
The First ‘Caretaker’ Government*

Kent Blore¹

Deputy Crown Counsel, Crown Law, Queensland.

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Abstract: This article attempts to trace the origins of the caretaker convention. Most commentators look back no further than Sir Winston Churchill’s caretaker government formed in the extraordinary circumstances that existed in the final days of World War II. The wartime coalition had broken up, leaving Churchill to form a new government, promising to act with restraint pending the first general election in Britain in nearly a decade. But the story neither begins nor ends there. Churchill’s government was not the first to be called a ‘caretaker’ government and even his caretaker government did not align with the modern concept. Searching for the first ‘caretaker’ government reveals a complex interaction between the label and the convention that played out over a century from 1885 to 1987 and beyond. The full story also suggests there may be a deeper rationale for the caretaker convention than the need for restraint while a government is not responsible to Parliament—the need for restraint while a government has impaired legitimacy.

INTRODUCTION

Parliamentary democracies are characterised by the principle of responsible government, which is the principle that the government is accountable for its actions to Parliament. But in times of transition, a government may find itself in power even though it is no longer accountable to Parliament. In those situations, the caretaker convention calls for restraint. The caretaker convention is the unwritten rule that once a government is no longer accountable to Parliament—either because Parliament has

¹ The views expressed in this article are those of the author and not those of Crown Law or the Queensland Government. The British newspapers referred to in this article can be found at: <https://www.britishnewspaperarchive.co.uk>. The Australian newspapers can be found at: <https://trove.nla.gov.au>.

been dissolved pending a general election or because the government has lost majority support—the government is to perform only routine tasks, avoiding major policy decisions or significant appointments that would fetter its successor.² A government enters into caretaker mode when the Parliament or the lower house is dissolved pending an election,³ and continues in caretaker mode either until the election result is clear, if the government is returned, or until the new government is sworn in, if the government changes hands.⁴ By calling for restraint, the caretaker convention minimises the need for accountability while the government is not accountable. In this way, the convention fits neatly with the principle of responsible government, but the two did not always go hand in hand. The principle of responsible government had become entrenched long before anyone recognised the caretaker convention.

2024 is the year of the election, with close to half of the world’s population heading to the polls this year.⁵ Among Westminster systems—including in the United Kingdom, India, Pakistan and Bangladesh—that makes 2024 the year of the caretaker government.⁶ In Australia, by the end of 2024, there will have been caretaker governments in four States and Territories: Tasmania, the Northern Territory, the

² John Wilson, ‘Constitutional Conventions and Election Campaigns: The Status of the Caretaker Convention in Canada’. *Canadian Parliamentary Review* Winter, 1995-6, pp. 12, 14.

³ Anne Twomey, *The Veiled Sceptre: Reserve Powers of Heads of State in Westminster Systems*. Cambridge: Cambridge University Press, 2018, pp. 519-522. Though some commentators suggest that the caretaker convention might commence earlier when the election is called, or later when the writs for the election are issued if there is any delay: Greg Taylor, *The Constitution of Victoria*. Sydney: Federation Press, 2006, p. 191; Glyn Davis, Alice Ling, Bill Scales and Roger Wilkins, ‘Rethinking Caretaker Conventions for Australian Governments’. *Australian Journal of Public Administration* 60(3), 2001, pp. 11, 14; George Winterton, ‘Constitutional Position of Australian State Governors’, in HP Lee and George Winterton (eds), *Australian Constitutional Perspectives*. Sydney: Lawbook Co, 1992, pp 274, 317.

⁴ Twomey, *The Veiled Sceptre*, pp. 522-526. Or until the appointment of a new government ‘virtually certain’ to enjoy the confidence of the lower house: Winterton, ‘Constitutional Position of Australian State Governors’, p. 320; George Winterton, ‘Tasmania’s hung Parliament, 1989’. *Public Law* 1992, pp. 423, 438.

⁵ Koh Ewe, ‘The Ultimate Election Year: All the Elections Around the World in 2024’. *Time*, 28 December 2023. Accessed at: <https://time.com/6550920/world-elections-2024/>.

⁶ In presidential systems, there is a related concept of a ‘lame duck’ government: see Rivka Weill, ‘Constitutional Transitions: The Role of Lame Ducks and Caretakers’. *Utah Law Review* 3, 2011, pp. 1087-1129. For a discussion of the caretaker convention in other European countries with responsible government including Ireland, Germany and Scandinavia, see: Jonathan Boston, Stephen Levine, Elizabeth McLeay, Nigel S Roberts and Hannah Schmidt, ‘Caretaker Government and the Evolution of Caretaker Conventions in New Zealand’. *Victoria University of Wellington Law Review* 28(4) 1998, pp. 629, 632-634.

Australian Capital Territory and Queensland.⁷ Sometime this year or next, the federal government in Australia will also enter into caretaker mode.⁸ In the year of the caretaker government, it is timely to ask: if the caretaker convention did not come with the advent of responsible government, when did it first arise? When was the first caretaker government?

WAS IT CHURCHILL'S 1945 'CARETAKER' GOVERNMENT?

