



Stepping carefully through the social media minefield

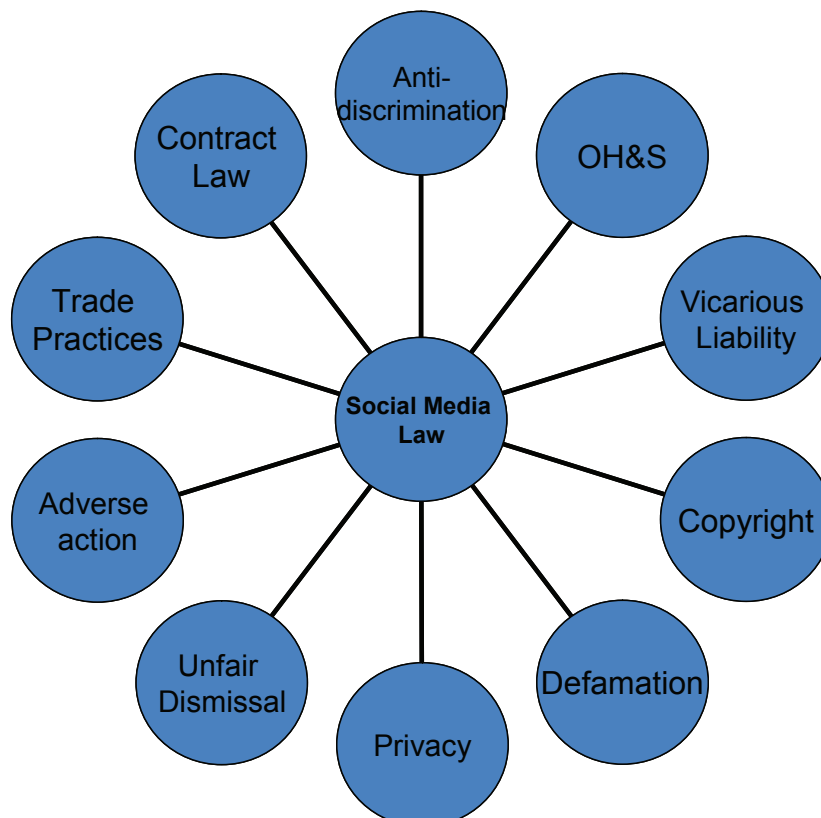
With the dramatic rise in usage of social media and varied networks such as Facebook, Twitter and LinkedIn, organisations are seeing the plethora of potential ramifications associated with inappropriate use of social media in the workplace. This should not deter organisations from moving towards effective use of social media and benefiting from the many positive business tools now taking their place in the corporate arena. The key to successful and low-risk use of social media in the workplace is having the appropriate policies in place and ensuring all employees are adequately trained in the proper use of social media both inside and outside the workplace.

The rise in usage of social media networks has been spectacular. There are currently over 10 million Australian users of Facebook (approximately 60% of the Australian population), with other sites such as LinkedIn and Twitter becoming vastly more popular. With this amount of activity and the growing use of smart phones such as iPhones and Blackberries, it has become virtually impossible for organisations to stamp out employee use of such sites.

The associated ramifications of employee use are widespread and complex, with the legal world only beginning to come to terms with how these potential issues can be regulated and dealt with appropriately. Not a day goes by where we do not see a 'social media related' news story, speaking about the reputation and brand damage to an organisation or person due to inappropriate use of social media networks.

There are many potential risks associated with the use of social media. The 'minefield' is constantly growing and it is becoming essential for organisations to identify the possible risks and protect themselves in order to effectively utilise the many benefits connected to the proper use of social media in the workplace.

The 'Minefield'





Loss of reputation to organisations and/or individuals due to inappropriate use of social media by employees has become the leading issue faced by organisations when determining whether to embrace social media or discourage its use. The increase of reports across the board of unfair dismissal claims, bullying and harassment, discrimination and defamation claims has now alerted organisations to the breadth of potential problems associated with this growing medium.

Social media forums for some employees has become an outlet for which they are voicing their frustrations and concerns regarding their employment. What used to be a 'venting' session with a friend over coffee has now turned into a widespread broadcast, with potentially millions of viewers.

