Case studies on human rights
About these materials

*Case studies on human rights* was developed by Liberty Victoria to help students understand the diversity of civil liberties and human rights, the value of such liberties and rights, and the ways in which they are protected under the Commonwealth Constitution.

The materials comprise guidelines for approaching VCE Unit 3, Area of Study 2, and a series of case studies, which address specific and implied rights protected by the Constitution. The case studies are designed to familiarise students with this area of law and to promote discussion about the nature of particular rights and their treatment in the courts.

A comprehensive list of resources for use by teachers and students follows the case studies. A sample assessment task is also included.

Curriculum links

**VCE Legal Studies**

**Unit 3 Area of Study 2: Constitution and the protection of rights**

*Case studies on human rights* and accompanying notes, references and tasks will assist students to:

- investigate the role of the Commonwealth Constitution in establishing and restricting the jurisdiction of the law-making powers of Parliament;
- investigate the role of the High Court with respect to law-making powers and the protection of rights contained in the Constitution;
- analyse the methods used to change the Constitution and analyse the impact of those methods;
- explore the importance of the Constitution in protecting democratic and human rights; and
- develop an awareness of the rights and responsibilities of Australian citizens.
Using the case studies

The case studies can be presented to students as starting points for classroom discussion or as individual or group research tasks. Before using the case studies, you may wish to undertake the following preparation:

- Discuss with students the restrictions imposed by the Commonwealth Constitution on the law-making powers of the State and Commonwealth Parliaments, with reference to Sections 51 (xxxi), 92, 109, 114, 115, 116 and 117 of the Constitution.
- Thoroughly examine Section 128 of the Constitution. All VCE Legal Studies textbooks contain useful sections on referendum proposals and discuss the reasons for the limited success of attempts to change the Constitution in this way.
- Discuss the High Court’s impact on the law-making powers of the State and Commonwealth Parliaments with reference to the following cases:
  - The King v The Commonwealth Court of Conciliation and Arbitration and the President Thereof and the Australian Builders’ Labourers’ Federation (1914) 18 CLR 54 (The Builders’ Labourers’ Case)
  - Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (1920) 28 CLR 129 (The Engineers’ Case)
  - The State of Victoria and Others v The Commonwealth (1926) 38 CLR 399 (The Roads Case)
  - The State of South Australia and Another v The Commonwealth and Another (1942) 65 CLR 373 (The Uniform Tax Case)
  - Attorney-General (Vic); Ex rel Black v The Commonwealth (1981) 146 CLR 559 (The DOGS Case)
  - Koowarta v Bjelke-Petersen; State of Queensland v The Commonwealth (1982) 153 CLR 168
  - The Commonwealth of Australia v Tasmania [1983] 158 CLR 1 (The Tasmanian Dam Case)
  - Richardson v Forestry Commission (1988) 164 CLR 261 (The Tasmanian Forests Case)
  - Cole v Whitfield (1988) 165 CLR 360 (The Crayfish Case)
  - Street v Queensland Bar Association (1989) 168 CLR 461
  - New South Wales v The Commonwealth (1990) 169 CLR 482 (The Incorporation Case).
- Consider the extent to which the Commonwealth Constitution expressly protects democratic and human rights by examining Sections 51 (xxxi), 92, 80, 116 and 117. Also consider decisions of the High Court in Australian Capital Television Pty Ltd and Ors v The Commonwealth (1992) 177 CLR 106 and Lange v Australian Broadcasting Corporation (1997) 189 CLR 520. These cases support the implied right to freedom of political communication in Australia.
  See Sections 7, 24 and 41 of the Constitution.
- Compare the Australian situation with the approach adopted for the constitutional protection of democratic and human rights in one of the following countries: the United States of America, Canada, New Zealand or South Africa. This is required under Area of Study 2.

Case studies 4 and 5 are for those students who have completed case studies 1, 2 and 3 and who might like to try their hand at some more complex issues. Teachers may care to direct some students to these case studies.