Some commentators, such as Ian Killey, trace the caretaker convention to the 1945 British election.⁹ One theory is that journalists coined the term 'caretaker government' in 1945 to describe the extraordinary circumstances Sir Winston Churchill found himself in at the close of World War II.¹⁰ The circumstances were certainly extraordinary.¹¹ The last general election in Britain had been held in 1935 before the outbreak of World War II. During the war, the major parties had agreed to an electoral truce whereby no general elections were held and by-elections were unopposed by the other major parties (though minor party and independent candidates did contest seats).¹² From 1937 to 1940, Neville Chamberlain of the Conservative party had been Prime Minister, but after the Allies were forced to retreat from Norway, Chamberlain considered that a government supported by all parties was required. As the Labour and Liberal parties would not join a government headed by him, he resigned in May 1940 in favour of Winston Churchill who then formed a coalition government comprising all three parties—the so-called Grand Coalition.¹³

⁷ See e.g. Queensland Government, *The Queensland Cabinet Handbook*. 2024, p. 83 [11.0].

⁸ Australian Government, *Cabinet Handbook*. 15th ed, 2022, p. 19 [123].

⁹ Ian Killey, *Constitutional conventions in Australia: an introduction to the unwritten rules of Australia's constitutions*. London: Anthem Press, 2014, p. 236; Nazrul Islam, 'Non-Party Caretaker Government in Bangladesh (1991-2001): Dilemma for Democracy?'. *Developing Country Studies* 3(8), 2013, pp. 116, 117; JC Johari, *The Constitution of India: A Politico-Legal Study*. New Delhi: Sterling Publishers, 4th ed, 2007, pp. 139-140.

¹⁰ Stephen Holt, 'The mother of all caretaker governments'. *The Sydney Morning Herald*, 8 August 2013. Accessed at: <https://www.smh.com.au/opinion/the-mother-of-all-caretaker-governments-20130807-2rh04.html>.

¹¹ See generally: Ivor Jennings, *Cabinet Government*. Cambridge: Cambridge University Press, 3rd ed, 1980, pp. 84, 531; Rodney Brazier, *Constitutional Practice: The Foundations of British Government*. Oxford: Oxford University Press, 3rd ed, 1999, pp. 44-45, 52-53.

¹² Henry Pelling, 'The 1945 General Election Reconsidered'. *The Historical Journal* 23(2), 1980, p. 399.

¹³ Pelling, 'The 1945 General Election Reconsidered', p. 400.

Following the defeat of Germany on 8 May 1945, Churchill proposed either an early election (to capitalise on his wartime reputation) or an extension of the coalition until the end of the war against Japan.¹⁴ The Labour party refused to extend the coalition, sparking Churchill's resignation on 23 May 1945. Later that same day, the King invited Churchill to form a new administration pending an election.¹⁵ Churchill gave an undertaking to the palace to confine his government to routine matters.¹⁶ The remarkable thing about that undertaking is that it appears to have been given the day Churchill was recommissioned on 23 May 1945, while Parliament was continuing to sit.¹⁷ The House of Commons was not dissolved until 15 June.

Polling day was set for 5 July 1945, but to give enough time for votes to come in from soldiers still serving overseas, the counting of the votes was delayed until 26 July 1945.¹⁸ So there was a two-month interlude between the collapse of the wartime coalition and the emergence of a new government, all against the background that no government could pretend to enjoy much democratic legitimacy anymore after nearly ten years since the last election. Churchill had not won that election; not even his party or his predecessor Prime Minister had.

In those unusual circumstances, Churchill embraced the label of his government as a 'caretaker government', even before the House of Commons was dissolved. On 26 May 1945, only three days into the new government, Churchill said

¹⁴ Pelling, 'The 1945 General Election Reconsidered', p. 401; Martin Gilbert, *Churchill: A Life*. London: Pimlico, 2000, p. 845.

¹⁵ Jennings, *Cabinet Government*, p. 84.

¹⁶ Mike Codd, 'National elections: caretaker conventions and arrangements for transition'. *AIAL Forum* 1996, p. 23. See also Gilbert, *Churchill: A Life*, pp. 845-6; Roy Jenkins, *Churchill*. London: Macmillan, 2001, p. 791.

¹⁷ 'Premier again visits King', *Dundee Evening Telegraph*, 23 May 1945, p. 4 ('It was assumed that this audience was given by the King for the purpose of the Premier's taking of office again with his "caretaker" Government'). The caretaker Cabinet was not commissioned until 26 May 1945, but even that was before Parliament was dissolved: 'The Caretaker Government', *Evening Despatch*, 26 May 1945, p. 1.

¹⁸ Roger Hermiston, *All Behind You, Winston – Churchill's Great Coalition, 1940-45*. London: Aurum Press, 2016, pp. 359-360; Maxwell Philip Schoenfeld, *The War Ministry of Winston Churchill*. Ames, Iowa: Iowa State University Press, 1972, p. 38-39; Jenkins, *Churchill*, p. 795.

