

State Restrictive Procedures

Disputed bills- Division 9A.

- This has never actually been used since its implementation in 2003
- Note: this does not apply to the annual appropriation bill.

Division 9A process:

1. Must be a '**Disputed Bill**' under S.65A – Passed the Assembly, and not passed by the Council within 2 months, or passed with amendments that are not accepted by the Council. **If not passed by the UH after 2 months, bill will be seen as a failure to pass.**
2. After being described as a 'Disputed Bill', the Bill is sent to the '**Dispute Resolution Committee**' under S.65B:
 - Constituted by 7 Assembly members, and 5 Council members, and must take into account the political composition of that House
 - This Committee must meet and attempt to reach a resolution:
 - If no resolution, it becomes a 'Deadlocked Bill' (s 65 c)
 - If there is a resolution, the agreement is sent to the 2 houses of parliament
3. If a resolution is not possible, or if the Assembly didn't give effect to the resolution of the committee, it is described as a '**Deadlocked Bill**,' and it can lead to an early election (S.65E) on the advice of the Premier
 - However, the Premier does *not* need to advise the Governor to call an early election
 - Under S.65E(2), in the case of a Deadlocked Bill, the Premier may advise the Governor in writing that the Assembly be dissolved as a result of that Bill
4. There will be a general election for the assembly and council.
 - *However – not compulsory. Whether or not there is a double dissolution depends on the whether the premier believes it to be politically advantageous to dissolve the parliament. Equivalent to double dissolution thing in constitution.*
5. After the election, if this process is repeated again with no resolution, it will lead to a '**Joint Sitting**' under S.65G
 - a. Must obtain an **Absolute Majority** within this Joint Sitting (S.65G)

Victorian Special Procedures- Financial Legislation

- Financial legislation has always been regarded as something special, because for a government to survive it must be able to levy tax and appropriate revenue.
- And because government has confidence of lower house, we generally think that when it comes to financial legislation the lower house have the dominance
- Located in **Division 9 Appropriation bill**
- **S 62** – any money bill must originate in LA (lower house)
 - May be rejected but NOT altered by the LC (**s62(2)**)
 - If there is a fine or a fee in an act, it is not an appropriation bill.
- **S 64** - describes circumstances in which the legislative council can suggest amendments to levy bills (taxation, appropriation bills) HOWEVER:
 - Cannot suggest any amendments that would increase any charge

- May suggest alterations once at each stage (3 stages: **s64(3) ss(a)(b)(c)**, first, second and third reading)
- **S65** outlines ANNUAL APPROPRIATION BILL: ‘must only deal with appropriation’
 - Bill with respect to ordinary annual services of the government (authorises gov to pay school teachers, firemen, etc)
 - Unlike Cth Consti, the Vic Consti provides a statutory definition which is broader than common understanding
 - Includes capital works and new services

Process

- (i) Assembly origination (**s 65(1)**) re money bills;
 - (ii) Limitation on LC’s powers, ‘ordinary annual services of government’ = defined in (**s 65(2)**);
 - the LC has a month to pass the annual appropriation bill (defined above), and if it does not pass it →
 - (iii) Appropriation on recommendation of Governor (**s 63**);
 - even though the UH has not passed the bill - which is quite radical
 - = Government that controls the LH (assembly) can bypass the UH (council) even though they do not consent to it.
- Thus, UH (council) can no longer block supply! The Whitlam situation could never happen in Victoria.
 - The deadlock provisions in s9A don’t apply, as there is no need... the LA can bypass the LC.

Restrictive Procedures: Manner and Form Provisions

- Such provisions are applicable to state legislation. The overarching notion is that States exercise plenary powers- they should legislate as they see fit. The government of today should not be bound by the decisions of the government of yesterday.
- Generally speaking, the State may legislate by means of a simple majority.
- A restrictive procedure however is created where the parliament enacts a restrictive procedure to limit its power to revoke or amend a law.
- For example- instead of a simple majority, the restrictive procedure may require an absolute majority, or a referendum if the law in question is to be amended or revoked.
- Governed under the *Australia Act 1986- Section 6- in limited circumstances a parliament MAY restrict themselves IF there is an applicable manner and form AND it deals with constitution/powers/ procedures.* (Former s5 CLVA).
 - *‘For a Restrictive Procedure to bind a subsequent parliament, must be a valid manner & form Restrictive Procedure, & the subsequent law must be a law concerning the constitution powers or procedures of the parliament’*
 - Legislation must be passed in this fashion Because AA is a valid Cth law, which overrides State legislation, under s 109 (thus they must comply with it).

Answering a Manner and Form question:

Preliminary matters:

Write: By way of s 16 of the Victorian Constitution, the Victorian parliament has a general grant of power, and may ordinarily amend laws by way of a simple majority. The exception to this rule is the restrictive procedure made binding by way of s 6 of the Australia Acts.

