



Vero

Professional Indemnity Claims Experience

June 2020



Contents

Thank you _____ 1

Strategic sounding board _____ 1

The Professional Indemnity team _____ 2

Short team biographies _____ 2

DLA Piper is a global law firm operating through various separate and distinct legal entities.
For further information please refer to www.dlapiper.com.

Thank you

Thank you for the opportunity to submit the credentials of our main/senior practitioners who provide services in relation to Professional Indemnity claims. We have a dedicated team with significant experience advising professionals across a broad range of industries. Depth in experience can be found in each of our Brisbane, Melbourne, Sydney and Perth offices.

Vero has ongoing access to a committed client relationship partner in James Berg and a suite of value-adds which we currently provide to Vero's team across the board.

If you require any further information or have any questions, please let me know.



Strategic sounding board

At any stage, we would be happy to facilitate a meeting with the Underwriting team and our lead partners in each State, to discuss our expertise and approach and to walk you through some key issues in each jurisdiction if that would be helpful.

The session would also be used to explain our approach to management of Professional Indemnity claims, including steps to take in an attempt to negotiate early resolution of claims.

More importantly however, the opportunity to hear from Underwriters about their current strategy, risk profile and industry focus would be invaluable, as would a discussion surrounding a three year Underwriting plan.


The Professional Indemnity team

CLIENT RELATIONSHIP PARTNER			
 James Berg Partner, Sydney T +61 2 9286 8193 james.berg@dlapiper.com			
SYDNEY	BRISBANE	MELBOURNE	PERTH
 James Berg Partner T +61 2 9286 8193 james.berg@dlapiper.com	 Sophie Devitt Partner T +61 7 3246 4058 sophie.devitt@dlapiper.com	 Sarah Fountain Partner T +61 3 9274 5256 sarah.fountain@dlapiper.com	 Jock Inness-Campbell Partner T +61 8 6467 6039 jock.campbell@dlapiper.com
 Summer Dow Senior Associate T +61 2 9286 8053 summer.dow@dlapiper.com	 Kristie Swainston Senior Associate T +61 7 3246 4095 kristie.swainston@dlapiper.com	 Melissa Zenel Senior Associate T +61 3 9274 5260 melissa.zenel@dlapiper.com	 Alicia Pull Solicitor T +61 8 6467 6236 alicia.pull@dlapiper.com


This senior team is supported by a team of very competent junior lawyers (also based across each of our offices) with relevant Professional Indemnity claims experience. Of course, no work is finalised without approval or sign-off from the senior team.

Short professional indemnity biographies of the senior team members are set out below.


Short team biographies


Team member	Brief introduction
<p>James Berg Sydney Office Managing Partner</p> 	<p>James commenced practice as an articled clerk in 1990 and was admitted as a solicitor in November 1994. In 2002, he started employment with Phillips Fox (predecessor to DLA Piper) and since that time has developed a practice which is heavily geared towards professional indemnity claims. Within James' professional indemnity practice, expertise has been developed across a number of industries and indeed James' profile has reached the point where he has been invited to deliver keynote presentations at annual industry events.</p> <p>James also advises numerous clients on the drafting of retainer agreements, with special focus on limitation of liability clauses as part of the risk management matrix for professionals. In addition, he has been retained by various insurers to assist in the drafting of policy wordings.</p> <p>Since 2003, James has been preparing and presenting the risk management module, a continuing professional education program, for members of the property profession every three years.</p> <p>Types of professionals advised/defended:</p> <ul style="list-style-type: none"> • Construction – acoustic engineers, architects, certifiers (building surveyors), civil engineers, earthworks contractors, geotechnical

Team member	Brief introduction
	<p>engineers, hydraulic engineers, mechanical engineers, quantity surveyors, structural engineers.</p> <ul style="list-style-type: none"> • Financial – accountants, insurance brokers, financial planners, mortgage brokers, stockbrokers. • Lawyers – barristers and solicitors. • Property – real estate agents and valuers. <p>Other components of James’ practice include:</p> <ul style="list-style-type: none"> • Medical Malpractice – allied health and doctors. • Association Liability. • Management Liability and Directors & Officers. • General/Public Liability. • Property/ISR. <p>Examples of current and recent professional indemnity claims are set out below.</p> <ul style="list-style-type: none"> • Acting for the building surveyor on appeal in the well-publicised Lacrosse Building fire, a claim for over \$12 million related to the application of (allegedly) non-compliant aluminium cladding. • Acting for an architect sued for not warning a builder regarding the use of the aluminium cladding product on a development in Sydney. • Acting for an engineer in relation to a civil claim for many millions arising out of the failure of a crane-support grillage attached to the side of a development – the grillage failed and the tower crane fell to an adjacent building. In addition, acting for the same engineer in a prosecution brought by SafeWork NSW. • Acting for quantity surveyors in relation to Supreme Court proceedings (\$2.3 million+) where allegation of breach of contract, negligence and ACL are made referable to a development which was subject to significant cost overruns and delays. • Acting for acoustic consultants sued for alleged negligence in relation to a significant residential development requiring major repairs, action in Supreme Court. • Acting for building surveyor in relation to alleged negligence in connection with a development in which an underground sewer reticulation piece of infrastructure was damaged. • Acted for geotechnical engineers in relation to various disputes alleging the design of shoring walls was inadequate, thereby undermining entire development. • Acted for structural engineers in relation to allegedly negligent design of building components.



