

## Implied Freedom of Political Communication

Freedom of political communication is derived from the express terms and structure of the Constitution; which sets up representative government (ss 7,24 Constitution; *Lange v ABC*). Members of the House and Senate are “directly elected by the people”, and therefore the implication is that freedom of communication is logical necessity, but not an absolute right (*Lange v ABC, Nationwide News v Wills*)

X could allege that state or federal Act <INSERT> exceeds the implied freedom of political communication and is invalid by proving the following:

1. **Burden**: the <law> effectively burdens freedom of communication about government or political matters either in its terms, operation or effect (*Lange v ABC*)
  - <Act> arguably **burdens** because it inconveniences, restricts or has adverse consequences (backed by possibility of criminal record, incarceration) (*Coleman*)
  - **Communication** extends to all matters of public affairs, which necessarily includes political discussion and any vigorous attempts to destroy and scrutinize electoral reputation (*Theophanous, Popovic*)
    - Implied freedom protected non-verbal conduct (*Levy*)
    - Doesn't extend to commercial advertising like legal services (*APLA*)
  - The freedom covers more than just communication about elections – covers any national, state or territory government or political matters (*Coleman*)
2. **Compatibility testing**: X would argue that the purposes of the law and the means adopted to achieve that purpose are not legitimate, in the sense that they are not compatible with the maintenance of constitutionally prescribed system of representative government (*Lange* modified in *McCloy*)
  - **legitimate purposes include**
    - keeping the peace and integrity of public authorities (*Coleman*)
    - protecting public safety (*Levy*)
    - prohibiting highly offensive communications (*Monis*)
    - protection of reputation through defamation laws (*Lange*)
  - the **identified means** of <facts> are also likely to be legitimate. Reversible??
  - both are likely to be compatible with representative government because they do not impinge upon the functioning of such a system.
3. **Proportionality**: X would contend that <law> is not reasonably appropriate and adapted to advance the legitimate object (*McCloy*)
  - arguably the <Act> goes beyond what is **suitable, necessary and adequate** having regard to the purpose of the restrictions
    - **Suitable**: rational connection of means to purpose of provision.
    - **Necessary**: no compelling alternative, protection of <purpose> is possible through less severe curtailment of <freedom> (*Nationwide*)
    - **Adequacy (value judgment)**: Analogise to *Coleman*, a law with a legitimate object of protecting the peace and questioning integrity of police, made it an offence to 'insult'. The court read it down to 'threatening' or severed since insulting is disproportionate to the protection of IFPC.