*They call us ‘the Caretakers’; we condone the title, because it means that we shall take every good care of everything that affects the welfare of Britain and all classes in Britain.*¹⁹

Churchill did practise restraint, famously involving the leader of the Labour party, Clement Attlee, in the post-war negotiations at Potsdam, in case Attlee won the election (which turned out to be the case).²⁰ There was also an expectation of restraint in the press coverage. According to one newspaper, the caretaker government would ‘lack authority to take decisions’,²¹ and another said that the interim government would be relegated to performing a ‘purely subordinate task’.²² One newspaper went so far as to say that, even before Parliament was dissolved, the caretaker government ‘must be practically powerless’ to pass ‘all but agreed legislation’.²³ On the other hand, Churchill did not consult with Attlee before taking the very serious step of giving Britain’s ‘unanimous, automatic, unquestioned agreement’ to the use of atomic weapons against Japan.²⁴

But contrary to popular belief, the press did not invent the term ‘caretaker government’ on the spot the day Churchill resigned and formed a new interim government. Speculation had been swirling for some months about when Churchill would quit the coalition and form what the journalists were already calling a ‘caretaker government’.²⁵ The wave of newspaper references to the anticipated ‘caretaker government’ can be traced back to an initial spike on 1 November 1944, the day after Churchill introduced a Bill to extend Parliament by a further year.²⁶ Churchill had taken the opportunity to

¹⁹ Hermiston, *All Behind You, Winston*, p. 364; Gilbert, *Churchill: A Life*, p. 846.

²⁰ Pelling, ‘The 1945 General Election Reconsidered’, pp. 404-5. Churchill may have proposed continuing on as Prime Minister for a short period after the election results were clear, however, apparently, ‘the King felt strongly that it would be wrong for a “lame-duck” PM to return to the Potsdam peace conference to represent Britain’: Kevin Theakston, *Winston Churchill and the British Constitution*. London: Politico’s, 2003, p. 227.

²¹ ‘Election Plans’, *The Scotsman*, 23 May 1945, p. 4.

²² ‘To Rise again’, *Gloucester Citizen*, 16 March 1945, p. 4.

²³ ‘Caretaker Government’, *Portsmouth Evening News*, 17 November 1944, p. 2. See also ‘Behind the Scenes’, *Sunday Mirror*, 6 May 1945, p. 2 (‘No minister will be found among the caretaker Government willing to risk his reputation or waste his time trying to get an actual Act through Parliament’).

²⁴ Killey, *Constitutional conventions in Australia*, p. 238.

²⁵ See e.g. ‘Premier May Delay His War Review: Autumn Election?’ *Coventry Evening Telegraph*, 9 April 1945, p. 3.

²⁶ See e.g. ‘Caretaker Govt’, *Newcastle Journal*, 1 November 1944, p. 3; ‘Stop gap govt to follow Coalition’, *Daily Herald*, 1 November 1944, p. 1; ‘Parliament’, *Birmingham Mail*, 1 November 1944, p. 3 (‘Mr Churchill presumably

outline what he envisaged for the first general election after the war ended. With the return to party politics, he said, the wartime coalition would need to be disbanded, leaving to the majority Conservative party the task of arranging the election.²⁷ In response, Arthur Greenwood—the Leader of the Opposition and a Labour man—‘laid his finger on the doubtful spot, the gap, in which there would have to be a caretakers’ Government’.²⁸ Under Churchill’s proposal, the Conservatives would go to the election with the benefit of incumbency. As Greenwood said to the House of Commons, it would ‘give an initial advantage to the caretaker Government which is in charge during those two or three months’.²⁹

So it was a politician, not a journalist, who first called Churchill’s proposed interim government a ‘caretaker government’. But Greenwood was not even the first Member of Parliament to use that pejorative term. Churchill himself had stood up in the House of Commons much earlier in 1930 to speak about another caretaker government. When discussing British interference in Egypt, he described the Egyptian government that had been installed as a ‘caretaker Government in power’.³⁰ Even Churchill knew about caretaker governments before he formed one.

WAS IT SALISBURY’S 1885 ‘CARETAKER’ GOVERNMENT?

The truth is Churchill knew about caretaker governments because his father—Lord Randolph Churchill—had served in the first government to be described as a ‘caretaker’ government in 1885. When Winston Churchill published a biography of his father in 1908, he entitled the chapter on that period, ‘The Ministry of Caretakers’.³¹ As a young man, Lord Randolph Churchill had been influential in the Conservatives. For a time, he

will form a caretakers Government for the two or three months of the electoral period’); ‘Electoral Outlook’, *Yorkshire Post and Leeds Intelligencer*, 1 November 1944, p. 2.

²⁷ Mr Churchill, United Kingdom, *Parliamentary Debates*, House of Commons, 31 October 1944, vol. 404, col. 662-7.

²⁸ ‘Churchill: War Should Last Till Spring: No Election For Seven Months’, *Yorkshire Observer*, 1 November 1944, p. 4.

²⁹ Arthur Greenwood, United Kingdom, *Parliamentary Debates*, House of Commons, 31 October 1944, vol. 404, col. 672.

³⁰ Mr Churchill, United Kingdom, *Parliamentary Debates*, House of Commons, 29 July 1930, vol. 242, col. 336-7.

³¹ Winston Churchill, *Lord Randolph Churchill*. London: Macmillan, 1906, vol. 1, pp. 423-473.

and the Marquis of Salisbury had led opposing factions of the Conservatives, but in 1885, they combined forces to defeat the Liberal Gladstone Government.

