

Facebook defamation ruling by High Court exposes all page owners to lawsuits, not just the media – from ABC News online

By ABC political reporter [Matthew Doran](#) 11 September 2021

Facebook page owners could be held responsible for the comments others make on their posts. As much as social media has helped us to stay connected, especially for those stuck in lockdown, it has also become a home for vile and questionable commentary.

The High Court this week weighed into that issue, in a way, when it ruled that media companies are liable for any comments from the general public on posts they put on Facebook. The case before the High Court directly involved some of the nation's biggest media organisations, but the consequences reach far beyond Australia's newsrooms.

If you're the admin of your band's Facebook page, or the local football club, or your own small business, it will matter to you too.

What has the High Court decided?

News Corp and Fairfax, the latter now owned by Nine, wanted a ruling on whether they could be held liable if defamatory comments were made by the public on their Facebook posts.

The issue arose after Dylan Voller, whose [case of mistreatment at the Don Dale Youth Detention Centre](#) sparked a royal commission, claimed he had been defamed by comments under posts by The Australian and The Sydney Morning Herald. Dylan Voller's case was taken to the High Court after media companies argued they weren't responsible for comments made by the public. Whether those comments actually defamed Mr Voller hasn't been decided yet — the High Court diversion put that on hold.

But the court found that the [media organisations were in fact legally responsible for comments on their pages](#), even though they played no part in drafting the remarks, because they had effectively facilitated the comments being posted.

Ruling means victims can skip the trolls and pursue page owners

In a case that was about the traditional media using online platforms, it is easy to understand how it applies to journalists.

The message from the High Court is that if a company wants a presence on social media, it's also responsible for moderating the content made in response to its posts.

Communications law expert Brett Walker, from the Australian National University, said the decision had even broader consequences. "Any organisation which administers a social media account could also be liable for defamation on the same basis — for example, businesses, sporting clubs and community groups," he told the ABC.

"The decision gives potential plaintiffs such as Mr Voller the choice of tracking down the 'anonymous' person who made a specific defamatory comment and taking action against them, or going straight after the publisher — ie the owner of the Facebook account. "Most plaintiffs will take the second option as identity and ability to pay are clear."

Mr Walker argued the decision could let individuals who make harmful comments "off the hook", and instead put the onus on those running a Facebook page to police the content posted to it by others. It may be easier to pursue an identifiable Facebook page owner for a lawsuit than to pursue anonymous commenters.

For people in NSW, South Australia, Victoria, Queensland and the ACT, anyone threatened with a defamation lawsuit will at least have a chance to resolve the issue before it heads to court. Recent changes to defamation laws in those jurisdictions require a plaintiff to give at least two weeks' notice of their intention to take action. "This provides publishers with an opportunity to remove the offending material quickly to limit the potential harm," Mr Walker said. "Those changes also include a 'serious harm' threshold to provide greater protection for comments that, while offensive, may not cause serious harm to a person's reputation."

Even though this ruling can seemingly apply to anyone in Australia, it's worth looking at the media as an example — in particular, smaller news organisations, such as those in regional areas. Kristy Hess, associate professor of communications at Deakin University, said it put much more pressure on outlets to devote precious time and energy to moderating comments online.

"All local news providers are strapped for resources," she said. I'd probably prefer a local newspaper to be producing content, than having to moderate comments. "That will be a challenge for independent media organisations." Kristy Hess says community newspapers will have to commit less time to news and more to social media moderation.

Lechelle Earl is the editor of SE Voice, an independent newspaper based in Mount Gambier in South Australia's south-east, that was launched last year. She said her team of 15 staff were already "hot on moderating" content on its social media platforms. "We're hyper-aware that we live in a small community, and lots of people are connected," she said. "We're not frightened to be heavy-handed in moderating, and would always err on the side of caution." Despite already putting it into practice, Ms Earl said the High Court's ruling cemented her view that media outlets should be responsible for the public discourse they encouraged. Lechelle Earl says her team at SE Voice will be more 'heavy-handed' in moderating social media following the High Court decision.

Since March, Facebook has allowed comments to be disabled on its platform.

But Ms Hess believes the media can take steps to improve the atmosphere on social media and lead by example, without switching off comments. "We do need to clean up public discourse — it has become a cesspit," she said. "There is a role for the media to facilitate that discussion about what's acceptable."