

### Cover for the Individual only

It is important to remember the definition of the 'Insured' under a Directors & Officers Liability policy **DOES NOT** include the Corporation. The definition, whilst it may vary for different Insurers, generally includes any past, present & future Directors, Executive Officers and Employees.

### What is a circumstance?

A 'circumstance' is a fact, situation or circumstance that the Insured knows about and which the Insured ought to reasonably realise may give rise to a claim in the future.

### How to recognise a circumstance?

Circumstances can at times be obscure, so we have split them into two categories: obvious and less obvious types.

Whilst this list is extensive, it is NOT intended to be a comprehensive listing of all possible types of circumstances. It is generally a matter for the courts to interpret whether a fact, situation or circumstance is a 'fact which might give rise to a claim' or not.

**The following examples should only be used as a guide.**

OBVIOUS TYPES	LESS OBVIOUS TYPES
<ul style="list-style-type: none"> <li>Letter of demand from shareholder arrives foreshadowing future litigation alleging breach of duty eg alleged breach of duty during allocation of shares.</li> </ul>	<ul style="list-style-type: none"> <li>Insured hears via another source of a shareholder's dissatisfaction over the management of the company, causing the shareholder financial loss.</li> </ul>
<ul style="list-style-type: none"> <li>Telephone call from a shareholder / shareholder's solicitor alleging breach of duty or some other failure.</li> </ul>	<ul style="list-style-type: none"> <li>Shareholder makes comment in passing over the quality of management provided by the Insured at the annual general meeting. Possible grounds for a claim.</li> </ul>
<ul style="list-style-type: none"> <li>An employee claims they have been defamed, harassed, discriminated against by the Insured.</li> </ul>	<ul style="list-style-type: none"> <li>Repayment problems arise with a financial institution or creditor.</li> </ul>
<ul style="list-style-type: none"> <li>ASIC / ACCC commences official investigations into the Insured's conduct of the company's affairs.</li> </ul>	<ul style="list-style-type: none"> <li>Insured discovers that the company's advertised financial projection was potentially misleading and could foresee potential financial loss for shareholders relying upon the advertised information.</li> </ul>
<ul style="list-style-type: none"> <li>ACCC obtains a search warrant against the company's records.</li> </ul>	<ul style="list-style-type: none"> <li>Insured receives complaint from a shareholder about a director/officer's performance, creating suspicions about their management competency.</li> </ul>
<ul style="list-style-type: none"> <li>Occupational Health &amp; Safety Authority commences investigations into a workplace incident.</li> </ul>	<ul style="list-style-type: none"> <li>Insured fails to take out adequate insurance resulting in a financial loss for the company.</li> </ul>
<ul style="list-style-type: none"> <li>Shareholder makes allegations, either verbally or in writing about the management of the company.</li> </ul>	<ul style="list-style-type: none"> <li>Company starts receiving complaints from its customers that their advertisements are misleading eg Section 52 Trade Practices Act claim.</li> </ul>
<ul style="list-style-type: none"> <li>Company goes into liquidation, voluntary administration or administration. Potential for creditor's action against the Insured.</li> </ul>	<ul style="list-style-type: none"> <li>Insured hears via another source of an employee's allegation of sexual harassment, discrimination or unfair dismissal by the Insured or an employee of the Insured.</li> </ul>
<ul style="list-style-type: none"> <li>Merger and acquisitions. Verbal or written allegations of misleading / deceptive behaviour by the Insured.</li> </ul>	
<ul style="list-style-type: none"> <li>Letter of demand from creditor arrives foreshadowing future litigation eg insolvent trading.</li> </ul>	