The sample assessment task is based on case study 1. Teachers who wish to use the assessment task should therefore avoid using case study 1 in class.
Case studies on human rights

Case study 1: political freedom

Part I

On 29 June 1950, William George Smith was arrested for protesting against the Korean War outside the US embassy. He and a group of about 12 protesters held banners with messages such as ‘United States must get out of Korea’, ‘Asian people want their freedom’ and ‘Hands off Asia’. William’s banner stated ‘Stop Yank intervention in Korea’. Although the evidence of bystanders suggested otherwise, the police claimed that it was a disorderly gathering. After being asked to leave the area by a uniformed police officer, William walked away briefly and then returned to the protest. He then resisted a plain clothes police officer who tried to wrest the banner from him. William also argued with a bystander who had said to him, ‘You Communists are only looking for trouble’, to which he replied, ‘The Yanks are causing the trouble in Korea.’ On this basis, the police arrested and charged William under the Police Offences Act 1928 for behaving in an offensive manner in a public place. He was convicted and charged £5, and then imprisoned for 14 days when he defaulted on payment of the fine.

Adapted from Worcester v Smith [1951] VLR 316

Part II

In Australian Capital Television Pty Ltd (ACTV) v Commonwealth (1992) 177 CLR 106 and Nationwide News v Wills (1992) 177 CLR 1, the High Court ‘found’ an implied freedom of political communication in the Commonwealth Constitution. In Coleman v Power [2004] HCA 39 (1 September 2004), this was held to protect a protester who was distributing leaflets regarding police corruption which contained the words, ‘Kiss my arse, you slimy lying bastards.’ Suppose the Federal Government decides to enact the Crimes (Public Disturbance and 'Move Along' Powers) Act 2007 (Cth), and the Victorian Government ensures the validity of the Act by enacting mirroring legislation. Key provisions of this Act include:

s.39 Where a police officer has reasonable grounds to believe that a person, in a public place, is engaging in conduct that is causing or is likely to cause fear in those in the immediate vicinity, that police officer may, after having cautioned the person once, arrest that person.

s.57 It is an offence, punishable by a maximum of level 6 imprisonment (five years), to engage in conduct that is causing or is likely to cause fear in those in the immediate vicinity in a public place.

Julia decides to protest against the coalition occupation of Iraq outside the US embassy in Melbourne. Julia stands in the street holding banners and saying things such as ‘The bloody Yanks are causing the trouble’ to bystanders. The police, who argue that they have reasonable grounds to believe that her actions are causing, or are likely to cause, fear in those within the embassy compound, use their newly enacted ‘move along’ powers to request that Julia vacate the area. When Julia refuses to move, the police promptly arrest her and charge her with committing an offence under the new Act.
**Discussion activities**

1. Identify which, if any, of William’s or Julia’s human rights you think the police might have infringed in arresting him or her.

2. If Julia wanted to argue that she was exercising her right to freedom of expression, could she use our current Commonwealth Constitution?

3. Suggest what impact the implied freedom of political communication cases might have had on the validity of the *Police Offences Act 1928*.

4. Can you think of any countries where Julia might have found Constitutional support for the rights she wants to assert? Do you think that our current constitutional framework gives adequate protection to human rights? Explain your answer carefully.

**Research activity**

Compare Australia with the US, Canadian, New Zealand, UK and South African approaches to political protestors and right of peaceful assembly.