On 8 June 1885, the Liberal Gladstone Government fell on the floor of the House of Commons when it was defeated on an amendment to its budget.³² Prime Minister Gladstone had only the previous year secured the passage of the controversial *Reform Act 1884*,³³ which would extend the franchise from approximately one-third of the adult male population to two-thirds, giving great swathes of the middle and working classes an electoral voice.³⁴ The next general election—at which the enlarged franchise would vote for the first time—was anticipated to be held in November in six months' time. As Winston Churchill later put it, there were 'two million intelligent citizens, newly enfranchised, impatiently await[ing] the opportunity of casting their votes'.³⁵

The Gladstone Government fell while Queen Victoria was away at Balmoral in Scotland, so it was not until 11 June that she summoned the leader of the Conservatives, Lord Salisbury, to invite him to form government.³⁶ By the afternoon of 13 June, as Liberals assembled in Greenwich for the annual Cobden Club Dinner, rumours had arrived by telegraph from the north that Lord Salisbury had 'intimated to her Majesty his unwillingness to attempt to form an Administration'.³⁷ The situation was a 'somewhat embarrassing one' for Lord Salisbury because the Conservatives were still in a minority in the House of Commons.³⁸

So on 13 June 1885, the Tories scrambled to form government without a majority in the House of Commons, and the coming election reminded everyone, not least the middle and working classes, that the House of Commons was itself elected by far less

³² United Kingdom, *Parliamentary Debates*, House of Commons, 8 June 1885, vol. 298, col. 1514; Clive Bigham, *The Prime Ministers of Britain 1721-1921*. London: John Murray, 1922, pp. 303-304, 316.

³³ *Representation of the People Act 1884*, 48 Vict, c 3. See W. Cunningham Glen, *The Representation of the People Act, 1884, with introduction, notes and index*. London: Shaw and Sons, 1885.

³⁴ Elizabeth Wicks, *The Evolution of a Constitution: Eight Key Moments in British Constitutional History*. Oxford: Hart Publishing, 2006, pp. 76-77.

³⁵ Churchill, *Lord Randolph Churchill*, vol. 1, p. 425 (internal quote removed).

³⁶ Mr Gladstone, United Kingdom, *Parliamentary Debates*, House of Commons, 12 June 1885, vol. 298, col. 1528.

³⁷ 'The Pamphlet Collection of Sir Robert Stout: Volume 54 – Cobden Club Dinner', p. 1. Accessed at: <http://nzetc.victoria.ac.nz/tm/scholarly/tei-Stout54-t7-body.html>. Also reproduced in Henry W. Lucy (ed), *Speeches of the Right Hon. Joseph Chamberlain MP*. London: George Routledge and Sons, 1885, pp. 145-6.

³⁸ G. Barnett Smith, *The Prime Ministers of Queen Victoria*. London: George Routledge and Sons, 1886, p. 398.

than a majority of the population. Against that political backdrop, a member of the outgoing Cabinet, Joseph Chamberlain, took to the stage at the Cobden Club. Chamberlain was a radical unionist who had made a name for himself by denouncing the aristocracy as a class ‘who toil not, neither do they spin’.³⁹ His speech that night was littered with references to electoral reform and ‘the hope that the Reformed Parliament will do much in the direction of completing the work which previous Reformed Parliaments have commenced’.⁴⁰ He then turned his attention to Lord Salisbury and the Conservatives. As a minority government, Chamberlain said, the Conservatives would need to adopt the policies of their opponents to retain the support of the House. As his speech reached a kind of fever pitch, Chamberlain had the sudden inspiration to call Lord Salisbury a ‘caretaker’:

I look forward with interest to the spectacle which I believe will shortly be presented of a great party with indecent expedition hastening to divest itself of a whole wardrobe of pledges and professions which it has accumulated during the past few years, stripping off every rag of consistency, and standing up naked and not ashamed, in order that it may squeeze itself into office. (Cheers and great laughter.) That is the position, gentlemen. It is only upon those terms that what will be known in history as the ‘Stop-gap’ Government can invite the toleration of its opponents. They must not undo our work. (Loud cheers.) They must not jeopardise the results already accomplished. They must continue on the main lines of the policy that they have so often and so vehemently condemned. But if they are willing to do that, for my part I see no reason why they should not remain as caretakers on the premises—(great laughter and cheering)—until the new

³⁹ Henry W. Lucy (ed), *Speeches of the Right Hon. Joseph Chamberlain MP*. London: George Routledge and Sons, 1885, p. 41.

⁴⁰ ‘The Pamphlet Collection of Sir Robert Stout: Volume 54 – Cobden Club Dinner’, p. 10.

*tenants are ready in November for a prolonged—and, I hope, permanent—occupation. (Great cheering and laughter.)*⁴¹

The label soon spread.⁴² According to one newspaper two days later, Chamberlain ‘ha[d] supplied a phrase which w[ould] be heard on every Liberal platform, and w[ould] infallibly stick’.⁴³ The phrase certainly did stick.

At that stage, the label was more of a political insult. But already, the rhetoric carried with it the imputation that the government *should* act with restraint. For example, a few months into the Salisbury government, the House of Commons debated whether a royal commission should be appointed to inquire into the education system. One Liberal Member of Parliament said

*It was not fit that an avowedly stop-gap Government should go to the expense of appointing a Royal Commission [or] that they should prejudge great and important questions of this kind as they had done—questions which would have to be decided by the great masses now enfranchised.*⁴⁴

However, the Salisbury government did not act as though it *must* act with restraint. For example, as Salisbury’s Secretary of State for India, Lord Churchill ordered the third Anglo-Burmese war in November 1885, hardly an example of routine administration.

