britain 1918–1951*, Oxford at the Clarendon Press, 1953, pp. 52–4.

⁹ *House of Commons Debates*, vol. 112, 17 February 1919, columns. 614–64; 18 February 1919, columns 791–815; 20 February 1919, columns 1309–1318; *House of Lords Debates*, vol. 33, 23 February 1919, columns 3889.

¹⁰ UK *Re-election of Ministers Act* 1919, 9 & 10 George 5, chapter 2.

¹¹ *House of Commons Debates*, vol. 191, 12 February 1926, columns 1417–88; vol. 196, 11 June 1926, columns. 1847–1934; *House of Lords Debates*, vol. 64, 22 June 1926, columns 501–30; 8 July 1926, columns 944–60.

¹² UK *Re-election of Ministers Act (1919) Amendment Act* 1926, 16 & 17 George.5, chapter 19.

¹³ <http://www.election.demon.co.uk/causes.html>, 5/3/04.

¹⁴ NSW *Constitution Act* (Imperial) 1855, 18 & 19 Victoria, chapter 54, Schedule, section XVIII

¹⁵ *ibid*, section XIX.

by-election but returned to Parliament later, becoming Premier. However Marshall Burdekin, appointed Minister in 1866, was not so lucky, not being returned to Parliament. Henry Copeland in 1883 also lost his by-election but was subsequently returned in another electorate, only to resign his ministry twelve weeks later after a drunken speech.¹⁶

In 1884 the legality of George Reid's membership of the Legislative Assembly was questioned after he became a Minister. The NSW Constitution was thereupon amended to legalise and clarify the position. The *Constitution Act* now exempted holders of nine specified portfolios.¹⁷ Subsequently numbers of bills were introduced into the NSW Parliament to abolish the practice completely but were all unsuccessful until 1906 when the practice was abolished in a general revision of electoral legislation.¹⁸

In **Victoria** the requirement occasionally brought unexpected consequences. In July 1881, David Gaunson MLA, a barrister notorious for his spirited defence of Ned Kelly, was appointed Minister for Lands in the short-lived O'Loghlen–Bent ministry. At the subsequent ministerial by-election, he was defeated.¹⁹

By the end of the nineteenth century, Ministerial by-elections had become a formality in Victoria. The newly-appointed Ministerial appointees were rarely, if ever, seriously challenged. But there was still a period when new appointees were not Members of Parliament. This occurred between their resignation and the end of the nomination period for the by-elections. Then it was usually found there were no opponents, resulting in their resuming their seats. Yet on one occasion the practice led to a Premier not sitting in Parliament for the duration of his appointment. George Elmslie, Victoria's 25th Premier in December 1913, had the misfortune of watching the defeat of government from the public gallery of the Legislative Assembly!

Elmslie became Premier unexpectedly, flowing a split in the governing Liberal Party. While Elmslie and his seven Ministerial colleagues were awaiting the end of the period for nominations for their Ministerial by-elections, the Liberals re-united and successfully moved a no-confidence motion against the Labor incoming government. The Elmslie government thus only lasted thirteen days. At the end of this period there were no nominations against Elmslie or any of his colleagues and

¹⁶ Hawker, G., *The Parliament of New South Wales 1856–1965*, Government Printer New South Wales, 1971, p. 58.

Rutledge, M., entry on Henry Copeland in *Australian Dictionary of Biography*, vol. 3, Melbourne University Press, 1969, ISBN 0-522-83909-6, p. 458.

Nairn, B., entry on Sir John Robertson in *Australian Dictionary of Biography*, vol. 6, 1976, ISBN 0-522-84108-2, p. 43.

¹⁷ *NSW Constitution Act Amendment (No. 2)*, No. V, 1884.

¹⁸ *NSW Parliamentary Elections Act* No. XLI of 1906, section 60.

¹⁹ Serle, G., entry on David Gaunson in *Australian Dictionary of Biography*, vol. 4, Melbourne University Press, 1972, ISBN 0-522-84034-5.

they all returned to Parliament, but by then their government had disappeared. More details of this parliamentary manoeuvring are in *Appendix 3*.

In 1914, in response to the strange events of the Elmslie government, the Liberal State government legislated to abolish this practice. Introducing the *Officials in Parliament Bill* into the Legislative Assembly on 1 September 1914 the Attorney-General, Mr Mackinnon said he did not want ‘to awaken any painful memories’. The only other speaker was Elmslie who said he gave the legislation ‘hearty acceptance’.²⁰ Two weeks later, the Legislative Council — so often the barrier to reform in Victoria — agreed to the change without debate.²¹ Because it amended the Constitution, the Bill then had to be reserved for the King’s assent.²² This amendment is now section 53(1) of the Victorian Constitution.