**Resources**


Ashdown, Kate; Bates, Nicholas; Walker, Carolyn; and Bates, Margaret, *Essential VCE Legal Studies, 2nd ed*, 2010, Cambridge University Press, Melbourne, pp 92-93, 97-119

Beazer, Margaret; Gray, Josie; Humphreys, Michelle; and Filippin, Lisa, *Justice and Outcomes*, 11th ed, 2010, Oxford University Press, Melbourne, pp 137, 145-146, 152-185

Farrar, Peter; Wilson, Joanne; Gentile, Cathy; Phelan, Simon; and Bruno, Ersilia, *Key Concepts in VCE Legal Studies Units 3 & 4*, 2010, John Wiley & Sons Australia Ltd, Milton, Queensland, pp 70-90
The July 1995 editions of the La Trobe University student magazine *Rabelais* and the RMIT student union publication *Revolution Catalyst* were denied classification by the Commonwealth Office of Film and Literature due to the inclusion of an article entitled ‘The Art of Shoplifting’. The decision of the Chief Censor was on the basis that the article ‘promotes, incites or instructs in matters of crime or violence’ as per ss. 19(3) and (4) of the *Classification of Publications Ordinance 1983* (ACT). This decision was confirmed by the Classification Review Board, and an application for judicial review was dismissed by Merkel J in the Federal Court.

The decision of Merkel J was appealed to the Full Court of the Federal Court. After considering a variety of sources to support the existence of a right to freedom of expression, French J commented that ‘at best it can be said that, absent constitutional implication, the common law and conservative rules of construction provide a ‘zone of partial protection’ (at 235, emphasis added) rather than the status of a ‘right’ to freedom of expression. In finding against the student magazines, the Court held (per Heerey J, at 246):

There is no Constitutional protection for speech which is ‘mere advocacy’ or abstract teaching of the necessity or propriety of criminal or violent conduct. The reason is simple. Such conduct is not part of the system of representative and responsible government or of the political and democratic process.

Adapted from *Brown and Others v The Members of the Classification Review Board of the Office of Film and Literature Classification* (1998) 82 FCR 225.
Discussion activities

1 Justice French suggests that, unlike the implied constitutional freedom of political communication, (see Australian Capital Television Pty Ltd v Commonwealth (No. 2) (1992) 177 CLR 106), many common law ‘rights’ are only partially protected by the process of statutory interpretation. In what ways could such ‘zones of partial protection’ be elevated to the status of fully-fledged rights?

2 Considering the impact of the decision of the Federal Court in Toben v Jones (2003) 199 ALR 1 (a case involving the internet publication of material by a holocaust deniers’ association), to what extent might the restraint of freedom of expression be incorporated in the charter?

3 As an example of the process of judicial decision-making, the case of Brown and Others v The Members of the Classification Review Board of the Office of Film and Literature Classification (1998) is fascinating. At one stage the Court entertained a philosophical debate about the acceptability of theft as a form of protest against the capitalist state, drawing on Oscar Wilde, Jean-Paul Sartre and Proudhon. It is arguable that had the article not been written, the Court and those associated with the case may never have been involved in such discussions. Is there a value in materials that provoke debate on issues such as this? Explain your answer carefully.

4 Imagine that you are a shopkeeper located next to La Trobe University. Your newsagency has been in the family for 20 years. Your store is your life – without it your kids cannot afford to go to a good school and you won’t be able to pay off your mortgage. How do you feel, knowing that the students who frequent your shop each day are reading articles that contain a ‘list of effective methods and observations’ on shoplifting?

Research activity

Interestingly, the Court published the article in question at the end of its decision. Read the article and decide for yourself. Is it ‘mere advocacy’ of crime or is it a valid contribution to what a famous US judge once described as the ‘marketplace of ideas’?

Resources

Aldous, Jules; Blakston, Victoria; Lapsanas, Kathy; and Shaw, Geoff, Making and Breaking the Law, 9th ed, 2010, VCTA Publishing, Melbourne, pp 132-134

Ashdown, Kate; Bates, Nicholas; Walker, Carolyn; and Bates, Margaret, Essential VCE Legal Studies, 2nd ed, 2010, Cambridge University Press, Melbourne, pp 97-98, 119

Beazer, Margaret; Gray, Josie; Humphreys, Michelle; and Filippin, Lisa, Justice and Outcomes, 11th ed, 2010, Oxford University Press, Melbourne, pp 177-178

Farrar, Peter; Wilson, Joanne; Gentile, Cathy; Phelan, Simon; and Bruno, Emsilia, Key Concepts in VCE Legal Studies Units 3 & 4, 2010, John Wiley & Sons Australia Ltd, Milton, Queensland, pp 70-90
Section 116 of the Commonwealth Constitution states:

The Commonwealth shall not make any law:

- for establishing any religion;
- or for imposing any religious observance;
- or for prohibiting the free exercise of any religion;

and no religious test shall be required as a qualification for any public office or public trust under the Commonwealth.

