

MANNER AND FORM ("M&F")

- It is a condition or requirement which has been imposed upon the process of enacting a valid law
- To be a binding manner and form provision, it must relate to the constitution, powers or procedure of parlt (Australia Act s6).
- There have been different approaches to manner and form provisions in different cases. For Example *South Eastern Drainage Board case*, in which the court characterised the first Act. However, in *Comalco*, both acts were characterised. The better view is that only 2nd Act should be characterised (*West Lakes v SA*).
- M&F provision must relate to legislative process and not any other such as executive; *Comalco*
- A M&F provision can be mandatory or merely directory. Depending on intention of parlt (e.g. use of words, Shall, Must etc indicate mandatory AND may etc indicate merely directory)

Limits of M&F provisions

- Cannot of be abdication of power; *West Lakes*
- Can indicate to the electors, but not to specific outside body
- Cannot deprive parlt of power masqueraded as a M&F provision
- If all elements of s6 of Australia Act are not satisfied, there are some alternative arguments; 1. Particularly useful if M&F provision is in constitution 2. Note doubts in *Maquet* – 3. Ranasinghe principle = parlt cannot ignore law making preconditions which are imposed in a constitution. Approved in *Camalco* and *West Lakes* and *Wilsmore*
- The s 106 CC argument – s106 says that constitution of states shall continue until altered in accordance with the constitution of the state. (e.g. in *WA v Wilsmore* Per Burt CJ – “to alter the state constitution other than in accordance with constitution would offend s 106 CC.
- Conclude by saying whether it is binding and whether it is effective as a M&F provision