In 1866 **Queensland** was faced with a financial crisis and Arthur Macalister resigned as Premier. Queensland’s first Premier, Robert Herbert, was recalled by the Governor to solely negotiate the passage of an emergency budgetary measure through Parliament. From 20 to 24 July 1866 Herbert and his Ministerial colleagues were officially ‘Ministers without portfolio’. This title was a contrivance to avoid the necessity for Ministerial by-elections.

In 1884 the practice was, in practical terms, removed by the passage of the *Officials in Parliament Act*.²³ The Clerk of the Legislative Assembly, Charles Bernays, in his history of Queensland politics, claims that members did not understand that they were repealing the requirement.²⁴

In **Western Australia** this practice led to a change of government in 1901. The WA Constitution, while not abolishing it, provided exemptions for specified executive positions.²⁵ Ministerial by-elections were however still necessary for other ministerial appointments. Following the grant of self-government in 1890, WA politics were stable under the Premiership of John Forrest. Following Forrest’s transfer to the Commonwealth Parliament in 1901, there was a period of instability and short-lived governments. In November 1901 Alfred Morgans defeated the Leake government in a vote of no-confidence in the Legislative Assembly. Leake vowed to oppose Morgans with all means, including ministerial by-elections. The new ministry was consequently faced with a very well organised campaign. In the by-elections in December 1901 three of the six ministers were defeated. Morgans was obliged to resign his commission and Leake resumed the Premiership.²⁶

²⁰ Victoria *Parliamentary Debates*, 1 September 1914, pp. 1134–5.

²¹ Victoria *Parliamentary Debates*, 16 September 1914, p. 1447.

²² Victorian Act no. 2578.

²³ Queensland *Officials in Parliament Act* 1884, 48 Victoria. no. 29.

²⁴ Bernays, C.A., *Queensland Politics During Sixty Years*.

²⁵ WA *Constitution Act* 1890, 53 & 54 Victoria, no. 123, section 28.

²⁶ de Garis, B., *Self-Government and Political Parties* in C.T. Stannage (ed.), *A New History of Western Australia*, University of Western Australia Press, 1982, p. 348.

de Garis, B., *Self-Government and Political Parties* in D. Black (ed.), *The House on the Hill: A*

Opposing new ministers in by-elections now became popular in WA. There were ten more contests in the period up to 1908, and another four in the next decade. One of these was to validate the 1917 Ministerial appointment of former Premier James Scaddan in the Lefroy government, following his defection from the ALP to the Nationals after the conscription crisis. Scaddan was defeated. Two years later, he was again appointed a Minister and re-entered Parliament (in that order). There was then a long break when Ministerial by-elections once again became *pro forma* with no opponents forthcoming. However, in March 1938 Alexander Panton was appointed Minister for Health. He was opposed at the ensuing by-election. He won the contest, and to him belongs the dubious honour of being the last person appointed a Minister to be opposed in a resulting by-election in Australia. He remained a Minister until 1947. The practice lingered as a formal requirement in WA longer than anywhere else in the world. In 1947 it was abolished in an amendment to the Constitution.²⁷

The Constitution Act of **Van Dieman's Land**²⁸ applied the Ministerial re-election requirement. In 1887, the newly appointed Attorney-General, R.J. Lucas, was defeated in his Ministerial by-election. This was a major factor leading to the demise of Tasmania's so-called 'Continuous Ministry' which had been in office since 1879.²⁹ The re-election requirement apparently continued until **Tasmania** adopted the Hare-Clark system of voting with multi-member constituencies in 1896.³⁰ Continuance of the practice would have been incompatible with the Hare-Clark system.

The practice survived for a long time in **Canada** at both Federal and Provincial level. There was a strong reprise of the Elmslie affair in Canada in 1926, but it was more involved and much more spectacular. The Prime Minister, Mackenzie King, sought to avoid a Parliamentary vote he was bound to lose over a Customs corruption scandal. He advised the Governor-General, Lord Byng, to dissolve the House of Commons and call an election, although it was only eight months since the preceding election. Byng refused to accept the advice and instead commissioned the Opposition Leader, Arthur Meighen, to form a government. Meighen persuaded the Governor-General to appoint seven 'acting' Ministers 'without portfolio' so as to avoid by-elections. Only Meighen's appointment was designated permanent necessitating a by-election for him alone. However when the House of Commons reassembled, Meighen's government immediately faced a censure motion directed precisely at this contrivance. The government lost and an election was now unavoidable. During the campaign, criticism was tellingly directed at Meighen for

History of the Parliament of Western Australia 1832–1990, Parliament of Western Australia 1991, p. 83.