⁴¹ ‘The Pamphlet Collection of Sir Robert Stout: Volume 54 – Cobden Club Dinner’, p. 11. The Oxford English Dictionary also traces the origins of this sense of ‘caretaker’ to the Cobden Club Dinner: J.A. Simpson and E.S.C. Weiner (eds), *The Oxford English Dictionary*. Oxford: Clarendon Press, 2nd ed, 1989, vol. 2, p. 897.

⁴² See e.g. ‘Our London Letter’, *Eastern Evening News*, 16 June 1885, p 2 (‘The “caretaker” Government may yet make excellent play for the regular tenants’); ‘Our London Letter’, *Norfolk News*, 27 June 1885, p. 5 (‘The Tory Government can earn no worthier title than caretakers’); ‘Our London Letter’, *Eastern Evening News*, 11 July 1885, p. 2 (‘Pity a poor Caretaker Government’); ‘A “Caretaker” Government: Extraordinary Suggestions’, *Birmingham Daily Post*, 13 May 1903, p. 7; ‘Overtures and Propositions: A Caretaker Government’, *Daily News* (London), 13 May 1903, p. 7.

⁴³ ‘Norwich, Monday, June 15’, *Eastern Evening News*, 15 June 1885, p. 2.

⁴⁴ Mr Lyulph Stanely, United Kingdom, *Parliamentary Debates*, House of Commons, 5 August 1885, vol. 300, col. 1249-1250 (Lyulph Stanley). As another example, one newspaper noted that Russia would not have proceeded on the basis that war might be declared by the Salisbury government: ‘She is not so simple as to imagine that a caretaker Government could do anything more than carry out their predecessor’s policy’: ‘Our London Letter’, *Eastern Evening News*, 27 August 1885, p. 2.

Without that necessary sense of obligation to act with restraint, a convention had not yet arisen.⁴⁵

WAS IT BEFORE 1885?

The Salisbury government in 1885 was the first caretaker government in name, but Anne Twomey points out that the caretaker convention had been recognised in nascent form long before that.⁴⁶ As one illustration, she points to a Canadian example from 1858, when a government had fallen on a vote of no confidence. The Governor-General, Sir Edmund Head, appointed George Brown to form a new government, but insisted that the new government confine itself to 'matters necessary for the ordinary administration of the government of the province' until such time as he faced Parliament and established whether he had the confidence of the lower house.⁴⁷ On the other hand, Ian Killey points to opposing examples that show governments before 1945 did not feel constrained by a convention during election periods. In Britain, Prime Minister Gladstone threatened to spend the government's surplus when his government was defeated in 1870. In 1880, Prime Minister Disraeli arranged for his private secretary to be elevated to the peerage following the defeat of his government.⁴⁸

OR WAS IT AFTER 1945?

Even Churchill's caretaker government of 1945 may not mark the beginning of the convention. One newspaper at the time complained that the label of caretaker 'ha[d] no constitutional meaning'.⁴⁹ As late as 1961, Sir Ivor Jennings still treated the 1945 caretaker government as an exception owing to extraordinary circumstances, rather

⁴⁵ The three elements of a convention are a common practice, a sense of being bound to follow the rule, and a good reason for the rule: Ivor Jennings, *The Law and the Constitution*. London: University of London Press, 2nd ed, 1938, p. 131.

⁴⁶ Twomey, *The Veiled Sceptre*, pp. 509-513.

⁴⁷ Alpheus Todd, *Parliamentary Government in the British Colonies*. London: Longmans, Green & Co, 2nd ed, 1894, p. 764.

⁴⁸ Killey, *Constitutional Conventions in Australia*, pp. 236-237.

⁴⁹ 'London Letter: The Next Government', *Liverpool Daily Post*, 23 May 1945, p. 2.

than the rule.⁵⁰ What Churchill did do was popularise the label of a caretaker government, especially in political reporting. Both the concept and the label continued to evolve.

Four years later, in Australia, Prime Minister Ben Chifley called a federal election. On 1 November 1949, the day following the issuing of the writs, *The Canberra Times* reported that ‘the Government now becomes a “caretaker” Government which will act until the elections.’⁵¹

Back in Britain after the next general election in 1950, the media referred to Attlee’s returned government as a ‘caretaker administration’ as it had won a majority of seats but with a minority of votes overall. For example, *The Canberra Times* wrote:

*It is difficult to understand how the Governments of other British countries, each of which does represent an unequivocal majority of electors, can regard the Attlee Government as being more than a caretaker administration and having more authority to commit future British policy in Commonwealth affairs than any other caretaker. The best that can be expected is that the caretaker will behave accordingly and that at a not distant date the electors of the United Kingdom will be given an opportunity to decide in clearer terms their choice of Government.*⁵²

Later when Attlee changed his ministry, he is reported as having ‘decided that, instead of regarding the new Government as a “caretaker administration,” it should remain in office as long as possible.’⁵³ Thus, at the time, the media appear to have used ‘caretaker’ to describe any government with impaired democratic legitimacy.