In 1911 Edgar Roy Krygger refused to perform the military service required by the **Defence Act 1903–11** (Cth).

Standing before the magistrate in Ballarat, Edgar stated: ‘I decline to render military service because it is opposed to the will of God. I spend all my time reading the Scriptures.’ Asked why, Edgar said that ‘the Scriptures tell us “if thine enemy smite thee on the one cheek turn to him the other also.” We have to do good to those who hate us and especially we are told in the Bible that in the last days there shall be wars and rumours of wars but the children of God are not to be troubled by these things. We are told that we are to be in the world but not of the world. Those that take the sword must perish by the sword.’

Edgar was convicted by the magistrate and sentenced to 64 hours detention (the time of the service that he had not attended). In the High Court, Griffith CJ held:

To require a man to do a thing which has nothing at all to do with religion is not prohibiting him from a free exercise of religion. It may be that a law requiring a man to do an act which his religion forbids would be objectionable on moral grounds, but it does not come within the prohibition of s.116, and the justification for a refusal to obey a law of that kind must be found elsewhere. The constitutional objection entirely fails.

Adapted from **Krygger v Williams** (1912) 15 CLR 366
Discussion activities

1. Does s. 116 of the Commonwealth Constitution guarantee freedom of religion?

2. If only ‘moral grounds’ allowed Edgar to refuse military service, on what facts might s. 116 of the Constitution have been invoked?

3. Chief Justice Griffith said that Edgar was required ‘to do a thing which has nothing at all to do with religion’. Edgar Krygger saw it as directly to do with his religion. Who was right? How should the law decide such matters?

4. The meaning of ‘religion’ is clearly important in the context of s. 116. How was ‘religion’ defined by Latham CJ in *Adelaide Company of Jehovah’s Witnesses v Commonwealth* (1943) 67 CLR 116 at page 123?

5. Religion can be a very personal thing. If Edgar had simply not wanted to pay tax because he felt that this went against his religion, would this have been less acceptable? What if a Commonwealth law had prescribed that Edgar was not allowed to discuss his religion in a public place, would the result have been any different?

6. Griffith CJ’s judgment suggests that only laws that directly legislate with respect to religion will be prohibited by the Constitution. How might religious freedom be better protected in Australia? Is the Constitution the only protection afforded to religious freedom in Australia? Explain your answer carefully.

Resources


Ashdown, Kate; Bates, Nicholas; Walker, Carolyn; and Bates, Margaret, *Essential VCE Legal Studies*, 2nd ed, 2010, Cambridge University Press, Melbourne, pp 92

Beazer, Margaret; Gray, Josie; Humphreys, Michelle; and Filippin, Lisa, *Justice and Outcomes*, 11th ed, 2010, Oxford University Press, Melbourne, pp 140, 160

Farrar, Peter; Wilson, Joanne; Gentile, Cathy; Phelan, Simon; and Bruno, Ersilia, *Key Concepts in VCE Legal Studies Units 3 & 4*, 2010, John Wiley & Sons Australia Ltd, Milton, Queensland, pp 65-66
Sheikh Tajjudin, a controversial Imam, is on a temporary visa in Australia. Sheikh Tajjudin has widespread support within the Muslim community, and this is demonstrated in elections for the council of the Australian Federation of Islamic Councils (AFIC). But there are also members of the Muslim community who are strongly opposed to Sheikh Tajjudin’s views, and this has created powerful tensions within the community. After receiving a number of complaints from Muslims who are opposed to the sheikh’s views, he is investigated by the Department of Immigration and Citizenship (DIAC). DIAC press the Australian Security Intelligence Organisation (ASIO) for a report on the sheikh, which is not granted. Nonetheless ASIO does indicate, after their own investigations, that they do not feel the sheikh poses any risk of ‘causing or promoting violence’ within the community. Sheikh Tajjudin’s visa expires, and after a brief delay DIAC agree to extend the sheikh’s visa for a further six months. When meeting with AFIC and the sheikh, DIAC suggest that ‘the Imam should pay attention to the manner through which his beliefs and values are presented so as not to be seen as offensive to other sections of the community’.