²⁷ *Western Australia Constitution (Re-Election of Ministers) Act*, no. 4 of 1947, section 2.

²⁸ *Van Dieman's Land Constitution Act* 1854, 18 Victoria, no. 17.

²⁹ Reynolds, J., *Premiers and Political Leaders* in E.C. Green (ed.), *A Century of Responsible Government in Tasmania 1856–1956*, Government Printer Tasmania 1956, p. 163.

³⁰ *Tasmania Electoral Act* 1907, 7 Edward 7, no. 6.

his use of the contrivance. Meighen was heavily defeated, including losing his own seat. Meighen, therefore — like Elmslie — was not a member of Parliament for any of the period of his government. King resumed the Premiership and Byng was recalled to Britain, a strong precedent thus having been established requiring Canadian Governors-General to always accept Prime Ministerial advice.³¹

The requirement for ministerial by-elections for members of Canada's House of Commons was abolished in 1931.³²

In the **Canadian Provinces** the practice was first abolished by **Alberta** in 1926,³³ quickly followed by **Québec**,³⁴ **New Brunswick**³⁵ and **Nova Scotia**³⁶ all in 1927. In 1929 **British Columbia** abolished it,³⁷ in 1932 **Prince Edward Island**,³⁸ in 1936 **Saskatchewan**³⁹ and in 1937 **Manitoba**.⁴⁰ In **Ontario** the practice was abolished for certain Ministers in 1926,⁴¹ but for other appointees not until 1941.⁴² (More work is required to ascertain if there was any effect of the practice on the Parliaments of the Canadian Provinces.)

In **Newfoundland** the requirement was abolished temporarily during the First World War.⁴³ The practice lapsed when Newfoundland lost its self-government in 1934 and its Parliament abolished. When Newfoundland joined Canada as a Province in 1949, the practice no longer applied.

The requirement for Ministerial by-elections never applied to the **Commonwealth of Australia**,⁴⁴ **South Australian**,⁴⁵ **New Zealand**⁴⁶ or **South African** Parliaments.⁴⁷

³¹ Forsey, E., *The Royal Power of Dissolution in the British Commonwealth*, 2nd edn, Oxford University Press, Toronto, 1968 is largely devoted to the King-Byng crisis; Bothwell, R., Drummond, I., and English, J., *Canada 1900–1945*, University of Toronto Press, 1987, p. 206; Evatt, H.V., *The King and His Dominion Governors: A Study of the Reserve Powers of the Crown in Great Britain and the Dominions*, 2nd edn, F.W. Cheshire, Melbourne, 1967, p. 55.

³² *Act to remove the necessity of the re-election of Members of the House of Commons of Canada on acceptance of office*, Canada, 21–22 George V.

³³ Alberta Act 16–17 George V, c.3.

³⁴ Québec Act 17 George V, c.13.

³⁵ New Brunswick Act 17 George V, c. 13.

³⁶ Nova Scotia Act 12–13 George V, c. 13.

³⁷ British Columbia Act 19 George V, c. 14.

³⁸ Prince Edward Island Act 22 George V, c. 3.

³⁹ Saskatchewan Act 1 Edward VIII, c. 2.

⁴⁰ Manitoba Act 1 George VI, c. 27. See Forsey, *op cit*, p. 207.

⁴¹ Ontario Act 16 George V, c. 5.

⁴² Ontario Act 5 George VI, c. 26.

⁴³ Newfoundland Acts 8 George V, c. 19 and 8–9 George V, c. 2.

⁴⁴ *Commonwealth of Australia Constitution Act* (Imperial), 63 & 64 Victoria, chapter 12, section 44.

⁴⁵ *SA Constitution Act* 1856, 1855–56, No. 2, section 17

⁴⁶ *New Zealand Constitution Act* (Imperial) 1852, 15 & 16 Victoria, chapter 72, is silent on the matter.

⁴⁷ *UK South Africa Act* 1909, 9 Edward 7, chapter 9.

*APPENDIX I**SOME RELEVANT STATUTORY PROVISIONS**UNITED KINGDOM*

Succession Act **1700** (An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject), 12 & 13 William III, chapter II.

III. That no person who has an Office or Place of Profit under the King, or receives a Pension from the Crown, shall be capable of serving as a Member of the House of Commons.

