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## **DIRECTORS & OFFICERS LIABILITY INSURANCE**

### **Information Brochure**

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## **Directors & Officers Liability Insurance Information brochure**

Directors & Officers Liability (D&O) Insurance is designed to protect Director or Officer from claims made against them arising out of the duty of care owed to the company.

D&O is a personal protection which protects the individual director or officer not the company. D&O is designed to protect the personal assets of the director or officer and enables a directors or officer to defend an action taken against them without having to sell their own personal assets.

Directors and Officers are exposed to claims from a variety of parties including:-

- Creditors – Can bring an action against a director or officer if they do not receive legally entitled payment of their invoices.
- Shareholders – Can bring an action against a director or officer for breach their duty of care to the company.
- Employees – Can bring an action against a director or officer for wrongful termination, harassment, discrimination or failure to promote.
- Competitors – Can bring an action against a director or officer for anti-competitive behaviour, restriction of trade and similar areas.
- Government bodies (ACCC, ASIC) – Can bring an action against a director or officer for breach a statutory requirement.

### **Claims examples**

#### **Honorary directorships carry the same duty of care as paid directorships**

A non-executive director was held liable for the losses of the firm even though the position he held was honorary. The director was not involved in the day-to-day operations of the entity and attended monthly Board meetings. He received financial statements prepared by an executive director which turned out to be fraudulent. The court ruled that all directors, irrespective of where they are paid or not, have a duty to make their own enquiries and ensure they are fully informed of their entities activities and true financial position.

#### **Company Raising Capital**

Directors and Officers are especially exposed when they seek to raise additional capital either through private capital raisings or through share market floats. If the financial targets are not reached or the information is misleading to investors then the investors can bring an action against the directors for false or mis-leading information.

In fact in a twist to the normal state of event a shareholder of a company sued the directors because it was making too much money. The shareholder alleged that, when the directors were seeking additional capital, the directors did not give sufficient

information to the shareholder to induce him to increase his shareholding. The shareholder alleged he suffered a financial loss because he did not gain from the now profitable company.

**Employment Practice claims – discrimination / harassment**

Employees who have been unfairly dismissed can bring a claim against the directors for wrongful termination.

An employee who worked at a factory was sacked after operating a machine without the safety guard which was against the specific instructions of the management. The manager sacked the staff member who subsequently sued the manager for wrongful dismissal.

The matter was settled at mediation after the manager agreed that he should have counselled the employee on the proper use of the machine and issued the employee with a warning. The manager agreeing to pay the complainant four weeks wages.