The following year in 1951, Prime Minister Robert Menzies wrote to his Ministers in the lead up to a double dissolution election in Australia, advising that they ‘should not make decisions on matters of policy or those of a contentious nature without first referring

⁵⁰ Jennings, *Cabinet Government*, pp. 86 n 1, 531.

⁵¹ ‘Parliament Dissolved for Elections’, *The Canberra Times*, 1 November 1949, p. 2.

⁵² ‘Pyrrhic Victory’, *The Canberra Times*, 27 February 1950, p. 2.

⁵³ ‘Attlee Rebuffs Left Wing’, *The Advertiser* (Adelaide), 2 March 1950, p. 2.

the matter to myself'.⁵⁴ Commentators such as Jennifer Menzies and Anne Tiernan identify this letter as the beginning of the caretaker convention in Australia.⁵⁵ However, Killey notes that Prime Minister Menzies may not have been acting on the basis that he was bound by precedent:

*Menzies' prime objective and possibly his only objective may well have been to apply central control over electoral strategy and he may not have sought to issue instructions to limit the exercise of powers due to caretaker reasons ... Whatever Menzies's objectives, this letter, and similar letters which were sent during following elections (it became established practice for the Prime Minister to send similar letters to Ministers by 1961) are now seen as an acknowledgement of the operation of the conventions in Australia.*⁵⁶

By then, 'caretaker' had entered the lexicon. For example, while *The Canberra Times* had not used 'caretaker' in this sense prior to 1945, between 1946 and 1960, it used 'caretaker' in coverage of at least 16 international political crises.⁵⁷ Domestically,

⁵⁴ 'Special Articles: Caretaker Conventions and Other Pre-Election Practices' in *Prime Minister and Cabinet Annual Report 1986-87*. Canberra: Australian Government Publishing Service, 1987, pp. 39, 40.

⁵⁵ Jennifer Menzies and Anne Tiernan, *Caretaker Conventions in Australasia: Minding the Shop for Government*. Canberra: Australian National University Press, 2nd ed, 2014, pp. 16. See also e.g. Alice Ling, 'Conventions about Caretaker Government in Australia'. Thesis, University of Queensland, 2001, pp. 29-30; Barry Dunphy, 'Government Caretaker Conventions – How do they work in practice?'. *Australian Resources and Energy Law Journal* 37(1) 2018, pp. 23, 24.

⁵⁶ Killey, *Constitutional Conventions in Australia*, p. 239 (footnote omitted).

⁵⁷ 'Indian Viceroy to Form "Caretaker" Government of Officials', *The Canberra Times*, 28 June 1946, p. 1; 'Pakistan Premier Denounces Accession to India', *The Canberra Times*, 6 November 1947, p. 1; 'Caretaker Government in Persia', *The Canberra Times*, 15 June 1948, p. 1; 'Spaak to Form "Caretaker" Government', *The Canberra Times*, 7 May 1948, p. 1; 'Election Ordered in Belgium', *The Canberra Times*, 1 May 1950, p. 1; 'Caretaker Government to Hold Greek Elections', *The Canberra Times*, 7 January 1950, p. 1; 'Israeli Govt Defeated', *The Canberra Times*, 19 October 1950, p. 1; '"Caretaker" Cabinet for Egypt', *The Canberra Times*, 5 November 1949, p. 1; 'Nahas Pasha to Lead Ministry', *The Canberra Times*, 13 January 1950, p. 4; 'Indonesian Govt to Resign', *The Canberra Times*, 17 August 1950, p. 4; 'Queen Juliana Asks Socialists to Form Cabinet', *The Canberra Times*, 3 February 1951, p. 4; 'M Pinay Declines French Post', *The Canberra Times*, 25 June 1953, p. 1; 'Caretaker PM for Tunisia', *The Canberra Times*, 4 August 1954, p. 2; 'New Japanese Premier Promises Early Poll', *The Canberra Times*, 10 December 1954, p. 1; 'Russian Hand with Egypt in Jordan Riots', *The Canberra Times*, 10 January 1956, p. 1; 'Governor Takes Control of Malta', *The Canberra Times*, 25 April 1958, p. 1; 'Five Ministers Removed From Ceylon Cabinet', *The Canberra Times*, 10 December 1959, p. 8.

'caretaker' was used to describe attempts to form a coalition government in Victoria in 1952 to bring about electoral reform,⁵⁸ as well as the New South Wales Premier in 1959 in the period between the death of the former premier and the official vote of caucus confirming the deputy as leader.⁵⁹

Although Prime Minister Menzies wrote letters to his Ministers each election advising caution, the development of the caretaker convention in Australia largely stagnated through the Menzies era because there was seen to be little prospect of a change of government. Towards the end of the 1960s, the convention regained relevance.⁶⁰

In 1972, Prime Minister McMahon refused Gough Whitlam permission to meet with public servants prior to the election to discuss the administrative implications of Labor's policies.⁶¹ This provided the impetus for the guidelines tabled by Prime Minister Malcolm Fraser in 1976 in the House of Representatives. These guidelines dealt with consultations by the Opposition with the public service during election periods.⁶²

In 1987, Gareth Evans tabled guidelines in the Senate concerning the handling of government business during election periods,⁶³ the same day that Parliament was dissolved for a double dissolution election.⁶⁴ These guidelines incorporated the earlier 1976 guidelines. They were soon followed by a special article in the 1986-87 annual report of the Department of Prime Minister and Cabinet.⁶⁵ Since then, the Department of Prime Minister and Cabinet has regularly updated the summary of the caretaker convention in the Cabinet Handbook, which has served as the model for the States'

⁵⁸ 'Labour-Holloway Group Now Able to Stop Supply Bill in Victorian Upper House', *The Canberra Times*, 15 October 1952, p. 1.