Succession to the Crown Act **1707** (An Act for the Security of Her Majesty's Person and Government, and of the Succession to the Crown of Great Britain in the Protestant Line), 6 Anne, chapter 7.

XXVI. Provided always, That if any Person being chosen a Member of the House of Commons, shall accept of any Office of Profit from the Crown, during such Time as he shall continue a Member, his Election shall be, and is hereby declared to be void, and a new Writ shall issue for a new Election, as if such Person so accepting was naturally dead. Provided nevertheless, That such Person shall be capable of being again elected, as if his Place had not become void as aforesaid.

Re-election of Ministers Act 1919, 9 George 5, chapter 2, section 1(1).

1. (1) Notwithstanding anything in any Act, a member of the Commons House of Parliament shall not vacate his seat by reason only of his acceptance of an office of profit if that office is an office the holder is capable of being elected to, or sitting or voting in, that House, and if such acceptance has taken place within nine months after the issue of a proclamation summoning a new Parliament....

Re-election of Ministers Act (1919) Amendment Act 1926, 16 & 17 George 5, chapter 19.

1(1). In subsection (1) of section one of the Re-election of Ministers Act, 1919, the words 'and if such acceptance has taken place within nine months after the issue of a proclamation summoning a new Parliament' shall be deleted and the said section shall, as from the passing of this Act, have effect as if the said words did not form part of the said section.

NEW SOUTH WALES

New South Wales Government Act 1855 (An Act to enable Her Majesty to assent to a Bill, as amended, of the Legislature of New South Wales, ‘to confer a Constitution on New South Wales, and to grant a Civil List to Her Majesty’) (Imperial), 18 & 18 Victoria, chapter LIV.

XVIII. Any Person holding any Office of Profit under the Crown, ... shall be incapable of being elected, or of sitting or voting as a Member of the Legislative Assembly, unless he be One of the following official Members of the Government, that is to say, the Colonial Secretary, Colonial Treasurer, Auditor General, Attorney General, and Solicitor General, or One of such additional Offices, not being more than Five, as the Governor with the Advice of the Executive Council, may from Time to Time, by a Notice in the Government Gazette, declare capable of being elected a Member of the said Assembly.

XIX. If any Member of the said Assembly shall accept of any Office of Profit from the Crown during Pleasure or for Term of Years, his Election shall be thereupon and is hereby declared to be void, and a Writ shall forthwith issue for anew Election: Provided that nothing in this Act shall extend to ... any of the official Members of the Government, or other Officers referred to in the last preceding Clause of this Act who may accept any other Office.

Constitution Act Amendment (No. 2), No. V, **1884**.

2. After the passing of this Act no person holding an office of profit under the Crown other than one or more of the office enumerated in the Schedule hereto ... shall be capable of being elected or voting as a Member of the Legislative Assembly but the holders for the time being of the offices enumerated in the Schedule shall be so capable. Provided always that the holder of any office of profit under the Crown created by Act of Parliament as an office of the Executive Government shall be capable of being elected and of sitting and voting as a Member of the said Assembly.

3. If any Member of the said Assembly shall accept any office of profit ... his election shall be thereupon and is hereby declared to be void and writ shall issue for a new election. Provided that nothing in this or the last preceding section contained shall extend to ... any of the offices enumerated in the Schedule hereto or referred to in the last preceding section who shall accept any other office of the Executive Government referred to in the said section or enumerated in the Schedule hereto.

...

SCHEDULE

The Colonial Secretary.

The Colonial Treasurer.

The Attorney-General.

The Secretary for Lands.

The Secretary for Public Works.

The Minister of Justice.

The Minister of Public Instruction.

The Secretary for Mines.

The Postmaster-General.

Constitution Act, No. 32, 1902. [a consolidation of the Constitution]

26. No person –

(a) holding an office of profit under the Crown other than one or more of the offices enumerated in the Second Schedule hereto;

...

shall be capable of being elected or of holding or voting as a Member of the Legislative Assembly, but the holders for the time being of the office enumerated in the said Schedule shall be so capable:

Provided that the holder of any office of profit under the Crown created by Act of Parliament as an office of the Executive Government shall be capable of being elected and of sitting and voting as a Member of the said Assembly.

27. If any Member of the said Assembly accepts any office of profit under the Crown, or pension from the Crown, during pleasure or for a term of years, his election shall thereupon become void, and a writ shall issue for a new election:

Provided that nothing in this or the last preceding section shall extend to –

...

