The 2010 election has left the fate of Australian government deep in Westminster territory. Next steps, perhaps only a short-term resolution, will depend on the major parties - Labor and the two coalition parties - and the assortment of private members on the cross bench of the House. Who forms the government rests on who has the confidence of the House, the polite parliamentary term for who has the numbers, from their own side and anyone else willing to offer support. For one person these events will be a special preoccupation - Her Excellency the Governor-General of Australia.

Doctrine and practice at Westminster itself will furnish Her Excellency with little guidance about the role she may be called upon to play. She would do better to acquaint herself with comparable recent occurrences in Australian states than what might look to be possible precedents at Westminster (or Ottawa or Canberra for that matter).

There is nevertheless some Westminster documentation with which Her Excellency will already be familiar. This would include the Senex letter, of 1950, and subsequent formulations about the role of the monarch when governments either lack a majority in the Commons or have only a small one.

The key point is the need to have a prime minister heading a government “for a reasonable period, with a working majority in the House of Commons.”

Some expositors of Westminster practice suggest that, “After an indecisive general election, the monarch is required to act only if the incumbent Prime Minister resigns before placing a Queen’s speech before Parliament or after failing to win a majority for that legislative programme in the House of Commons.”

(Contemporary circumstances may well dictate a more expeditious resolution. Business confidence is as important these days as the confidence of the House.)

The expositors go on to say, “The overarching principle at such delicate times is that the Queen’s government must be carried on and that the monarch is not drawn into political controversy by those politicians competing to receive her commission to form a government.” These are no more than pithy statements of what people in the corridors of power already know.

Unfortunately, none of the previous four Australian elections bearing some similarity to that which has now passed provides much guidance as to whose claim on The Lodge should be recognised.

The elections of 1913 and 1961 produced governments with minuscule majorities; in 1913, a double dissolution within a year was the way out; in 1961, an early House election restored a large majority to the Menzies government.

On the latter occasion opposition leader Arthur Calwell argued that had the seat count in the House been equal, he would have claimed office on the basis of a greater share of the primary vote. The 02-60 result meant that his theory was never tested; it is not likely that the governor-general, Viscount de L’Isle, would have accepted it.

In a formal sense, such an argument should not be accepted this time either. It would, however, be an influential consideration for the cross bench to take account of when they decide where to cast their lot.

More than a month elapsed between the 1922 election which left Billy Hughes’s Nationalist government without a majority and the commissioning of the first coalition government under another Nationalist leader, S. M. Bruce. That was a case of party negotiation, rather than garnering support from various individuals.

There has been much dwelling on the Menzies government left one short of a majority. Labor was, however, still divided between the federal party and the Lang group. Only Menzies was in a position to form a government.

In the following year, Labor settled its differences and, in due course, at budget time, the Independents switched their votes, bringing Labor to office. In circumstances of national danger, Fadden, having succeeded Menzies as prime minister, recommended that John Curtin be sent for rather than bringing on an early election.

In the past half-century one in three elections in Canada have produced minority governments but there are contrasts rather than parallels between Australia and Canada on matters of this sort.

All states have had, in the past generation, a range of experience with major party governments surviving, in the main, for the normal life of a parliament on the votes of Independents. Sometimes the Independents operate as a block; sometimes as individuals. A well-known occasion where such an alliance came to grief relatively early is that of Tasmania in the early 1990s.

The daily vice-regal notice will hold special interest in the next few weeks. The Governor-General needs to be fully informed not only about the constitutional and legal situation but also about pertinent matters of parliamentary tradition and practice. It has become accepted that apart from speaking with party leaders, she can also look to the solicitor-general in informing herself of matters to be addressed.

And, lest there be any doubt, as the Senex letter made so clear, she is “free to ask informal advice from anybody whom [she] thinks fit to consult”.  

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