

## MANNER & FORM REQUIREMENTS

A manner and form requirement is a condition which existing legislation imposes upon the process of law making (*Trethowan*)

### Australia Act 1986

**S6:** Notwithstanding sections 2 and 3 (2) above, a law made after the commencement of this Act by the Parliament of a State 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, whether made before or after the commencement of this Act.

**INTRO:** Ordinarily restrictive procedures (RP) will not be binding due to parliamentary sovereignty and plenary legislative powers, however as per s6 Australia Act...

### STEP 1: IS THERE A RESTRICTIVE PROCEDURE IN [1<sup>st</sup> Law]?

Is there a procedure more onerous than the standard 50% approval of both houses and royal assent?

### STEP 2: IS THE RESTRICTIVE PROCEDURE DOUBLY ENTRENCHED AND MANDATORY?

If there is a specific procedure to be followed, but that procedure isn't self-referential, it isn't doubly entrenched

- + The procedure must apply to itself so that Parliament is unable to repeal it via usual procedure (*Trethowan*)

Possible Restrictive Procedures include;

- + Absolute Majority (*Marquet*)
- + Referenda (*Trethowan*)
- + Special Majority (*Harris*)
- + Consent from a representative non-parliamentary body (*Westlakes*)

To determine whether it is mandatory, consider whether words of obligation have been used

### STEP 3: HAS [2<sup>nd</sup> LAW] FOLLOWED THE PROCEDURE

#### STEP 4: IS THE RESTRICTIVE PROCEDURE VALID?

Is the RP so onerous that it goes beyond telling Parliament the procedure of changing the law to the substance of their powers?

The more important the subject matter, the more onerous the RP is allowed to be  
*(Westlakes)*

As per case law;

- + Referendum isn't too onerous *(Westlakes) (Trethowan)*
- + Absolute Majority is okay *(Marquet)*
- + Special Majority is dependant on the subject matter
- + Consent of a non-representative extra parliamentary body is too onerous  
*(Westlakes)*

#### STEP 5: IS THE STATE TRYING TO AMEND/CREATE A LAW RELATING TO THE CONSTITUTION, POWERS OR PROCEDURE OF PARLIAMENT?

If the new law doesn't affect the CPP, then s6 of the Australia Act doesn't apply

As per Dixon J in *Trethowan*;

- + Constitution = nature, composition or structure of Parliament
- + Powers = any law referring to Parliament's legislative authority
- + Procedure = any law about Parliament's own conduct

### AG (NSW) v Trethowan (1931)

Under s7A *Constitution Act 1902 (NSW)*, the Legislative Council can't be abolished except following the approval by a majority of voters at referendum. It also stated that the provisions of this section shall extend to any appeal for the repeal or amendment of this section.

In 1930, an Act was passed to abolish the LC and to repeal s7A without referendum.

**Issue:** Was the NSW Parliament bound to comply with the referendum requirement in s7A of NSW Constitution Act?

**Held:**

s7A permitted manner and form requirement as it placed more onerous procedures on amendment, but wasn't too onerous

### Westlakes v SA (1980)

Westlakes Development Act 1969 s16(4) provided that certain alterations to an agreement between the State Government and W couldn't be made without written consent of W. In 1980 SA passed a law to floodlight Football Park and remove the need for W's consent.

**Held:**

Court ruled in favour of SA

- + A manner and form requirement that requires the consent of an extra-Parliamentary body in order to pass legislation would be ineffective as it amounts to an abdication of power

- + A referendum requirement can be distinguished as the people at referendum are a representative body

### AG (WA) v Marquet (2003)

Under s13 Electoral Distribution Act 1947, an absolute majority in both houses of Parliament is required for any amendment to the Act. In 2001, Parliament passed 2 Acts;

- + Electoral Distribution Repeal Act 2001 to repeal
- + Electoral Amendment Act 2001 (to create a new system of electoral distribution)

Neither Act was passed with an absolute majority, only a simple majority, but they were presented for assent

**Issue:** Was s13 a valid and effective manner and form requirement?

- + YES = s13 placed more onerous procedures on amendment and the 2001 Bills concerned the CPP of Parliament by providing new electoral distribution regime

**Issue:** Did the term 'amend' in s13 of 1947 Act include the 'repeal' of the whole Act?

- + Yes, amend includes repeal (otherwise this would subvert the purpose of the manner and form requirement)

**Held:**

The 2001 Amendment and Repeal Bills weren't validly enacted because they didn't follow the manner and form prescribed in s 13.