(b) any of the offices enumerated in the Second Schedule hereto, or referred to in the last preceding section, who accept any other office of the Executive Government referred to in the said section or enumerated in the said Schedule.

SECOND SCHEDULE

[Identical to the Schedule to the 1884 Act]

Parliamentary Elections Act, No. 41, 1906.

60. Section twenty-seven of the Constitution Act, 1902, is amended by adding the following paragraph, to stand as paragraph (c): -

‘Any Member of the Legislative Assembly who accepts any of the offices enumerated in the Second Schedule hereto, or any office of profit under the Crown created by Act of Parliament as an office of the Executive Government.’

VICTORIA

Constitution Act 1855 18 & 19 Victoria, chapter 55.

XVII. If any Member of the Legislative Council or the Legislative Assembly shall accept of any Office of Profit under the Crown during Pleasure, his Seat shall thereupon become vacant, but such Person shall, if otherwise duly qualified, be capable of being re-elected.

Officials in Parliament Act 1914.

2. Notwithstanding anything in the Constitution Act or The Constitution Act Amendment Acts in any case where a member of the Legislative Council or of the Legislative Assembly is appointed by the Governor as an officer capable of being elected member of either House of Parliament and of sitting or voting therein the acceptance by him of the appointment shall not vacate his seat.

Constitution Act 1975.

53(1). Notwithstanding anything in this Act where a person is appointed by the Governor to be a responsible Minister of the Crown the acceptance by him of the appointment shall not prevent him from becoming a member of the Council or the Assembly or from sitting and voting as a member or if he is a member shall not vacate his seat.

QUEENSLAND

The Officials in Parliament Act of 1884.

1. The Governor may from time to time, by Proclamation, declare any Officers of the Crown, not exceeding seven in all, and being Officers liable to retire on political grounds, to be capable of being elected members of the Legislative Assembly, and of sitting and voting therein...

WESTERN AUSTRALIA

Constitution Act 1890, 53 & 54 Victoria, no. 123.

28. If any person while holding an office of profit under the Crown ... be elected a member of the Legislative Assembly, or of the Legislative Council ... if he takes the oath or makes the affirmation herein-before prescribed, be held by so doing to vacate the said office.

Provided always, that there shall be five principal executive offices of the Government liable to be vacated on political grounds, and that to such offices this section shall not apply.

The said offices shall be such five offices as shall be designated and declared by the Governor in council ...

[The *Constitution Act Amendment Act 1899* extended the exemption to six officers. The *Constitution Act Amendment Act (No. 1) 1947* extended the exemption to eight officers, with retrospective effect from 1927].

Constitution Act (Re-Election of Ministers) Act, No. 4 of **1947**.

3. Notwithstanding anything in any Act, a Member of the Legislative Council or the Legislative Assembly shall not vacate his seat by reason only of his acceptance of an office of profit under the Crown if that office be one which the holder is liable to vacate on political grounds and which is referred to in the Constitution Act 1889 ... and the Constitution Act Amendment Act 1899 ...

SOUTH AUSTRALIA

Constitution Act 1856, 1855–56, No. 2.

17. If any Member of the said Parliament shall accept of any office of profit or pension from the Crown, during pleasure, excepting those offices which are hereinafter required to be held by Members of the said Parliament, his seat shall be thereupon and is hereby declared to be vacant.

VAN DIEMAN'S LAND / TASMANIA

Constitution Act 1855, 18 Victoria, No.17.

XXVII. If any Member either of the Legislative Council or of the House of Assembly shall accept any office of profit from the Government during pleasure or otherwise the seat shall thereupon become vacant.

COMMONWEALTH OF AUSTRALIA

Commonwealth of Australia Constitution Act (Imperial), 63 & 64 Victoria, chapter 122.

44. Any person who –

...

(iv) Holds any office of profit under the Crown, ...

shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.

But sub-section iv does not apply to the office of any of the Queen's Ministers of State for the Commonwealth ...

CANADA

Act to remove the necessity of the re-election of Members of the House of Commons of Canada on acceptance of office, **1931**, 21–22 George V, chapter 52.

1...a member of the House of Commons shall not vacate his seat by reason only of his acceptance of an office of profit under the Crown, if that office is an office the holder of which is capable of being elected to, or sitting or voting in, the House of Commons.

... Nothing in this act contained shall render ineligible as aforesaid, any person, member of the King's Privy Council, holding the recognized position of First Minister, [titles of various Ministers enumerated], or any office which is hereafter created, to be held by a member of the King's Privy Council for Canada, or shall disqualify any such person to sit or vote in the House of Commons, if he is elected while he holds such office, or is a member of the House of Commons at the date of his nomination by the Crown for such office, and is not otherwise disqualified.