One day after DIAC announced their decision to the sheikh, Sheikh Tajjudin gives a provocative speech at a mosque in which he apparently promotes suicide bombing of Israeli and American establishments in response to the Israeli invasion of Southern Lebanon. The Minister then moves to deport the sheikh under the Migration Act 1958 (Cth).

Adapted from Lebanese Muslim Association v Minister for Immigration and Ethnic Affairs (1986) 67 ALR 195
Discussion activities

1. The phrase ‘I disapprove of what you say but I will defend to the death your right to say it’ has been (incorrectly) attributed to Voltaire, a French writer and philosopher of the 18th century. Thomas Paine, a radical 18th century intellectual, said, ‘Our duty to defend rights extends to defending the rights of people whose views we hold in distaste.’ Simon Lee, in his book *The Cost of Free Speech* (1990), suggests that this means that the true test of our commitment to free speech is whether we still wish to uphold it even when we disapprove of what is being said. Do you agree? Should we defend Mr Tajjudin’s right to say what he has said?

2. In deciding to deport the Imam, the Minister not only enforced migration laws, but also achieved the cessation of the Imam’s activities at the mosque. Justice Pincus said in this case that ‘if it be right that the government is free to prevent the entry of any and all foreign clergy, it is in a position to stop the free exercise of at least those religions with a strong international connection, particularly those short of local clergy’; in other words, deportation could be used as a backdoor method to control religious expression. Was he right?

3. As a non-national, should the sheikh have a claim under a human rights charter?

4. To what extent would a State-based charter operate to protect people from actions of the Commonwealth Government? Considering s. 109 of the Commonwealth Constitution, would any Victorian statutory charter of human rights simply be invalid if there were any inconsistency?

5. Imagine an alternative scenario, where a community radio station agrees to broadcast a segment of the sheikh’s speech as a part of its hourly news and chat show. At the last minute, an influential financial backer of the station threatens to withdraw its funding if the speech is aired. Would this be an example of private citizens restricting free speech?

6. Disregarding the question of whether or not we agree that the speech should be protected, how might private infringements on free speech be prevented?

Resources

- Ashdown, Kate; Bates, Nicholas; Walker, Carolyn; and Bates, Margaret, *Essential VCE Legal Studies*, 2nd ed, 2010, Cambridge University Press, Melbourne, pp 92
- Beazer, Margaret; Gray, Josie; Humphreys, Michelle; and Filippin, Lisa, *Justice and Outcomes*, 11th ed, 2010, Oxford University Press, Melbourne, pp 140-160
- Farrar, Peter; Wilson, Joanne; Gentile, Cathy; Phelan, Simon; and Bruno, Gersilia, *Key Concepts in VCE Legal Studies Units 3 & 4*, 2010, John Wiley & Sons Australia Ltd, Milton, Queensland, pp 65-66, 70-73
In the seminal cases of *Australian Capital Television v Commonwealth* (1992) 177 CLR 106, *Nationwide News v Wills* (1992) 177 CLR 1 and *Theophanous v Herald & Weekly Times Ltd* (1994) 182 CLR 184, the High Court ‘found’ an implied freedom of political communication in the Commonwealth Constitution. In 1997 this new-found freedom was tested in the case of Mr Levy.