⁵⁹ 'Mr Heffron Sworn in as Premier', *The Canberra Times*, 24 October 1959, p. 1.

⁶⁰ Menzies and Tiernan, *Caretaker Conventions in Australasia*, p. 17.

⁶¹ G. Hawker and P. Weller, 'Pre-election consultations: A proposal and its problems'. *Australian Quarterly* 46(2) 1974, p. 100.

⁶² Malcolm Fraser, Commonwealth, *Parliamentary Debates*, House of Representatives, 9 December 1976, p. 3591.

⁶³ Gareth Evans, Commonwealth, *Parliamentary Debates*, Senate, 5 June 1987, p. 3668.

⁶⁴ Letter from Prime Minister Bob Hawke to the Governor-General, Sir Ninian Stephen, 27 May 1987, tabled by John Button, Commonwealth, *Parliamentary Debates*, Senate, 28 May 1987, p. 3140.

⁶⁵ 'Special Articles: Caretaker Conventions and Other Pre-Election Practices' in *Prime Minister and Cabinet Annual Report 1986-87*. Canberra: Australian Government Publishing Service, 1987, p. 39.

Cabinet Handbooks.⁶⁶ For example, the first draft of the Queensland Cabinet Handbook included a chapter on the caretaker convention in nearly identical language to the 1987 special article,⁶⁷ which survived in a slightly truncated form in the first edition of the Queensland Cabinet Handbook in 1992.⁶⁸ By that time, there can be no doubt that the caretaker convention had become firmly ingrained.

The label and the concept of the caretaker convention continue to evolve today. Caretaker guidelines have gradually expanded to include related conventions with distinct rationales, such as restrictions on government advertising and the use of government resources during election periods, as well as rules designed to ensure that public servants remain neutral during the election campaign.⁶⁹ Whereas the caretaker convention is grounded in the principle of responsible government, these related conventions are based on the principle of fair play during an election campaign and the ethos of the public service as independent and impartial.⁷⁰ But housing them in the same document has led to an expansion of the label. ‘Caretaker conventions’ in the plural now encompasses the caretaker convention as well as these related conventions. A public servant can now be accused of breaching the ‘caretaker conventions’,⁷¹ or even the Opposition. During the 2024 State election in Tasmania, the Liberal Government accused the Labor Opposition of a ‘clear breach of election caretaker provisions’ when the Leader of the Opposition used an ambulance as a backdrop to announce a health policy.⁷² That anyone other than a member of a caretaker government could be accused of breaching the ‘caretaker conventions’ goes to show how far the language around ‘caretaker’ has moved.

⁶⁶ Killey, *Constitutional Conventions in Australia*, pp. 240-241; Menzies and Tiernan, *Caretaker Conventions in Australasia*, pp. 18-19.

⁶⁷ Cabinet Office Queensland, *Departmental Copy, Queensland Cabinet Handbook*. 20 March 1990, pp. 91-96.

⁶⁸ *Queensland Cabinet Handbook*. Government Printer, 1st ed, 1992, pp. 110-114.

⁶⁹ See e.g. Australian Government, Department of the Prime Minister and Cabinet, *Guidance on Caretaker Conventions*. 2021, pp. 5-11 [7]; Queensland Government, Department of the Premier and Cabinet, *2024 State General Election: Guidelines on the Caretaker Conventions*. 2024, pp. 7-8 [4], 10-12 [6], 14 [8].

⁷⁰ Twomey, *The Veiled Sceptre*, pp. 514-5, 519, 536.

⁷¹ See e.g. Crime and Misconduct Commission (Qld), *The Tugun Bypass Investigation*. July 2004, pp 25-9.

⁷² ‘Labor Party under fire for using ambulance as “political prop” during election campaign’. *Pulse Tasmania*, 3 March 2024. Accessed at: <https://pulsetasmania.com.au/news/labor-party-under-fire-for-using-ambulance-as-political-prop-during-election-campaign/>.

The concept of the caretaker convention is also still evolving. While everyone now agrees that the government should act with restraint when it is no longer accountable to Parliament, the finer details of the convention are constantly being worked out every time the convention is observed or not observed. Disputes arise from time to time as to whether particular appointments are ‘significant’ enough or particular decisions are ‘major’ enough to attract the caretaker convention. Disputes also arise over the timing of a decision and whether it was made within the caretaker period.⁷³

Disputes even arise over whether a caretaker government is responsible for a particular decision at all. That can be seen in the recent controversy from the Tasmanian State election over a blowout in a contract for the construction of new Spirit of Tasmania ferries. Two days before election day, the board of a government-owned corporation committed to paying an additional \$80 million for the ferries. Following their defeat at the election, Labor complained that such a major decision during the caretaker period amounted to a breach of the caretaker convention, especially as the Opposition had been ‘kept in the dark’.⁷⁴ In response, Premier Jeremy Rockliff said that the board had only informed the government of its decision some days after election day, and in any event the decision was a commercial one made by the board, not the government. He told Parliament, ‘I want to make it clear it was a decision for the board, not the ministers’.⁷⁵ This example raises interesting questions about what role the caretaker convention plays in an era of privatisation and the outsourcing of government work.⁷⁶ There are no clear answers.⁷⁷ Certainly, the political actors involved disagreed about

⁷³ See e.g. the controversy that arose in Victoria in 1999 when a decision was made to make a significant appointment before the election but with the appointment to take effect during the caretaker period: Davis, Ling, Scales and Wilkins, ‘Rethinking Caretaker Conventions’, p.18.

