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# LEGAL STUDIO

Continuing professional  
development

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## Common Insurance Questions Demystified

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### Overview

1. Commonly asked questions
2. Investigations & notification
3. Role play

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## Key Corporate Policies

- Directors' & Officers' Liability
- Management Liability
- Commercial Crime
- Cyber & Extensions
- Employment Liability Standalone
- Mandatory Workers' Compensation
- What is Your Business?



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## Common Questions

- What is our cover?
- What is a claim versus a circumstances?
- When to notify?
- Can an insurer legally decline a circumstance?
- How is an investigation defined?
- The difference between first party loss and third party loss?

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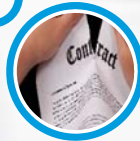
## The Year in Review



**FSRC: Hayne report**



**QBE \$132.5M**



**Unfair Contract Terms**



**ASIC  
Enforcement  
Powers**



**ALRC: Class Actions**

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## Identify Loss

- Preferably, recognise a problem before it becomes a loss.
- After the fact, what & whose loss is it?

First Party  
Loss

Third Party  
Loss

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## Investigations & Pre-Investigation Costs

- What is an **investigation** under the D&O Policy?
- **Pitfalls** – could only relate to certain types of pre-investigation (such as an internal inquiry).
- Don't assume all costs incurred will be covered.
- No overheads.
- No operating costs.

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## Is there a claim under the policy?

- Claims made cover vs occurrence based
- **What? How? Who? When?**
- Does the policy wording define 'claim'?
- If the policy has no definition of 'claim', there is a claim when:
  - a demand for something is due, or an assertion of a right to something, or
  - something in the nature that of a demand to satisfy a liability that is alleged to have to a third party claimant

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## Notification Bingo

- Notice to Produce
- Request for Submissions
- Summons
- Mareva
- Letters Patent
- Statement of Claim
- Subpoena
- Section 19 Examination

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## D&O Policy – typical claim definition

- (a) Written demand (monetary or non-monetary)
- (b) Civil or criminal proceeding (other than administrative/regulatory proceedings)
- (c) Administrative or regulatory proceeding, or
- (d) Official request for extradition of an Insured Person

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## If no claim, should the circumstances be notified to insurers?

- Deeming provisions: section 40 of the *Insurance Contracts Act 1984* (Cth)
- If the company is **aware**, then you may need to **notify**
- Understand circumstances
- Validity of notice depends on the proper construction of the policy as a whole in the circumstances of the particular claim, and not on whether the notice has been accepted/rejected

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## Types of notification



Specific

- Specific event
- Identifiable loss and claimant(s)



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- Specific event
- Unidentifiable loss or claimant(s)

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# Role Play Experience

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