

# TRUSTEE TROUBLES

Personal costs, Indemnity, Harassment and Insurance

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# INTRODUCTION TO TRUSTEE ROLES AND RESPONSIBILITIES

## KEY FUNCTIONS OF TRUSTEES

- **Management Oversight:**
  - Oversee the administration of the sectional title scheme.
  - Make decisions on behalf of the body corporate.
- **Representation:**
  - Act as representatives of all property owners.
  - Ensure the collective interests are prioritised.
- **Compliance Assurance:**
  - Ensure adherence to relevant laws and regulations.
  - Implement and enforce the scheme's rules.



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# FIDUCIARY DUTIES OF TRUSTEES

## Duty to Act in Good Faith

- Prioritise the best interests of the body corporate.
- Avoid conflicts of interest.

## Duty of Care and Diligence

- Perform duties with reasonable care and skill.
- Make informed decisions after due consideration.

## Compliance Responsibilities

- **Maintenance:** Upkeep of common property and facilities.
- **Rule Enforcement:** Ensure all residents adhere to established rules.
- **Financial Management:** Levy and collect contributions and Manage the body corporate's finances responsibly.



# LEGAL RISKS AND PERSONAL LIABILITY

## Negligence Claims

- Failing to fulfill duties may lead to legal action.

## Harassment Allegations

- Interactions with owners or residents may result in claims.

## Personal Liability Risks

- Acting outside of authority can lead to personal financial loss.
- Liability for damages if found negligent or in breach of duty.

## Mitigation Strategies

- Stay informed about legal obligations.
- Document decisions and actions thoroughly.



# THE HARASSMENT ACT AND LEGAL COSTS

## MANAGING TRUSTEE RISKS AND LEGAL CHALLENGES

### Understanding the Harassment Act

- Defines harassment and provides legal remedies.
- Trustees can be both complainants and respondents.

### Implications for Trustees

- Defending against harassment claims can be costly.
- Legal processes may be lengthy and stressful.

### Financial Considerations

- Legal costs may not be recoverable, even if vindicated.
- Personal finances could be at risk without indemnification.



# STATUTORY INDEMNIFICATION FOR TRUSTEES

## MANAGING TRUSTEE RISKS AND LEGAL CHALLENGES



### Prescribed Management Rules (PMRs)

- Offer indemnification for trustees acting in good faith.
- Protect against personal liability for official actions.



### Conditions for Indemnification

- Actions must be within the scope of trustee authority.
- No gross negligence or willful misconduct involved.



### Benefits

- Encourages diligent performance without fear of personal loss.
- Supports trustees in making necessary decisions.



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# THE IMPORTANCE OF INDEMNITY INSURANCE

## MANAGING TRUSTEE RISKS AND LEGAL CHALLENGES

### Role of Indemnity Insurance

- Provides financial protection against claims and legal action.
- Covers legal defense costs and potential damages.

### Coverage Details

- Should include all trustees during their term of service.
- Must be sufficient to cover potential high-cost claims.

### Body Corporate's Responsibility

- Obtain and maintain appropriate insurance policies.
- Regularly review and update coverage as needed.



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# LIMITATIONS AND CONSIDERATIONS OF INDEMNITY INSURANCE

## Exclusions:

Acts of fraud or dishonesty typically not covered.



## Coverage Limits:

Maximum payout amounts may apply.



## Regular Policy Reviews:

Ensure coverage aligns with current risks.

Update policies to reflect changes in legislation or scheme activities.



## Consulting Professionals:

Engage with insurance brokers for expert advice.

Clarify any ambiguous terms or conditions.



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# FIDUCIARY DUTIES OF TRUSTEES

## ADDRESSING FINANCIAL RISKS IN LEGAL DISPUTES

### Challenges in Cost Recovery

- Courts may not award legal costs to the successful party.
- Trustees might bear expenses even when acting appropriately.

### Urgency of Action

- Some situations require immediate response.
- Delay in obtaining body corporate approval can be detrimental.

### Financial Implications

- Personal funds may be used upfront.
- Reimbursement is not guaranteed without proper policies.



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# POLICIES FOR LEGAL DEFENCE AND INDEMNIFICATION

## STREAMLINING INDEMNIFICATION THROUGH EFFECTIVE POLICIES

### Establishing Clear Policies

- Bodies corporate should have documented indemnification procedures.
- Policies should outline the process for claiming indemnity.

### Alignment with Insurance Requirements

- Ensure internal policies meet insurer's criteria.
- Facilitates smoother claims processing.

### Benefits of Policies

- Provides clarity and assurance to trustees.
- Minimises disputes over reimbursement.



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# CLAIMS FOR REIMBURSEMENT AGAINST THE BODY CORPORATE

## GUIDELINES FOR CLAIMING REIMBURSEMENT EFFECTIVELY

### Eligibility for Reimbursement

- Trustees acted in good faith and within their authority.
- Expenses were necessary and reasonable.

### Reimbursement Process

- Submit detailed claims with supporting evidence.
- Body corporate reviews and approves legitimate expenses.

### Importance of Documentation

- Accurate records of actions and decisions support claims.
- Transparency aids in timely reimbursement.



# CONCLUSION: ENSURING PROTECTION AND SUPPORT FOR TRUSTEES

## POTENTIAL LEGAL CHALLENGES

### Education

- Regular training on legal duties and risks.

### Indemnification

- Robust indemnity provisions in place.

### Insurance

- Adequate indemnity insurance coverage.

### Importance of Clarity in Policies

- Reduces uncertainty for trustees.
- Enhances decision-making confidence.


### Role of the Body Corporate


- Provide support and resources to trustees.
- Foster a collaborative environment.





# Q AND A THANK YOU!

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