ONTARIO & QUÉBEC

British North America Act (Imperial) **1867**, 30 Victoria, chapter 8.

83. Until the Legislature of Ontario or of Quebec otherwise provides, a Person accepting or holding in Ontario or Quebec any Office, Commission or Employment, permanent or temporary, at the Nomination of the Lieutenant Governor, to which an annual Salary, or any Fee, Allowance, Emolument, or Profit of any Kind or Amount whatever from the Province is attached shall not be eligible as a Member of the Legislative Assembly of the respective Province, nor shall he sit or vote as such; but

nothing in this Section shall make ineligible any Person being a Member of the respective Province, or holding any of the following Offices, that is to say, the Offices of Attorney General, Secretary and Registrar of the Province, Treasurer of the Province, Commissioner of Crown Lands, and Commissioner of Agriculture and Public Works, and in Quebec Solicitor General, or shall disqualify him to sit or vote in the House for which he is elected, provided he is elected while holding such Office.

SOUTH AFRICA

South Africa Act (Imperial) **1909**, 9 Edward 7, chapter 9.

53. No person shall be capable of being chosen or of sitting as a senator or as a member of the House of Assembly who –

...

(d) holds any office of profit under the Crown within the Union. Provided that the following persons shall not be deemed to hold an office of profit under the Crown for the purposes of this subsection:

a Minister of State for the Union;

...

APPENDIX 2:**SUMMARY**

Jurisdiction	Applied to Ministers	Abolished	Connected with Major Political Event
United Kingdom	All	1919: Not applicable for 9 months after election 1926: Abolished completely	1908: W S Churchill loses by-election 1914: C Masterman loses successive by-elections
New South Wales	Specified positions exempt. Also exempt when accepting additional portfolios	Specified portfolios exempt. 1906: Abolished completely	1856: S Donaldson, Premier, loses by-election. 1863: J Martin, Premier, loses by-election
Victoria	All	1914	1913: All Elmslie Govt. Ministers absent from Parliament for term of their incumbency
Queensland	All	1884	1866: Herbert Govt in office short-term by contrivance
Western Australia	Senior portfolios exempted	1947	1901: Three Ministers lose their by-elections, leading to resignation of Morgans Govt
South Australia	No	Not applicable	
Tasmania	All	1896	
Commonwealth of Australia	No	Not applicable	
New Zealand	No	Not applicable	
South Africa	No	Not applicable	
Canada	Yes	1931	1926: A Meighen absent from Parliament for term of his incumbency and loses Parliamentary vote and subsequent general election because of criticism of how he sought to avoid by-elections
Newfoundland	Yes	1934, when Parliament temporarily abolished	
Nova Scotia	Yes	1927	
Prince Edward Island	Yes	1932	
New Brunswick	Yes	1927	
Québec	Yes	1927	
Ontario	Yes	1926: For certain Ministers 1941: Abolished completely	
Manitoba	Yes	1937	
Saskatchewan	Yes	1936	
Alberta	Yes	1926	
British Columbia	Yes	1929	

APPENDIX 3:***THE VICTORIAN PARLIAMENTARY EVENTS OF 1913***

In December 1913 when Labor formed its first Victorian State government, due to a temporary split within the Liberals, there had already been Labor governments at the Federal level and in all other States. The Party leader, Elmslie, an unassuming man had only recently taken over unexpectedly due to his predecessor's ill-health. [The Labor Party in this period of Victorian politics seemed likely to be a perpetual opposition. The electoral system was gerrymandered to favour rural votes and, in addition, the Labor Party had not made as much impact as it had interstate. This was largely because liberals had supported workers' causes to some extent and gained their electoral support.

William Watt led a Liberal government from May 1912. The formerly opposed non-Labor forces in Victorian politics had formally united in 1909 under the title of the Liberal Party, but this still encompassed factions of liberals, conservatives and country interests. In particular, the group of thirteen country members — sometimes referred to as the Corner Party — were determined to protect country interests. Their suspicion of Watt had recently been intensified by his introduction of the expensive scheme for electrification of Melbourne's suburban railways. They were now very wary of his proposed Redistribution Bill which they believed would dilute their influence. The group's tactics varied from harrying the government to outright opposition. The Direct Ministerialists (Liberals other than the country group) had twenty-nine members, and Labor twenty.