Under regulations made pursuant to the *Victorian Wildlife Act 1975* and the *Conservation, Forests and Lands Act 1987*, it was an offence to be within an area set aside for the hunting of game birds at the beginning of the hunting season without a licence. In June 1994, Laurence Levy, a vocal opponent of duck shooting in Victoria, defied these regulations and entered the prohibited area during the hunting season without a licence. He claimed that he was there to collect dead and wounded ducks legally shot, as well as killed or wounded birds of protected species. Mr Levy asserted that he was there to draw media attention to what was occurring and to ensure that the Victorian people could ‘form or exercise informed political judgments about the stance of the Victorian Government in continuing to support or permit duck shooting’.

In the subsequent argument before the High Court, one of the key issues was what constituted ‘freedom of political communication’. What did it mean to speak of ‘political communication’? Did it include showing pictures of maimed and killed fowl to video cameras?

In the judgments given, the court gave various pronouncements on the possible meanings that might be attributed to the implied freedom of political communication. Justice McHugh suggested that political communication might include ‘false, unreasoned and emotional communications as well as true, unreasoned and detached communications’ (at 623). Moreover, McHugh J held that ‘signs, symbols, gestures and images are perceived by all and used by many to communicate information, ideas and opinions. Indeed, in an appropriate context, any form of expressive conduct is capable of communicating a political or government message to those who witness it’ (at 622–3).

Ultimately, despite finding that Mr Levy was communicating in a way that was protected by the implied freedom, the Court found that the regulations did not infringe this freedom because they were also for the purpose of ensuring public safety, and hence they did not upset the balance between legitimate ends and means which may have incidentally infringed the implied freedom.

Adapted from *Levy v Victoria* (1997) 189 CLR 579
Discussion activities

1. Despite a broad meaning being given to ‘political communication’, the High Court is willing to take a proportionate approach to interpreting the freedom, such that a legitimate end may protect an infringement. What sort of guidelines might assist balancing the freedom with attaining other legitimate aims?

2. Brian Walters SC suggests that the cases of Levy and Lange v ABC (1997) 189 CLR 520 have left us with a limited defence of ‘qualified privilege’ and that there is now no constitutional protection of free speech. Do you agree? How might freedom of speech be better protected in Australia?

3. When the High Court ‘found’ the implied freedom of political communication in the text and structure of the Constitution, as a necessary means of ensuring that the system of representative and responsible government is maintained, many attacked the High Court for its perceived ‘judicial activism’. In one attack, Professor Craven from WA’s University of Notre Dame called it ‘nonsense on stilts’.
   a. Explain what is meant by the term ‘judicial activism’.
   b. Faced with the prospect of a human rights violation, how else might the High Court have protected freedom of speech?

Resources

Aldous, Jules; Blakston, Victoria; Lapsanas, Kathy; and Shaw, Geoff, Making and Breaking the Law, 9th ed, 2010, VCTA Publishing, Melbourne, pp 132-134

Ashdown, Kate; Bates, Nicholas; Walker, Carolyn; and Bates, Margaret, Essential VCE Legal Studies, 2nd ed, 2010, Cambridge University Press, Melbourne, pp 92-93, 97-98

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Farrar, Peter; Wilson, Joanne; Gentile, Cathy; Phelan, Simon; and Bruno, Ersilia, Key Concepts in VCE Legal Studies Units 3 & 4, 2010, John Wiley & Sons Australia Ltd, Milton, Queensland, pp 70-73
Sample Assessment Task

VCE Legal Studies Unit 3 Outcome 2

The Constitution and the protection of human rights

1 Explain, using examples, the distinction between the exclusive powers of the Commonwealth, the concurrent powers of the Commonwealth and the States and the residual powers of the States under the Commonwealth Constitution.
   [6 marks]

2 How is it possible for the High Court of Australia to increase or decrease the legislative power of the Commonwealth Parliament? Use a case example to illustrate your answer.
   [6 marks]