⁷⁴ David Killick, ‘Labor says it was kept in the dark over TT-Line ferries in lead-up to state election’. *The Mercury*, 16 August 2024; Rob Inglis, ‘TT-Line compelled to explain \$8m Spirit of Tasmania payment, set to front public inquiry’. *The Mercury*, 23 June 2024; David Killick, ‘Cover-up claims over TT Line ferry cost blowout’. *The Mercury*, 23 May 2024. Accessed at: <https://www.themercury.com.au/>.

⁷⁵ Jeremy Rockliff, Tasmania, *Parliamentary Debates*, House of Assembly, 15 May 2024, p. 25. See also Dean Winter at p. 10.

⁷⁶ The Guidelines in Queensland now state that government-owned corporations ‘should observe the conventions and practices unless to do so would conflict with their legal obligations or compelling organisational requirements’: Queensland Government, Department of the Premier and Cabinet, *2024 State General Election: Guidelines on the Caretaker Conventions*. 2024, p. 2 [1.4].

⁷⁷ After mounting political pressure, the Deputy Premier resigned from the infrastructure portfolio, but apparently on account of his handling of the project, not any breach of the caretaker convention: Adam Holmes, ‘Infrastructure Minister Michael Ferguson resigns over Spirit of Tasmania port debacle’. *ABC News*, 26 August

whether the caretaker government was responsible for the actions of a government-owned corporation. But it is through controversies like these that we will continue to learn the full metes and bounds of the caretaker convention.

SO WHEN WAS IT?

When was the first caretaker government? The answer depends on what you mean. By the mid-nineteenth century, there were examples of governments in the colonies that had practised restraint because their legitimacy had been impaired, meaning—in a Westminster system—that their responsibility to Parliament had been impaired. But the rule—if it could be called that—was still honoured in the breach, and the practice still went without a name.

The name came like a thunderbolt at the Cobden Club Dinner in 1885. The label of ‘caretaker’ stung because it insinuated that the Salisbury government lacked legitimacy, not because it was not accountable to Parliament, but because the Parliament to which it was accountable was itself unrepresentative. Britain was on the cusp of expanding the franchise to another third of the adult male population. The Salisbury government was seen as minding the shop until then.

The label stuck, including in the mind of a young Winston Churchill, whose father—Lord Randolph Churchill—had served in the Salisbury government. A generation later, the label resurfaced to describe another government with impaired legitimacy in extraordinary circumstances. Churchill’s 1945 caretaker government was accountable to Parliament, but the Parliament itself had not faced the electorate during the war for nearly a decade. Churchill undertook to practise restraint pending the election, though he appears to have given that undertaking while Parliament was still sitting.

The wide press coverage of events in 1945 meant that the label took on a life of its own. It was used over and over again to describe any government that lacked legitimacy. Over time, at some point between the 1950s and the 1980s, the label and the modern concept of a caretaker government came to align. The only measure of legitimacy that came to count was whether the government was accountable to Parliament. A

2024. Accessed at: <https://www.abc.net.au/news/2024-08-26/tas-michael-ferguson-resigns-over-spirit-of-tas-debacle/104269586>.

caretaker government came to mean a government that is no longer accountable to Parliament, either because Parliament has been dissolved or because the government has lost a confidence vote and fallen on the floor of the house. A government that finds itself in that situation is now bound by convention to act with restraint. In Australia, perhaps the first government to feel bound was Menzies' government in 1951, or perhaps Hawke's government in 1987, when the government tabled caretaker convention guidelines immediately before dissolving Parliament for the election.

Yet the origins of the label indicate that the caretaker convention may be concerned with a much deeper sense of democratic legitimacy. In a system of parliamentary democracy, ordinarily, democratic legitimacy is expressed through Parliament. But the original caretaker governments of 1885 and 1945 show that that is not always true. In extreme scenarios—such as a reduced franchise or a prolonged war—the government may lack democratic legitimacy because the Parliament lacks it. No one can tell what the future may hold. Extreme scenarios like that may arise again in the future. A government deeply unpopular with children might find itself in power on the cusp of the franchise being expanded to children,⁷⁸ or a pandemic may prevent elections from being held for many years.⁷⁹ There would be precedent for calling such a government, a 'caretaker' government.

⁷⁸ Settled understandings of the need to exclude children from the franchise may not survive scrutiny: *Make It 16 Inc v Attorney-General* [2022] 1 NZLR 683, 702-704 [52]-[56], 707 [72] (Ellen France J, Winkelmann CJ, Glazebrook and O'Regan agreeing).

⁷⁹ As feared at the start of the COVID-19 pandemic. See e.g. the contingencies introduced in case local government elections were cancelled: *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020* (Qld) s 16.