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## MANNER AND FORM REQUIREMENTS

- A **restrictive procedure** is a requirement for passing a law which is more onerous than the standard requirement of being passed by a simple majority in both houses of parliament, and then receiving royal assent.
  - It is “a condition and... requirement which existing legislation imposed upon the process of lawmaking” (**Threthowan per Rich J.**).
  - It does not restrict the legislative power of the States; it is a procedural limit that outlines how the law is to be implemented.
- Restrictive procedures are enabled by **s 6 Australia Act**, which says that “a law...respecting the constitution, powers or procedure of the Parliament of the State shall be of no force or effect unless it is made in such **manner and form** as may from time to time be required by a law made by that Parliament”.
- The States have residual plenary legislative power (**s 2(1) Australia Act, s 16 Constitution**).

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### 1. State the restrictive procedure contained in [Law 1]

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- A RP is anything more onerous than a normal procedure (ie. simple majority in both houses and royal assent).
  - Often a referendum, special majority, absolute majority etc.

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### 2. Is [Law 1] doubly entrenched and mandatory?

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#### 2.1. Mandatory

#### 2.2. Doubly entrenched

- Doubly entrenched = the provision containing the RP itself is entrenched and cannot be amended or removed without following the RP.
  - Eg. “Including this section”, “The entire Act”.

Case	Illustrative facts
Trethowan	Stated that s 7A(6) provided 7A may not be modified except for referendum – hence, protected itself.

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### 3. Acknowledge that [Law 2] hasn't followed the restrictive procedure outlined in [Law 1].

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### 4. Is [Restrictive procedure in Law 1] a permissible MAF restriction?

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- RP cannot be too onerous to amount to a curtailment of law-making ability (**Westlakes**).

#### **4.1. Importance of the subject matter being protected**

- To determine whether a RP is too onerous, the importance of what is being entrenched (ie. the subject matter being protected) must be considered (**Westlakes**).

Case	Illustrative facts
Marquet	Law required an absolute majority in both Houses of State Parliament for “any Bill to amend this Act”; onerous but valid M&F requirement. The law concerned distribution of electoral divisions – so subject matter warranted a RP.

#### **4.2. Consent of an extra-parliamentary (EP) body**

- Requiring consent from an extra-parliamentary (EP) body is *prima facie* invalid as it amounts to an abdication on Parliament’s ability to legislate (**Westlakes**).
  - Exception where the EP body is representative eg local council so that the legislature maintains its representative character.

Case	Illustrative facts
Westlakes	Law provided that amendments could not be made w/o seeking the consent in writing of Westlakes Corp.

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### **5. Does [Law 2] relate to the CPP of Parliament?**

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- Only laws “respecting the CPP of Pmt” are subject to M&F (**s 6 AA**).

#### **5.1. Constitution**

- Constitution = composition of the Plmt.

Case	Illustrative facts
Threthowan	Law abolishing the upper house was a CPP law as the number of houses in Plmt affects its constitution.
Marquet	Law re the distribution of electorates was a CPP law as it affects the election of MPs (who constitute Plmt).

#### **5.2. Powers**

- Powers = a law that regulates Plmt’s law-making.

Case	Illustrative facts
McCawley	Law proposing a change to judicial tenure affects Plmt’s powers.

### **5.3. Procedures**

- The role of the speaker, the no. of times a Bill needs to be read, internal procedures, regulating standing orders of Plmt
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## **6. Conclusion**

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- If the second law does not relate to the CPP of Parliament, it is not bound by the MAF requirement and hence the second law will be valid.
- If the second law does relate to the CPP of Parliament, it is bound by the MAF requirement and its failure to follow the RP makes the second law invalid.
  - It will be of “no force or effect” as it is not made in a manner and form as required by Parliament’s RP.