

PART 1: WHEN ARE COMMITTEE MEMBERS LIABLE FOR DEFAMATION CLAIMS?

Sections 101A and 111A of the *Body Corporate and Community Management Act (Qld) 1997* are the two most important sections about avoiding liability for claims made against committee members in Queensland.

Those sections have the following headings: “Protection of committee members from liability” and “Protection of body corporate and committee from liability for defamation”.

The ‘protection’ from claims given by those sections is however very limited and committee members must tread carefully to avoid exposure to potentially expensive legal action.

General ‘protection’

Section 101A gives committee members general protection from civil liability for claims made. Importantly, this section does not extend to protect a committee member from criminal liability.

If you are a committee member and a claim is made against you, the answers to the following questions determine whether you are protected:

1. Did you act (or fail to act) in good faith?
2. Did you act (or fail to act) without negligence?
3. Were you performing your role as a committee member at the time of the act (or at the time of the failure to act)?

These questions are not simple and require an intimate understanding of the law, but if you answered ‘no’ to any of those questions, you may not be protected from a civil claim.

Even if you answered ‘yes’ to all of those questions, the general protection does not apply to claims regarding the publication of defamatory matter by a committee member.

So, if a claim is made against a committee member about the publication of defamatory matter, section 111A is the only section that may give protection to a committee member from that claim (in addition to any defences the member may have under defamation legislation or the general law, addressed further below).

Specific ‘protection’

Section 111A gives committee members protection from liability for defamation, but only in specific circumstances.

Those circumstances are where the committee publishes required material for a general meeting of the body corporate and that required material contains defamatory matter.

'Required material' is defined to include:

1. a motion (including the substance of a motion) submitted other than by or for the committee for the general meeting;
2. an explanatory note for such a motion that is prepared by the submitter of that motion.

Some important limitations to the protection that can be observed at this point include:

1. the protection does not apply to committee meeting material;
2. the protection does not apply to general meeting motions submitted by the committee;
3. the protection does not apply to all material that may be published by a committee, such as an explanatory schedule prepared by the committee and published with the general meeting material.

A possible scenario is where a committee member submits a motion for a general meeting in their capacity as lot owner and that motion contains defamatory matter. That person may seek to rely on the protection from a defamation claim they enjoy in their capacity as committee member, however the legislation has closed that loophole by excluding that person from benefitting from the protection ordinarily given by section 111A.

Defamation Act

Section 24 of the Defamation Act provides that a defence under that Act (including under the general law) is additional to any defence or exclusion of liability available to a person under other law.

This means that, if defamatory matter is published outside of the limited protections offered by s111A of the body corporate legislation, the *Defamation Act* (Qld) 2005 and the general law may provide a committee member with a valid defence to a defamation claim.

What should I do?

There are less protections available to committee members from defamation under the *Body Corporate and Community Management Act* (Qld) 1997 than may be first thought.

Additionally, many people are surprised to learn how broad the concept of a defamatory statement is, and when a Court will consider material contains defamatory matter. Anything that lowers the standing of a person in the eyes of others, or might cause people to shun or avoid the person, will be considered defamatory. Accordingly, great care must be exercised before publishing material (whether verbal or in writing) which paints somebody in a negative light.

Whether you are a committee member or not, it is important that you seek legal advice before publishing any material that may contain defamatory matter as the risk of doing so may result in you facing a possible expensive defamation claim with limited protections under the legislation to defend the claim.