Dissatisfaction therefore came to a head in debate on the *Electoral Districts (Redistribution) Bill's* clause increasing the number of members. The Corner Party and the Labor Party both voted against it resulting in the government's defeat on a clause which Watt chose to regard as vital. Watt tendered his resignation to the Lieutenant-Governor, Sir John Madden, on Friday 5 December 1913. Next day Madden commissioned Elmslie, as Leader of the next biggest party, to form a government. It was immediately apparent that the new government was not in control of Parliament. The defeat of the Watt government had succeeded in delivering a shock to the Liberal Party which reunited. As John Anderson expresses it, the Liberal rebels now made 'frantic peace overtures. The corner members were being manoeuvred by a master puppeteer [Watt], and had no alternative but to submit to terms'.⁴⁸

⁴⁸ Anderson, J., *W.A. Watt: A Political Biography*, Master of Arts thesis, University of New South Wales, 1972.

As well as Premier, Elmslie took the Treasurer's portfolio. There were seven Ministers and four Honorary Ministers.⁴⁹

Humphrey McQueen, in a review of the Labor Party in Victoria in the early twentieth century, comments on the subsequent events that 'It was then that what could have been a melodrama was turned into a low farce'.⁵⁰ When Parliament met, Elmslie and all seven of his ministerial colleagues had been obliged to resign from Parliament and were awaiting by-elections in their constituencies. Specifically, they were awaiting the closure of nominations for their by-elections, to discover if, in fact, they would have any opponents and thus have to face elections. The most able debaters on the Labor side therefore had to watch the debates from the public gallery. It fell to the Honorary Ministers without portfolios — two in each house — to lead the Parliamentary business and to defend the newly installed government. On the other side, the Liberals had reunited, making defeat of Labor inevitable.⁵¹ Throughout the next few days' Parliamentary motions the Liberals withdrew eight of their members from voting as a counterpart to the now absent Labor members.

Parliament remained in session without a break. Elmslie was sworn in as Premier on Tuesday 9 December 1913. Parliament met the same day and the Liberals immediately demonstrated their control. Honorary Ministers in both chambers moved an adjournment to 6 January 1914 to enable the new Ministers to face their possible by-elections and the new government to formulate its program. The Opposition, however, moved amendments to the motions that the two houses be adjourned only for the next few days. These were carried in the Legislative Assembly thirty-five to thirteen and in the Legislative Council without a Division. Watt, now Opposition Leader, then foreshadowed a No-Confidence motion in the government for Thursday, 11 December 1913.

On 11 December the Legislative Assembly debated the No-Confidence motion. Liberal members pointed to their superior claims to government and argued that Labor was in a minority and had no claim to government. Watt said Labor was like a bunch of urchins who had stolen into the orchard while the owner's back was turned and that as soon as the rightful owner returned they filled the air with their cries. He said that Sir John Madden had been wrongly advised when Labor told him they could carry on government.

Labor members, however, argued that it was unfair that the government should be immediately subjected to a challenge when it had had no time to do anything that could be objected to. Indeed it was claimed to be unprecedented for any government

⁴⁹ Public Record Office of Victoria file VPRS 7581/P1, Item 35, contains the Lieutenant-Governor's record of swearing-in of Ministers with their portfolios.

⁵⁰ McQueen, H., in D. Murphy (ed.), *Labor in Politics: The State Labor Parties in Australia 1880–1920*, University of Queensland Press, St Lucia, 1975, ISBN 0-7022-09392, p. 322.

⁵¹ The political events of the next few days were extensively reported in the Victorian *Parliamentary Debates*, Melbourne *Age*, Melbourne *Argus* and Melbourne *Herald* throughout December 1913.

deriving from the British Parliamentary system to be subjected to a motion of No-Confidence on the day it was sworn in. Labor members claimed that Liberal members had quietly told them before Elmslie was sworn in that they would give him a 'fair run'. This was however denied.

These events were a strong echo of the fate of the week-long Dawson government in Queensland — the world's first Labor government — in 1899, and the Earle Labor government in Tasmania in 1909. In both cases, Labor came to power as a result of temporary splits among the conservatives, and the shock of this immediately led to them being reunited, with the Labor governments never having control of Parliament.⁵²

Debate resumed on Tuesday 16 December and the inevitable defeat of the Labor government (36 to 13) occurred. The Opposition then further demonstrated their control of Parliament by defeating a Labor motion that the Lieutenant-Governor be advised to dissolve Parliament.

Elmslie proposed to the Lieutenant-Governor that he should be granted a dissolution of Parliament and an election. Elmslie presented Sir John with a lengthy memorandum arguing this case. Sir John rejected the argument as Watt could clearly again form a government.

