

WHO PAYS THE COSTS TO DEFEND A DEFAMATION CLAIM INVOLVING A COMMITTEE MEMBER?

Committee members naturally think that any claim made by or against them while performing their duties should be defended, at the cost of the body corporate (or its insurer).

However, this is not necessarily the case.

Insurance

Insurance policies for community titles scheme will generally include cover for office bearer's liability. This policy is designed to provide protection to committee members against losses arising from their conduct performed (or not performed, as the case may be) during the course of carrying out their committee duties.

However, this policy will generally contain an exclusion from protection for defamation. This means that if a defamation claim is made against a committee member, the insurer will generally not provide cover for any costs incurred in defending that claim.

Body Corporate

There are statutory restraints regarding how a body corporate may apply its funds.

The primary functions of a body corporate include administering the common property, enforcing the community management statement and carrying out other functions – as required by the body corporate legislation.

Body corporate funds may only be used to undertake these statutory purposes, and cannot be used for other purposes, no matter how worthwhile those other purposes may be.

Adjudicators have previously determined that paying for costs incurred by a committee member defending (or initiating) a defamation claim, are not usually considered costs that fall within the functions of a body corporate.

A body corporate's duty to act reasonably also applies to the way that the body corporate chooses to spend its money and the circumstances where it might be reasonable for a body corporate to pay the legal costs of a committee member arising from a defamation claim are limited.

In the event that a body corporate was to pay the costs of a committee member arising from a defamation claim, it is likely that an adjudicator would order a body corporate to recover those costs, should an adjudication application be made.

What to do?

Before a body corporate makes any payment for costs incurred by a committee member in a defamation claim, it should obtain legal advice, otherwise the body corporate may be embroiled in a dispute in the Commissioner's Office, despite any good intentions.

If you are a committee member (including a non-voting building manager) and you are not protected from liability for a defamation claim by the body corporate legislation, it is unlikely that a body corporate will be allowed to pay for costs incurred by you to defend that claim.

However, if a committee member is required to defend a defamation claim, the circumstances surrounding the claim may make it appropriate for the body corporate to pay for any costs incurred, and legal advice should be obtained about the committee member's position about the recoverability of costs.

Liability limited by a scheme approved under Professional Standards Legislation
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