Depending on the severity of the conduct, organisations are seeking to protect themselves against reputational damage by terminating employees who inappropriately use social media networks to post derogatory or unfavourable comments about their employer. However, the law surrounding dismissals of this nature has been varied and the Courts have determined many cases differently, purely upon the facts and circumstances surrounding each termination.

Earlier this year, Fair Work Australia ("**FWA**"), upon appeal, upheld a decision that an employee of a hairdressing salon, who had posted comments about her employer on Facebook, had been unfairly dismissed. The employee had posted the following comment on her Facebook page:

"Xmas bonus, along side a job warning, followed by no holiday pay! Whoooooo! The Hairdressing Industry rocks man!!!! AWSOME!"

Whilst the court cautioned against Facebook-posting outside of work hours, stating that *"it would be foolish of employees to think they may say as they wish on their Facebook page with total immunity from any consequences,"* the Court ultimately found that the comments were not enough to be seen to damage the Employer's business.

In contrast, a case determined by FWA in late 2010 found otherwise. A disgruntled employee was dismissed for, amongst other things, posting the following comments on her MySpace blog:

"This place covers people's lives, offering to protect them when catastrophe happens and yet fails to protect the people that work for them. Chasing dollars over safety. Witch hunting. Nothing but witch hunters... This is corruption at its rawest, it is corruption at every level!"

The Court found that the blog, in effect, was an attack on the integrity of the management of the organisation. Further, the criticism of corruption was of such a nature and degree that it could not be brushed aside. The refusal by the employee to remove the blog when requested to by the employer also factored in the Court's decision.

It is therefore evident, through the Court's varied decisions, that employee knowledge and understanding of appropriate social media usage is paramount. The existence of policies and regular training will give the organisation a significant buffer against unfair dismissal claims, in the event that an employer relies upon a policy to dismiss an employee for breach. Whilst this is not airtight, it gives organisations some protection if policies are properly circulated to employees and staff are given adequate training on the appropriate use of social media.

The key for organisations is to find the right balance in their own businesses, for the use of social media. Whilst some organisations may opt for a straight 'ban' approach, they may potentially miss the array of opportunities associated with this growing medium. Organisations must first decide whether social media potentially has a



positive role to play in their business. If this is the case (and for most, given the speed of growth in social media, it will be), organisations will need to effectively manage the use across the organisation by properly educating employees and putting appropriate policies in place, guiding both employers and employees down the path of effective social media use.

Many organisations will already have IT policies, governing the appropriate use of staff email and internet browsing. However many will not have specific Social Media policies, or clauses within their pre-existing documents. Before embarking upon the realm of social media in the workplace, it is incumbent upon organisations to effectively manage the risks and educate staff on the potential ramifications associated with misuse. Further, many employees are not aware that their conduct, albeit out of work hours, may give rise to their termination if their conduct is serious enough to cause damage to the business. It is also essential for organisations to appropriately review employment contracts to reflect their social media policy.

It is important for organisations to consider the following factors prior to implementing an appropriate social media policy:

- What type of conduct does the employer need to protect itself against?
- What is the nature and extent of the control over social media usage?
- What is considered 'appropriate' use of social media?
- What names, logos, icons etc... cannot be published?
- Does the organisation have valuable IP to protect?
- Who will the policy apply to?

Clauses that are advisable to include in such policies are:

- What activities are permitted / forbidden (including out of hours conduct).
- What information is monitored and how.
- What members of staff have access to staff emails and browsing logs.
- How incidents are to be reported and handled.
- Consequences of breach and non-compliance of the policy.

Most importantly, all policies should be easily accessible by staff. Training should be held regularly as the world of social media use is rapidly changing.

Social media provides organisations with many opportunities for business development, branding and client communication. This rapidly growing medium is definitely here to stay and will continue to provide headaches for employers if not managed effectively. Organisations should not shy away from embracing this powerful new tool. However, it is imperative that they become educated in the many pitfalls associated with the improper associated with the improper and unregulated use of social media and prepare polices, employment contracts and training programs accordingly.

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