When the Legislative Assembly came back next day (Friday 19 December) it was only to hear an outgoing Honorary Minister announce that Elmslie had an appointment with the Lieutenant-Governor to resign.

On Monday 22 December Parliament resumed with Watt and the Liberals back on the government side. Ironically the very first business was a statement by the Speaker advising the return of Elmslie and his ex-Ministerial colleagues. In every case there had been no other candidates and by-elections had been unnecessary. Next day Parliament adjourned for a break over the Christmas period and politics disappeared from the newspapers in the true Australian Christmas tradition.

McQueen comments that

This period in office left an indelible stamp on the minds of all members of caucus, as their parliamentary tactics throughout the next sixteen years were designed to recreate the events of 3–4 December 1913. They never realized who had done what, with which, and to whom.⁵³

⁵² For the Dawson government in Queensland see J. Scott, and K. Saunders (eds), *The World's First Labor Government*, Royal Historical Society of Queensland, Brisbane, 2001, ISBN 0-9595790-7-9 and R. Fitzgerald, *Seven Days to Remember: The World's First Labor Government*, Queensland University Press, St Lucia, 1999, ISBN 0-7022-3139-8, pp. 29–45.

For the Earle government in Tasmania see Hobart *Mercury* 13 to 27 October 1909; Hobart *Daily Post* 13 to 27 October 1909; Launceston *Examiner* 13 to 27 October 1909.

⁵³ McQueen, Murphy (ed.), *op cit*, p. 322.

John Anderson wrote a political biography of William Watt in which he comments that ‘The whole episode ... had all the hallmarks of a planned campaign by the Premier [Watt], whose position was now stronger than ever.’⁵⁴ Sir Frederic Eggleston, later a Liberal member of the Victorian Parliament, surveyed Victorian politics from 1900 to 1913 in a biography of George Swinburne. Eggleston also had no doubt that Watt had designed the events. He said that Watt ‘discredited Elmslie and he discredited his [Watt’s] rebellious followers.’ Eggleston also opined that Elmslie by taking office ‘made himself ridiculous and lost prestige.’⁵⁵

Elmslie’s government had, of course, not been able to achieve anything. All its energies in its extremely short life were devoted to its Parliamentary defence. Elmslie had, quite properly, directed his Ministers to make only routine decisions until Parliamentary support had been resolved.

This series of events was unusual enough in itself. But there were a number of other peculiarities.

Victoria was without a Governor during this political crisis. Sir John Fuller was absent on home leave in Britain because of ill-health. Management of the crisis therefore devolved to Sir John Madden as Lieutenant-Governor. Madden continued, however, to also perform his duties as Chief Justice of Victoria. He usually sat on the Supreme Court bench during the day and seemed to turn his attention to administration of the government late in the day. He did not attend the Court every day. On 18 December 1913, when the crisis was at its height, he still undertook a commitment to open an industrial exhibition in Ballarat. Madden returned to Melbourne by the evening train and Elmslie had to wait until 11 pm to see him!

Sir John Madden was, as mentioned, Lieutenant-Governor. Meanwhile, his brother, Sir Frank Madden, was Speaker of the Legislative Assembly, as a nominee of the Liberal Party, presiding over the No-Confidence debates. There was, however, no suggestion that there was any influencing of one by the other.

The Minister of Railways in the outgoing Watt government was A.A. Billson — not a common name. The Minister of Railways in the Elmslie government was J.W. Billson. They were not related. Perhaps we can speculate that this must have been a convenience for public servants, avoiding the need for them to have to rewrite their Ministerial briefing notes.

Despite the seriousness of debating the future of the government — the most important business any Parliament can undertake — it still commenced each day with routine business. On Thursday, 11 December 1913, for example, before the

⁵⁴ Anderson, *op cit*, p. 171.

⁵⁵ Sugden, E., Eggleston, F., *George Swinburne: A Biography*, Angus & Robertson, Sydney, 1931, p. 304.

Want of Confidence debate, the Legislative Assembly received a paper showing fines imposed under the *Milk and Dairy Supervision Act*.

These events took place not in the grand Victorian Parliament House overlooking the City, because that was then occupied by the Federal Parliament, but in Victoria's temporary (if 1901 to 1927 can be called 'temporary') Parliament at the Exhibition Building, Carlton.⁵⁶ ▲

⁵⁶ Isaacs, V., *Parliament in Exile: Aspects of the Victorian Parliament at the Exhibition Building 1901 to 1927* in *Australasian Parliamentary Review*, 17(1), Autumn 2002.