3 Identify the democratic and human rights that are protected under the Commonwealth Constitution.
   [6 marks]

4 Carefully read the attached case study and answer these questions:
   a Identify which, if any, of William and Julia's human rights you think the police might have infringed in arresting them?
      [5 marks]
   b If Julia wanted to argue that she was exercising her right to freedom of expression, how could she use the current Commonwealth Constitution to support her argument? Explain your answer carefully.
      [5 marks]
   c Suggest what impact the implied freedom of political communication cases might have had on the validity of the Police Offences Act 1928.
      [5 marks]
   d To what extent would Julia's freedom of political expression be protected by the South African Bill of Rights had her protest occurred in Pretoria rather than in Melbourne? Explain your answer carefully.
      [7 marks]

Total: 40 marks
Sample Assessment Task

VCE Legal Studies Unit 3 Outcome 2
The Constitution and the protection of human rights
Case study on political freedom

Part I
On 29 June 1950, William George Smith was arrested for protesting against the Korean War outside the US embassy. He and a group of about 12 protesters held banners with messages like ‘United States must get out of Korea’, ‘Asian people want their freedom’ and ‘Hands off Asia’. William’s banner stated ‘Stop Yank intervention in Korea’. Although the evidence of bystanders suggested otherwise, the police claimed that it was a disorderly gathering. After being asked to leave the area by a uniformed police officer, William walked away briefly and then returned to the protest. He then resisted a plain clothes police officer who tried to wrest the banner off him. William also argued with a bystander who had said to him ‘You Communists are only looking for trouble’, to which he replied ‘The Yanks are causing the trouble in Korea.’ On this basis, the police arrested and charged William under the Police Offences Act 1928 for behaving in an offensive manner in a public place. He was convicted and charged £5, and then imprisoned for 14 days when he defaulted on payment of the fine. Adapted from Worcester v Smith [1951] VLR 316

Part II
In Australian Capital Television Proprietary Limited (ACTV) v Commonwealth (1992) 177 CLR 106 and Nationwide News v Wills (1992) 177 CLR 1, the High Court ‘found’ an implied freedom of political communication in the Commonwealth Constitution. In Coleman v Power [2004] HCA 39 (1 September 2004), this was held to protect a protester who was distributing leaflets regarding police corruption which contained the words ‘Kiss my arse, you slimy lying bastards’.

Suppose that the Federal Government decides to enact the Crimes (Public Disturbance and ‘Move Along’ Powers) Act 2007 (Cth). The Victorian Government ensures the validity of the Act by enacting mirroring legislation. Key provisions of this act include:

s.39 Where a police officer has reasonable grounds to believe that a person, in a public place, is engaging in conduct that is causing or is likely to cause fear in those in the immediate vicinity, that police officer may, after having cautioned the person once, arrest that person.

s.57 It is an offence, punishable by a maximum of level 6 imprisonment (five years) to engage in conduct that is causing or is likely to cause fear in those in the immediate vicinity in a public place.

Julia decides to protest against the coalition occupation of Iraq outside the US embassy in Melbourne. Julia stands in the street holding banners and saying things such as ‘The bloody Yanks are causing the trouble’ to bystanders. The police, who argue that they have reasonable grounds to believe that her actions are causing, or are likely to cause, fear in those within the embassy compound, use their newly enacted ‘move along’ powers to request that Julia vacate the area. When Julia refuses to move, the police promptly arrest her and charge her with committing an offence under the new Act.
## Resources

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### List of cases

- *Adelaide Company of Jehovah’s Witnesses v Commonwealth* (1943) 67 CLR 116
- *Brown and Others v The Members of the Classification Review Board of the Office of Film and Literature Classification* (1998) 82 FCR 225
- *Coleman v Porter* [2004] HCA 39
- *Krygger v Williams* (1912) 15 CLR 366
- *Lange v ABC* (1997) 189 CLR 520
- *Lebanese Muslim Association v Minister for Immigration and Ethnic Affairs* (1986) 67 ALR 195
- *Nationwide News v Wills* (1992) 177 CLR 1
- *Theophanous v Herald & Weekly Times Ltd* (1994) 182 CLR 184
- *Toben v Jones* (2003) 199 ALR 1
- *Worcester v Smith* [1951] VLR 316

