

Addressing an Extraterritoriality Problem:

Step 1. *Outline the presumption against extraterritoriality.*

State that every law or statute that is passed is presumed to only have jurisdiction to the people that live in the state that it is passed in. For a law to influence those outside of its jurisdiction, it must explicitly state so as per:

Jumbunna Coal Mine NL v Victorian Government

'Coal Miners Association'

Step 2. *Source of power.*

Though there is a presumption against extraterritoriality, the **Australia Act 1986 (Cth) S2(1)** allows for a law to extend its jurisdiction if it: *a)* explicitly states that the law is intended to breach the presumption and *b)* if the individual affected has a '**sufficient Nexus**' to the state as per: *Pearce v Florenca*

Step 3. *Determining a Sufficient Nexus.*

For a sufficient nexus to be met, a connection must be established between the specific extraterritorial conduct and the state law as per *Union Steamship Co v King*. This connection includes: **residency, domicile, carrying on business**, as per *Broken Hill South v Commissioner of Taxation (NSW)*.

Answer Format (Apply them to the Facts)

As per the judgements made in *Jumbunna Coal Mine NL v Vic* and the 'Coal Miners Association' case, there is a strict presumption against extraterritoriality. It is a common-law presumption that every law that is passed by a state parliament only has jurisdiction in the residents of that state. However, under the *Australia Act 1986 (Cth) S2(1)* a state is granted the power to pass a piece of legislation that influences those that are not within the state.

Does the piece of legislation explicitly and obviously state that the law breaches the presumption of extraterritoriality?

Is there a sufficient nexus between the individual accused of breaching the act?

If so, which of the nexuses are met?

Addressing a Manner and Form Problem

Definition: A manner and form provision is a rule that determines that for a piece of legislation or a statute in a constitution to be changed, it must be repealed through specific outlined provisions – often a national referendum or absolute majority of parliament to ensure that the *electorate* is being considered.

Importance: Manner and form allows for important laws that often protect the liberty of the individual to be protected. The manner and form of the act is often protected by double entrenchment which forbids Parliament from changing the law without explicit approval from the people.

Example of Double Entrenchment:

1. *This is provision one.*
2. *This section, as well as provision one cannot be repealed unless it undergoes a repeal through national referendum or absolute majority of state Parliament.*

Absolute: More than half of all possible voters – commonwealth/state constitutional law
Simple: Half of the senators present to vote from both houses – regular legislation

Step 1. *State the Manner and form requirements in SA*

Manner and form requirement in South Australia is either a state referendum (ss10A(2), 88) or absolute majority of both Houses (S64A(3)) – SA Constitution Act 1934

Step 2. *Determine whether Manner and Form can be imposed on the legislation*

For manner and form to apply to a statute, the law must be related to makeup of the constitution or the powers and procedures of the state parliament.

'a law... respecting the constitution, powers or procedure of 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.'
– Australia act 1986 (Cth) S6

Step 3. *Determine if the double entrenchment is valid*

If the law does not meet the necessary criteria to receive a manner and form provision, it's double entrenchment is deemed invalid. *West Lakes Ltd v South Australia*

Answer Format (Apply them to the Facts)

Manner and form are the process of protecting a law that is vital to an individual's liberty so that it can arbitrarily be changed without the people's consideration. Manner and form requirement in South Australia is either a state referendum (ss10A(2), 88) or absolute majority of both Houses (S64A(3)) – SA Constitution Act 1934.

Is it double entrenched? If not, it can be changed without manner and form requirements.

*If so, does the piece of legislation relate to **makeup of the constitution or the powers and procedures of the state parliament?***

If so, which of the criteria are met?