

- This rule remains the same with the State parliament (*Kirk v IRC NSW 2010*)
  - IE to get around a privative clause, you **HAVE** to argue **the error of law in question is a Jurisdictional Error meaning the privative clause does not apply.**
  - **First assess the Hickman principle (3 stage test), then consider the constitutional argument of whether JE applies -**
- R v Hickman* says a decision will not be reviewed if
- 1. the decision was made in good faith
  - 2. the decision relates to the subject matter ie it was on topic
  - 3. the decision is reasonably capable of reference to the power conferred upon the decision maker.
- Finding JE, the decision is automatically void because there was no legal foundation for its creation (*MFI v Bhardwaj 2002*).

### Delegated Legislation

- **How to challenge delegated legislation (one of these 4 ways...) -**
  - **1. Parliament was not entitled to delegate the law making power in question**
    - Federal government can delegate power to an executive body.
    - *P S157 v Cth* - Government may not delegate an entire head of power under s51 of Constitution, as it would go against the entrenched principles of the separation of powers.
    - Government must also ensure the subject matter of the delegated legislation power is clearly defined and clearly fits into one of the constitutional heads of power.
  - **2. One or more requirements regarding the implementation of the delegated legislation is not satisfied - assume that these are complied with for most questions -**
    - Tabling - the delegated legislation is laid before each house of parliament and made available to the public via publication.
    - Scrutiny
    - Disallowance
  - **3. The delegated legislation falls outside the scope of what is permitted by the parent Act.**
    - **'Reasonable proportionality' test - *South Australia v Tanner*** - Has the Executive body created subordinate legislation that does something so out of proportion with what the parent Act intended, that it cannot be considered a real exercise of power?
    - **"Necessary or expedient" - *Shanahan v Scott*** - Where an executive is empowered to make delegated legislation which is 'necessary or expedient' or words to that effect, you need to consider whether the legislation 'complements' rather than 'supplements' the Act. It should not extend or vary the Act's objectives.

**Ends justifying the means - *Paull v Munday*** - If an executive body can make delegated legislation on one thing, it cannot make subordinate legislation on