Team member	Brief introduction
	<ul style="list-style-type: none"> • Acting for mortgage brokers across a range of matters, including AFCA complaints/disputes and a claim currently on appeal after success in first instance in the Supreme Court. • Acted in an accountant's professional indemnity matter relating to alleged liability arising out of a failure to adequately assess a tax liability based on clean energy rebates. Complex issues surrounding the application of GST and government rebates, together with an assessment of the accountant's conduct in the circumstances. • Acting for insurance brokers in relation to alleged failure to advise or warn re policies, or failure to place appropriate/adequate insurance. • Acted for financial planners in relation to allegedly negligent advice resulting in losses for clients. • Acting for senior counsel in relation to a litigated claim against him referable to the work he performed during a prior trial – allegations not only include negligence but also unconscionable conduct and breach of fiduciary duty. • Acting for a barrister in relation to a complaint to the Bar Association in relation to his conduct during an Anton Pillar application and alleged lack of candour. • Acting for a barrister in relation to a litigated claim for services provided to a previous client in relation to settlement of a claim. • Acted for a firm of solicitors sued by a former client in relation to the outcome of a bitter family law dispute.
<p>Sophie Devitt Brisbane Office Managing Partner</p> 	<p>Sophie Devitt is a litigation and regulatory lawyer who specialises in the area of professional indemnity litigation together with insurance and financial services regulation. She strikes the balance between supporting and advising on front-end regulatory change, insurance policy coverage provisions and claims handling, and managing complex, professional indemnity litigation and other insurance claims litigation. Sophie has over 18 years of experience.</p> <p>Sophie was recently awarded Lawyer of the Year in Brisbane for the categories "Insurance Law" and "Legal Malpractice Litigation" in the Australian Financial Review's <i>Best Lawyers in Australia</i>. She was also listed as Lawyer of Year in Brisbane for the Best Professional Malpractice Litigation Lawyer in 2019.</p> <p>Types of professionals advised/defended:</p> <ul style="list-style-type: none"> • Financial – accountants, insurance brokers, insurance intermediaries, financial planners, mortgage brokers. • Construction – engineers, architects, certifiers (building surveyors), earthworks contractors, geotechnical engineers, hydraulic engineers, mechanical engineers, quantity surveyors, structural engineers.



Team member	Brief introduction
	<ul style="list-style-type: none"> • Lawyers – barristers and solicitors. • Property – property managers, real estate agents and valuers. <p>Other components of Sophie’s litigation practice include:</p> <ul style="list-style-type: none"> • Medical Malpractice – allied health and doctors. • Association Liability. • Management Liability and Directors & Officers. • General/Public Liability. • Property/ISR. • Statutory liability including workplace health and safety prosecutions. <p>Examples of current and recent professional indemnity claims are set out below.</p> <ul style="list-style-type: none"> • Defending a claim against a financial advisors relating to advice given for the investment in an investment scheme which included apparent misrepresentations within the product disclosure statement for the investment. • Acting for a number of insurance brokers primarily involving claims for failing to arrange adequate insurance. • Defending a multi-million dollar claim (approximate value of AU\$7 million plus) against a financial advisor brought by multiple plaintiffs for advice given about investment in products related to collateralised debt obligations including claims of misrepresentations as to the nature of the investment itself. • Advising an insurer with respect to indemnity on the notification of alleged circumstances (across a significant number of clients and advisors) that may give rise to multiple claims against a large financial planner dealer group. • Advising a large engineering firm with respect to allegations of negligent specification of structural connections for multi -level residential apartment blocks. The matter was settled. • Acting for a national real estate agency on multiple claims for failure to comply with statutory obligations pursuant to the relevant legislation. • Acting for the Applicant, a construction manager, in a claim before the Commercial and Consumer Tribunal regarding the design and construction of a luxury waterfront home. • Defending multiple claims before the Australian Financial Complaints Authority (and its predecessor the Financial Ombudsman Service) brought against insurance brokers relating to advice, disclosure obligations and availability of cover and also claims directly against insurers.