Step 1	Does the Bill in Question expressly or impliedly vary any section of the Constitution Act 1974?
	<ul style="list-style-type: none"> • Will expressly vary the section if the section in question is expressly stated: <i>eg: s31(1) of the constitution is hereby amended to....</i> • Will impliedly vary the section if the amendment does not expressly mention the section to be

	<p>amended, but implies instead implies the section- for example: <i>Abolition of the Office of the Attorney General act states: 'There shall be no Attorney General for Victoria'</i> This would impliedly repeal s 94a (Auditor General) of the Victorian Constitution Act.</p>										
Step 2	<p>Is the Act protected by way of restrictive procedure?</p> <ul style="list-style-type: none"> Is the legislation which the new bill wishes to amend protected by a restrictive procedure? In the Victorian Constitution, s 18(1b) lists sections to which the restrictive procedure of a referendum applies. Eg- s 18 (1B)(n) states that matters re: the Attorney General, under s 94s will be subjected to a referendum should a bill be introduced to alter or vary the section. <p>If not protected by way of restrictive procedure, return to basal position.</p>										
Step 3	<p>Is the restrictive procedure in question self entrenched?</p> <ul style="list-style-type: none"> The provision of the act containing the restrictive procedure must itself be covered by the requirement to change the legislative procedure. Look for words such as 'this act, including this section'. In the Victorian Constitution, matters dealt with in s18(1B) are self entrenched by way of s(18)(1B)(A) <p>If RP is not self entrenched- return to basal position.</p>										
Step 4	<p>Is the restrictive procedure in question a valid manner and form provision?</p> <ul style="list-style-type: none"> The restrictive procedure must be a valid/legitimate MF requirement rather than a substantial restraint on law making power or an abdication of parliament's law making power (s6 AA; King CJ in <i>West Lakes</i>) The MF in question in <i>Westlakes</i> was one of alteration to legislation, which could only occur with the written approval of <i>Westlakes</i>. If in doubt, come back to the 'substantial restraint on law making power' <table border="1" data-bbox="347 831 1334 1388"> <tr> <td>Referendum</td> <td>This would be seen to be allowable because the parliament represents the people: <i>Westlakes</i>.</td> </tr> <tr> <td>Absolute Majority (50%) +1 in both houses</td> <td>Approved as a valid RP in <i>Marquet</i></td> </tr> <tr> <td>Special Majority</td> <td> <ul style="list-style-type: none"> Special majorities are probably OK provided they don't get up to absurd percentages (eg 90%) 66% is borderline – <i>Ranasinghe</i> found 2/3 was OK </td> </tr> <tr> <td>Extra parliamentary organisation / third party</td> <td>Not democratically elected- therefore not valid: <i>Westlakes</i>. This is so even if the organisation is democratically elected (eg union)</td> </tr> <tr> <td>Importance of the subject matter</td> <td> <p>King CJ in <i>West Lakes</i> indicated that the RP may be more severe if it is about an important/is protecting an important matter of constitutional principle.</p> <ul style="list-style-type: none"> If <u>not</u> important subject-matter → <i>less likely</i> to be a legitimate M&F requirement If <u>important</u> → <i>more likely</i> to be legitimate M&F requirement, though perhaps not as important as constitutional principle <p>If <u>important constitutional</u> principle → <i>very likely</i> to be a legitimate M&F requirement (King CJ, <i>West Lakes</i>)</p> </td> </tr> </table> <p>If not a valid M&F provision, return to basal position.</p>	Referendum	This would be seen to be allowable because the parliament represents the people: <i>Westlakes</i> .	Absolute Majority (50%) +1 in both houses	Approved as a valid RP in <i>Marquet</i>	Special Majority	<ul style="list-style-type: none"> Special majorities are probably OK provided they don't get up to absurd percentages (eg 90%) 66% is borderline – <i>Ranasinghe</i> found 2/3 was OK 	Extra parliamentary organisation / third party	Not democratically elected- therefore not valid: <i>Westlakes</i>. This is so even if the organisation is democratically elected (eg union)	Importance of the subject matter	<p>King CJ in <i>West Lakes</i> indicated that the RP may be more severe if it is about an important/is protecting an important matter of constitutional principle.</p> <ul style="list-style-type: none"> If <u>not</u> important subject-matter → <i>less likely</i> to be a legitimate M&F requirement If <u>important</u> → <i>more likely</i> to be legitimate M&F requirement, though perhaps not as important as constitutional principle <p>If <u>important constitutional</u> principle → <i>very likely</i> to be a legitimate M&F requirement (King CJ, <i>West Lakes</i>)</p>
Referendum	This would be seen to be allowable because the parliament represents the people: <i>Westlakes</i> .										
Absolute Majority (50%) +1 in both houses	Approved as a valid RP in <i>Marquet</i>										
Special Majority	<ul style="list-style-type: none"> Special majorities are probably OK provided they don't get up to absurd percentages (eg 90%) 66% is borderline – <i>Ranasinghe</i> found 2/3 was OK 										
Extra parliamentary organisation / third party	Not democratically elected- therefore not valid: <i>Westlakes</i>. This is so even if the organisation is democratically elected (eg union)										
Importance of the subject matter	<p>King CJ in <i>West Lakes</i> indicated that the RP may be more severe if it is about an important/is protecting an important matter of constitutional principle.</p> <ul style="list-style-type: none"> If <u>not</u> important subject-matter → <i>less likely</i> to be a legitimate M&F requirement If <u>important</u> → <i>more likely</i> to be legitimate M&F requirement, though perhaps not as important as constitutional principle <p>If <u>important constitutional</u> principle → <i>very likely</i> to be a legitimate M&F requirement (King CJ, <i>West Lakes</i>)</p>										
Step 5	<p>Is the law in question one a law respecting the constitution, powers or procedures of Parliament?</p> <p>To meet s6 of the AA, the provision must relate to the “constitution, powers or procedure” of the Parliament.</p> <p>The second act is “of no force or effect” if it does not concerns “constitution, powers or procedure” of the State Parliament (cf judiciary, public service, executive: <i>Twomey</i>).</p> <p><i>Marquet</i> gave some guidance on this: usually to do with the make up of parliament,</p> <table border="1" data-bbox="347 1749 1114 2024"> <tr> <td>When the law is concerning:</td> <td></td> </tr> <tr> <td>Constitution of the Parliament</td> <td> <ul style="list-style-type: none"> Meaning: “constitution of parliament” refers to “nature and composition” “constitution of the Parliament extends to features which go to give it, and its Houses, a representative character” Ask: does the proposed law substantially lessen the representative nature of parliament? </td> </tr> <tr> <td>Includes Laws which:</td> <td> <ul style="list-style-type: none"> -Restore a second house -Abolish a house </td> </tr> </table>	When the law is concerning:		Constitution of the Parliament	<ul style="list-style-type: none"> Meaning: “constitution of parliament” refers to “nature and composition” “constitution of the Parliament extends to features which go to give it, and its Houses, a representative character” Ask: does the proposed law substantially lessen the representative nature of parliament? 	Includes Laws which:	<ul style="list-style-type: none"> -Restore a second house -Abolish a house 				
When the law is concerning:											
Constitution of the Parliament	<ul style="list-style-type: none"> Meaning: “constitution of parliament” refers to “nature and composition” “constitution of the Parliament extends to features which go to give it, and its Houses, a representative character” Ask: does the proposed law substantially lessen the representative nature of parliament? 										
Includes Laws which:	<ul style="list-style-type: none"> -Restore a second house -Abolish a house 										

