

## CONSTITUTIONAL LAW

### T2: Manner and Form

**Issue Spotting** → have to have something that restricts a state parliament to amend a particular law or purports to do so

Pursuant to s6 of the **Australia Act 1986** a law made respecting the constitution, powers, and procedure of the State Parliament shall only be enforceable provided that it has been passed in the required manner and form.

This is because, although State Parliaments enjoy residual plenary power (**s2(1) AA; s16 Vic Constitution**), they cannot ordinarily legally bind successive parliaments or this would undermine parliamentary sovereignty (**Union Steamship**).

Therefore, X will argue that [LAW] may constitute a valid restrictive procedure under s6 which grants the State the power to restrict the process of law making power (**Trethowan**).

#### Step 1 - Is Law 1 double entrenched and mandatory?

##### Double entrenched

To be an effective restrictive procedure, a manner and form provision must itself be entrenched, or else the provision can be repealed by the normal procedure (**Trethowan**). The inclusion of **self-referential language** will prevent the parliament from repealing the Act ordinarily.

The inclusion in [section] of the words 'including this section' makes the RP double entrenched, preventing Parliament from replacing the act in a standard fashion (**Trethowan**)

- 'This Act' denotes self-referential language

**OR**

The words 'any alteration of this Act' suggests both [section] and the RP found elsewhere in this Act are covered by the RP, thus denoting double entrenchment ([Trethowan](#))

2 types:

2 separate provision - self-referential language: another provision protecting M&F rule.

In [Trethowan](#), s7A legislative council could not be abolished without referendum and s7A could not be amended or repealed without referendum

In same provision - M&F protects itself

In [Marquet](#): bill to amend the entire act includes a bill which amends this particular protecting section

[West Lakes](#): none at all

### Mandatory language

[Law 1] must comprise mandatory, obligatory language. It cannot be merely directory ([Trethowan](#))

The RP is mandatory as evidenced by the words ['shall not', 'must not' - as opposed to 'may' or 'can'] ([Trethowan](#))

**OR**

The language of [...] does not import any optional language, like 'may' or 'can', it directly prohibits, which suggests the RP is mandatory. ([Trethowan](#))

### Step 2 - Is law 1 a permissible M&F restriction?

**WRITE:** In the present case, the relevant restrictive procedure is ....

The court must determine whether this provision prescribes the manner and form for passing laws, or rather, impermissibly prescribes the substantive content of laws (*[South Eastern Draining Board](#)*)

**WRITE:** the RP must not be too onerous so as to undermine the notion of parliamentary sovereignty. Thus, the court will weigh up the