

Lange v Australian Broadcasting Corporation (1997) 189 CLR 520

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Facts

- David Lange was a former Prime Minister of New Zealand.
- The Australian Broadcasting Corporation (**the ABC**) broadcast a report which had been broadcast the previous night in New Zealand on Television New Zealand's "Frontline" program.
- The program alleged that the New Zealand Labour Party, then in government, had come to be under the influence of large business interests. This influence arose due to those business interests making large donations to New Zealand Labour's 1987 election campaign funds.
- Lange alleged that the ABC had made defamatory statements to the effect that he had been corrupt while in office.

Issues

- Was the ABC Frontline report defamatory or protected by the implied freedom of political communication?

Held

- A unanimous High Court held that the ABC program was defamatory. The High Court clarified and refined the principles surrounding this implied freedom.
- Unlike America, the implied freedom of political communication is a negative right - it is primarily a restraint on the executive and legislature. This was an overturn of *Theophanous v Herald & Weekly Times Ltd.*
- The Court modified the requirements of the defence of qualified privilege - the existing defence did not accommodate the requirements of the Constitutional implied freedom of political communication. Voters, in order to participate in the democratic process of representative government, have an interest in receiving information about political affairs. Publishers should be able to publish this information.

Test for Defence of Defamation

- The Court developed a two-part test for a defence in respect to a publisher which publishes potentially defamatory political information:
 - Does the law effectively burden freedom of communication about government or political matters?
 - If the law does burden that freedom, is the law reasonably appropriate and adapted to serve

a legitimate end which is compatible with the maintenance of representative and responsible government?

- If the answer to the first question is "yes" and the second question is "no", then the law infringes on the implied freedom of political communication. The ABC claimed qualified privilege under the NSW Defamation Act, but this legislation was held to be appropriately adapted.
- This test was expanded to a three part test in the 2015 decision of *McCloy v NSW* (see corresponding summary).

Full Text

The full text is available here:

<http://www7.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1997/25.html>

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