		-Remove the Queen or her representative as a - -constituent element of parliament
		-Affect royal assent
		-Alter electoral districts, the number of seats. -The system of voting or the duration of the parliamentary term
		-Concern the relationship between both houses
	Powers of the Parliament <i>The powers to make laws</i>	Impose or expressly repeal or amend a manner and form provision
		Concerning parliamentary privilege
		Deal with the resolution of deadlock between the Houses
	Procedure of the Parliament <i>(The Internal Protocols of Parliament)</i>	Relate to standing order; the office of Speaker, quorums.
<p>Conclude whether the law IS or IS NOT concerning the constitution, powers or procedure of the parliament as per s 6 Australia Act.</p>		
	If Yes:	If No:
	The restrictive procedure is valid and will therefore bind the parliament- Hence it must be complied with before the repeal / amending act is effective.	The procedure is INEFFECTIVE to bind by way of RP and therefore the parliament may return to the basal position- i.e a simple majority.

There are many restrictive procedures in the Victorian constitution that are likely in effective. Why are they there?

- Maybe the entire notion of restrictive procedures that we understand is wrong...The authority of *Ranasighe*- a Privy Council Decision in the 60's, held that any restrictive procedure, so long as it is of valid manner and form can be binding. If they are right, then restrictive manner and form provisions are much broader than we understand them to be. However, it is almost certain that *Ranasighe* is wrong. We are not bound by the PC, and the decision in *Marquet* (HC) states that the law must be one concerning the constitution, powers or procedures of parliament.
- **A political threshold:** For example, should the state government of the day wish to abolish the office of the Auditor General, the opposition would cease on this, saying that the government is tearing apart the constitution, not taking this to the people. Powerful political rhetoric even though in a legal sense it may not be strictly correct.
 - *Kennet Government restricted the independence of institutions such as the DPP, auditor general etc by way of legislation- none of these restrictions were protected. The subsequent Labor government entrenched these 'key institutions' in the constitution- so at the very least it would create a political threshold.*