Operating a Social Media Platform? Are you at Risk of Defamation Proceedings?

Any business with a Facebook, Twitter or other social media presence should be concerned about a recent Supreme Court decision, *Voller v Nationwide News Pty Limited [2019] NSWSC 766*, which in essence found that media organisations published comments by third parties made on their websites or pages on social media platforms, even if they were unaware of them and hence could be liable for them if they were defamatory. There is likely to be an appeal, but many experts doubt that the decision will be overturned.

The case involved major media organisations, but could have broader application, because the decision appears to turn on the media organisations' provision of a forum for comments and encouragement of comments for its commercial purposes and because media organisations are not alone in doing that. With the tensions often inherent in strata relationships, one can see the potential for problems for strata managing agents operating web sites and social media pages for owners corporations.

The decision also suggests that, even though Facebook lacks the functionality of allowing comments to be disabled generally, the same effect could practically be achieved by a software hack involving hiding virtually all comments, by hiding comments containing very common words, which could then be unhidden when reviewed by a staff member of the business.

Unsatisfactory as it is, to avoid liability, businesses promoting themselves or clients through their own websites and pages on social media platforms need to consider:

- Blocking comments until they have been reviewed by a staff member.
- Appointing a staff member to review comments and unblock those which are not defamatory or otherwise problematic for the business.
- Where the business is a strata managing agent operating pages for the benefit of owners corporation clients, reviewing its agency agreement with a view to procuring the necessary authority, limitation of liability and fee structure to safely and cost effectively provide these services.

We have considerable experience with these issues and can assist if you are having difficulties with them.

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Key takeaways

- Businesses with social media presence may be liable for defamatory comments made by third parties.
- The Supreme Court decision in Voller v Nationwide News Pty Limited highlights the risks for media and similar organisations.
- Strata managing agents should consider comment moderation strategies to mitigate defamation risks.
- Reviewing agency agreements can help clarify liability and authority regarding social media management.
- Bannermans Lawyers offers expertise in navigating these legal challenges.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

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