



CBAA Fact Sheet

Facebook Defamation Case Guide

What does the recent Facebook defamation ruling by the High court mean for your station?

On 8 September 2021, [the High Court ruled that media outlets](#) are legally responsible for defamatory comments made by the public on posts published on an organisation's Facebook pages. The decision has consequences for all media organisations who run social media pages or have commenting features on their websites. If the default setting enabling comments on a post is not changed, this is considered to be an invitation or encouragement to comment. If someone posts a defamatory comment - the media organisation who owns the page is legally considered a "publisher" of the comments and can be sued.

Community radio stations are media organisations and should exercise additional caution when interacting with listeners on any page affiliated with the station. Depending on your size, the content you deliver, and how many staff and volunteers you have, you may want to consider moderating or restricting comments on all or some kinds of posts.

FAQs

What happened in the Facebook defamation case?

The case considered whether media outlets including The Sydney Morning Herald, The Australian, the Centralian Advocate and Sky News could be held liable for defamatory comments made on their Facebook pages. The comments concerned Dylan Voller, whose mistreatment in the Don Dale Youth Detention Centre sparked a Royal Commission into the Protection & Detention of Children in the Northern Territory. The High Court found that by facilitating and encouraging comments on their Facebook pages, the media outlets had participated in the communication of defamatory material and could be held legally responsible as publishers of these comments.

Would we be legally responsible even if we were unaware of the comments?

Yes. The court found that media outlets are legally responsible for comments made in response to their posts, even if they were unaware of the exact nature of those comments.

Would we be legally responsible for comments if they are deleted after we become aware of them?

Yes. The court said it did not matter if the comments were deleted after the media outlet became aware of them. They were seen to be the publishers of the posts from the outset.

Can we get in trouble for defamatory comments made in the past?

If someone wants to sue you for defamation, they should commence action within 12 months from the date of publication. In some cases, the court has discretion to extend this time frame to three years. Reforms are currently underway and have been made in the majority of states to count the date of publication from the first time the material is uploaded, instead of resetting each time the material is viewed or downloaded.

What about program pages affiliated with the station e.g. Individual program pages?

The decision has implications for all users of social media platforms including individuals. It may mean that anyone can be held liable for defamatory comments posted on pages that they moderate. Stations should communicate protocols on how to moderate comments with owners of any page affiliated with the station, including volunteers.

What if volunteers or station staff share station content on their personal pages?

So long as the station content itself was not defamatory, posts on the personal pages of volunteers or staff members would be the legal responsibility of that volunteer or staff member.

What about other social media platforms?

The High Court case only concerned Facebook, but the decision has implications for other social media platforms and websites with commenting functions. If your station uses other social media platforms or if your website allows comments to be posted, you should also exercise caution when allowing comments on posts.

Help, I need a refresher on what constitutes defamation!

If a person feels that material has been published which harms their reputation, they may have grounds to file a [defamation](#) case. This includes written statements, verbal comments and pictures. The person would need to prove that a negative claim was made about them or their behaviour which would cause an ordinary, reasonable person to think less of them.

The Community Media Training Organisation offers both a [one day course](#) and an [online self-paced course](#) on Media Law that both cover defamation. Justice Connect has online resources on [defamation](#) and is running a [webinar on Social Media & the Law](#) on 9 November 2021.

Tips to help you monitor your social media pages

How do I moderate my page?

If you have the resourcing and knowledge, and the desire to keep encouraging conversation on your pages, you could consider training a Digital/Social Media Moderator at your station. You can develop moderation guidelines to help your Digital/Social Media Moderator to make decisions on what comments should be deleted and explain decisions to your community. These guidelines should be published on your social media pages.


For examples of moderation guidelines see [The Conversation's community standards](#), [The Australian Government's social media moderation guidelines](#). It is important to take care of your Digital/Social Media Moderator's mental health - this [ABC article](#) highlights some issues to be aware of. Justice Connect also has online resources on [social media](#).

How do I restrict comments and posts on my social media page?

Social media platforms have now made it possible to restrict comments and replies on public posts. It may also be advisable to restrict other people from putting up posts on your page. If you don't have the resources to have a dedicated Digital/Social Media Moderator, it is recommended that you consider limiting or pre-approving posts and comments about controversial, sensitive or political issues.

Facebook

To limit who can comment on your posts:


1. Be logged in as an admin of the page.
2. Click  on the top right of the post.
3. Click **Who can comment on your post?**
4. Select **Public, Pages you follow**, or **Profiles and Pages you mention**.
5. Click **Done**.

To disable posts by other people on your page:

1. Be logged in as an admin of the page
2. Click **Settings** at the top of the page or the bottom of the Manage Page toolbar on the left.
3. From **General**, click **Visitor Posts**.
4. Select **Disable posts by other people on the Page**.
5. Click **Save Changes**.

To review posts by other people before they appear:

1. Be logged in as an admin of the page
2. Click **Settings** at the top of the page or the bottom of the Manage Page toolbar on the left.
3. From **General**, click **Visitor Posts**.
4. Select **Allow visitors to the Page to publish posts**.
5. Tick **Review posts by other people before they are published to the Page**.
6. Click **Save Changes**.

If you choose to review posts, posts by others will be hidden from your Page by default. To approve a post, go to the **Posts by Others** section of your Page's activity log, click  next to the post and select **Allowed on Page**.

Twitter

[Click here](#) for Twitter's easy-to-follow instructions on how to change the reply settings on conversations.




Instagram

To disable comments on individual posts:


1. Click  above your post.
2. Select **Turn Off Commenting**.

LinkedIn

To disable comments on posts before you share:


1. Click  **Start a post**.
2. Click the  **Anyone icon**.
3. Select  **No one** from the pop-up window.
4. Click **Save**.

To disable comments or limit who can comment on a post you've shared:

1. Click the **More** icon on the upper right of the post.
2. Select  **Who can comment on this post?** from the dropdown.
3. From the confirmation pop-up window, select

-  **No One.**
- or  **Connections only.**

To disable comments on articles you've published:

1. Locate your article from your recent activity or from the publishing tool.
2. Click the  **Comment settings** icon at the bottom of your article.
3. Click **Disable comments** and then **Save Changes**.

Need more information?

For advice specific to your station, please feel free to call the CBAA's Member Services team on 02 9310 2999 or email us at support@cbaa.org.au