

# KELLEHERS AUSTRALIA

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## “(Anti)-Social Media in contested hearings and online amenity impact”

### Newsflash

Negative online behavior is increasingly a part of hotly contested local ‘real world’ disputes. This reflects the wider social issue of how clear lines can be drawn between online and offline behaviour.

Kellehers Australia recently ran a fascinating case considering social media as evidence of an ‘amenity impact’ within the meaning of the *Liquor Control Reform Act 1998* (the Liquor Act).<sup>1</sup>

The decision in *Bomboras Torquay*<sup>2</sup> sets out, what we understand to be, the first finding on whether a licensee’s online behaviour can amount to an amenity impact. The decision shapes liquor licensing law in Victoria, but also raises questions as to online behaviour and amenity.

Hubert Algie appeared before the Commission and advocated that the online behaviour of a venue operator (‘the licensee’) constituted evidence of negative amenity impact to the area<sup>3</sup>. In that case, our client was an objector. He believed that Facebook posts by the licensee which targeted objectors, and listed their names and addresses, had resulted in vandalism at his property and had created community disharmony. Mr Algie’s submission on the amenity question was that:

- inflammatory and abusive social media posts may, in themselves, detract from the amenity of the area where the posts are associated with a particular neighbourhood; and
- social media posts may incite abusive and anti-social behaviour in the ‘real world’ which detracts from the amenity of the area.

In this case, the Commission held that the online behaviour did not have sufficient connection to constitute an amenity impact under the Liquor Act. The Commission found that, to establish an amenity impact, online behaviour must be:

1. ‘sufficiently connected with the actual supply of liquor’<sup>4</sup>; and
2. sufficiently connected to the licensed premises: to have ‘occurred inside the Premises, or a place outside the Premises that is sufficiently proximate to the Premises’.<sup>5</sup>

In our experience, it is increasingly difficult to define a clear limit on the impacts of online behaviour on ‘real world’ individuals and communities. We see an increase in the number of permit or licence applicants seeking to discredit and/or ostracize objectors within the online community. Online behaviour can be immensely unnerving, unsettling and lead to further personal attacks, and in this way undermine the statutory rights to object. This decision represents an important development in an increasingly important aspect of land use, planning and licencing law.

Ms Virginia Trescowthick and Mr Hubert Algie

9 July 2018

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<sup>1</sup> Key terms under consideration were ‘amenity’ and ‘amenity impact’.

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‘Amenity’ is defined under s 3A of the LCR Act as the quality that an area has of being pleasant and agreeable

‘Amenity impact’ means any factor set out in s 3AA of the LCR Act, which includes violent behaviour or using threatening, abusive or insulting language, which may occur inside, or a place outside a licensed premises that is sufficiently proximate to, that premises, that constitutes a detraction from or detriment to the amenity of the area in which the licensed premises is situated.

<sup>2</sup> Bomboras Torquay (Liquor – Internal Review) [2018] VCGLR (28 June 2018).

<sup>3</sup> *Liquor Control Reform Act 1998* (Vic) s3AA

<sup>4</sup> Bomboras Torquay (Liquor – Internal Review) [2018] VCGLR (28 June 2018) [94].

<sup>5</sup> *Ibid.*

In-House Memo