### Reading a case reference

**Krygger v Williams** (1912) 15 CLR 366

- **Case name**: note that in Australia, the ‘v’ is usually pronounced ‘and’ in civil cases and ‘against’ in criminal cases, unlike in America where it is pronounced ‘versus’.
- **Year in which judgment was delivered**.
- **Name of reporting series**: here the ‘Commonwealth Law Reports’.
- **Volume**
- **Specific page reference**
Further reading
Walters, Brian, Slapping on the Writs: Defamation, Developers and Community Activism, 1st ed, 2003, UNS W Press, Sydney

Liberty Victoria
Liberty Victoria has an extensive list of resources available to download from its website, including information on:
• Access to justice • Bill of rights
• Constitutional reform • Criminal justice
• Democratic rights • Discrimination
• Freedom of speech • Gender
• Government accountability • Human rights
• Indigenous rights • Police and policing
• Privacy and surveillance • Refugees
• Workplace • Young people

For more information contact the Liberty Victoria office:
Phone (03) 9670 6422 www.libertyvictoria.org.au

Human Rights and Equal Opportunity Commission
The Human Rights and Equal Opportunity Commission website has a range of educational resource material directed at both students and teachers.
Information for teachers (www.hreoc.gov.au/education/index.html) includes:
• classroom modules
• curriculum links documents for all States
• resource sheets for planning lessons on human rights
• web links for exploration of human rights issues
• a mailing list for regular updates on human rights education initiatives
• free resources to order for classroom use.
Information for students (www.hreoc.gov.au/info_for_students/index.html) includes:
• history and key issues
• human rights in Australia and overseas
• children’s rights
• resources, posters and links to further information
• an events calendar and ways to get involved in promoting human rights.
Useful internet sites

ABC: ‘Human Rights'
www.abc.net.au/civics/rights/enter.htm

Australian Human Rights and Equal Opportunity Commission
www.hreoc.gov.au

Australian Muslim Civil Rights Advocacy Network (‘AMCRAN’)
www.amcran.org

Department of Foreign Affairs and Trade

Human Rights Council of Australia
www.hrca.org.au

Human Rights Watch
www.hrw.org

The Justice Project

Liberty Victoria (Victorian Council of Civil Liberties)
www.libertvictoria.org.au

New South Wales Council for Civil Liberties
www.nswccl.org.au

Office of the High Commissioner for Human Rights
www.ohchr.org/english

University of Minnesota Human Rights Library at the Castan Centre for Human Rights Law, Monash University
http://humanrights.law.monash.edu.au

Victorian Charter of Human Rights and Responsibilities
www.justice.vic.gov.au
Follow links to Your Rights then Human Rights.
Contributors

About Victoria Law Foundation
Victoria Law Foundation helps Victorians understand the law and their legal system. We are a not-for-profit organisation funded by the Legal Services Board Public Purpose Fund. The Foundation funds and generates innovative projects, including plain-language publications that promote community understanding of the law and the legal system. Wherever possible, publications are made available at no cost to schools and community organisations. The Foundation also organises the annual Law Week in May, which features a number of activities for schools. For more information visit www.victorialawfoundation.org.au/law-week

About Liberty Victoria
Liberty Victoria, also known as the Victorian Council for Civil Liberties Inc, is an independent non-government organisation committed to the defence and extension of human rights and civil liberties. It seeks to promote Australia’s compliance with the major human rights instruments set out in international law. Much of Liberty’s work is directed towards educating the community about the importance of civil liberties and human rights. This involves liaison with government, police and regulatory authorities to prevent erosion of rights and freedoms or to enhance their protection. Liberty makes submissions, conducts law reform campaigns and meets with members of parliament.

About the authors
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