



## Social Media Liability: Are you liable for comments made on your Facebook page?

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The realm of social media liability has been a relatively untouched legal subject up until a recent landmark case in the Supreme Court of New South Wales. The case of *Voller v Nationwide News Pty Ltd; Voller v Fairfax Media Publications Pty Ltd; Voller v Australian News Channel Pty Ltd* [2019] NSWSC 766 held that three media companies were classed as the ‘publishers’ of comments made by the public on their Facebook posts for the purposes of a defamation class.

The three companies would use their facebook page to disseminate links to news stories, which would also invite the public to leave comments on their public facebook page or their respective news website. Typically, liability in defamation arises because the **actual publication** of the material is defamatory in nature, and ‘publication’ occurs when the material is delivered to the public. In this case, the Court found that ‘publication’ only occurs in respect of the comments when the comment is placed in a form that is easy to understand and able to be viewed by the public, which is done by the owner of the facebook page as opposed to the actual author of the comments.

Due to this, the Court held that each media was not only a publisher of the comments on their page, but the overarching/primary publisher for all content linked with its page. As the primary publisher, the liability for defamatory material falls on them. The Court stated that due to the fact that these media companies have both the **capacity** and **ability** to monitor and filter comments containing defamatory material, their failure to do so lead them to be liable for defamatory material.

Many Local Councils are active participants in a variety of differing social media platforms so need to be made aware of the possible liability they could be up for if their accounts are not properly monitored. There is a fine line between limiting peoples ability to express their opinions on Council’s pages and falling victim to a defamation claim – Councils need to ensure that they are properly monitoring and vetting comments on posts in order to prevent defamatory comments being posted.