



## HIGH COURT OF AUSTRALIA

8 September 2021

FAIRFAX MEDIA PUBLICATIONS PTY LTD v DYLAN VOLLER  
NATIONWIDE NEWS PTY LIMITED v DYLAN VOLLER  
AUSTRALIAN NEWS CHANNEL PTY LTD v DYLAN VOLLER  
[2021] HCA 27

Today, the High Court dismissed appeals from a judgment of the Court of Appeal of the Supreme Court of New South Wales concerning whether, by posting content relating to news stories about Mr Voller, the respondent, on their respective public Facebook pages, the appellants were liable for the publication of allegedly defamatory "comments" that were posted by third-party Facebook users in response to the content.

The appellants are media companies which publish newspapers that circulate in New South Wales or operate television stations, or both. Each appellant maintained a public Facebook page on which they posted content relating to news stories and provided hyperlinks to those stories on their website. After posting content relating to particular news stories referring to Mr Voller, including posts concerning his incarceration in a juvenile justice detention centre in the Northern Territory, a number of third-party Facebook users responded with comments that were alleged to be defamatory of Mr Voller. Mr Voller brought proceedings against the appellants alleging that they were liable for defamation as the publishers of those comments.

The primary judge ordered that a question concerning the issue of publication, as agreed by the parties, be decided separately from the balance of the proceedings. The question was whether Mr Voller had "established the publication element of the cause of action of defamation against the defendant[s] in respect of each of the Facebook comments by third-party users". The Court of Appeal concluded that the primary judge did not err in answering that question in the affirmative.

The High Court by majority dismissed the appeals and found that the appellants were the publishers of the third-party Facebook user comments. A majority of the Court held that the liability of a person as a publisher depends upon whether that person, by facilitating and encouraging the relevant communication, "participated" in the communication of the defamatory matter to a third person. The majority rejected the appellants' argument that for a person to be a publisher they must know of the relevant defamatory matter and intend to convey it. Each appellant, by the creation of a public Facebook page and the posting of content on that page, facilitated, encouraged and thereby assisted the publication of comments from third-party Facebook users. The appellants were therefore publishers of the third-party comments.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*