Team member	Brief introduction
<p data-bbox="256 266 523 338">Jock Inness-Campbell Partner, Perth</p> 	<p data-bbox="564 266 1445 495">Jock Inness-Campbell began his career at Phillips Fox as a vacation clerk in 2001. Since that time (leaving aside a year travelling around continental Europe) he has worked largely on professional indemnity and complex infrastructure liability claims, including leading the first successful defence of a class action claim in Western Australia (acting for the State electricity provider).</p> <p data-bbox="564 528 1445 678">In addition to defence work, Jock regularly advises professional service providers on risk management issues, including the risk management module that is presented to the property profession across Australia every three years.</p> <p data-bbox="564 712 1099 741">Types of professionals advised/defended:</p> <ul data-bbox="564 759 932 974" style="list-style-type: none"> • Financial service providers • Construction professionals • Allied health specialists • Property advisors • Barristers and solicitors <p data-bbox="564 1010 1150 1039">Other components of Jock's practice include:</p> <ul data-bbox="564 1057 967 1182" style="list-style-type: none"> • General/Public Liability • Commercial contract disputes • Management liability <p data-bbox="564 1216 1406 1283">Examples of current and recent professional indemnity claims are set out below:</p> <ul data-bbox="564 1301 1426 2000" style="list-style-type: none"> • Acting for a fire engineer in a Federal Court cladding and other construction defects dispute involving student accommodation in the Northern Territory. • Acting for construction and property management companies in a series of contractual and management disputes regarding the construction of a large hospital and court building. • Acting for a number of local government authorities in relation to a series of claims arising out of allegations of defective road design. Several claims litigated to the Court of Appeal. • Acting for a number of construction and vibration damage claims involving new and iconic Western Australian buildings. • Acting for a Western Australian university in a design dispute following a flooding event. • Acting for doctors, physiotherapists and other Allied Health professionals in response to complaints made to Australian Health Practitioner Regulation Agency (AHPRA), including several matters escalated to the State Administrative Tribunal.

Team member	Brief introduction
	<ul style="list-style-type: none"> • Acting for a global construction company in a major contract works dispute following the failure of shopping centre roofing. • Acting for local governments and health care providers at coronial inquests. • Advising Devcon/Glenpoint in a series of claims arising out of the collapse of a commercial structure in 2002. Claims dismissed by the Court of Appeal in 2008. • Acting and continues to act for a number of land valuers and finance brokers concerning claims for negligence and misconduct. Several matters litigated in Supreme and Federal Courts. • Acting on instructions from the professional indemnity insurers of a number of Australian Financial Services License holders in relation to disputes before AFCA (and previously FOS) and District, and Supreme Courts and the Federal Court of Australia. • Acting in a number of construction damage claims involving Perth CBD constructions, including Multiplex's Enex100 and City Square. • Acting for an information and communication technologies company in a multi-million dollar dispute arising from the construction of an online enrolment and course platform for an Australian university. • Representing architects and valuers in responding to consumer protection complaints being investigated by the Department of Mines, Industry Regulation and Safety. • Acting for a major international construction contractor in relation to allegations that the construction of a 45 storey commercial tower caused serious structural damage to an adjacent commercial tower block (claim dismissed following expert adjudication).
<p data-bbox="252 1361 488 1435">Sarah Fountain Partner, Melbourne</p> 	<p data-bbox="563 1361 1426 1592">Sarah Fountain is a litigation lawyer with expertise in insurance. The majority of her practice focuses on professional indemnity claims and including defending claims against professionals, providing policy coverage advice to insurers and acting for professionals in professional conduct inquiries. She has more than 15 years' experience acting in professional indemnity claims, both in Australia and the United Kingdom.</p> <p data-bbox="563 1626 1102 1659">Types of professionals advised/defended:</p> <ul style="list-style-type: none"> • Financial service providers (accountants, auditors, financial advisers, mortgage brokers, insurance brokers) • Construction professionals (architects, building surveyors, building inspectors, engineers, project managers) • Allied health professionals (psychologists, physiotherapists, chiropractors, Chinese medicine practitioners and more) • Property professionals (valuers, real estate agents) • Legal professionals (solicitors)

Team member	Brief introduction
	<ul style="list-style-type: none"> • Others (agronomists, graphic designers and more) <p>Other components of Sarah’s practice include:</p> <ul style="list-style-type: none"> • General liability • Management liability • Cyber and data breaches • Commercial litigation, with a focus on corporate disputes and shareholder disputes <p>Examples of current and recent professional indemnity claims are set out below:</p> <ul style="list-style-type: none"> • Acting for a building surveyor in a multi-party dispute arising out of the design and construction of a fire station in suburban Melbourne. The quantum claimed exceeded \$15 million. • Acting for a project manager in a multi-party dispute arising out of the design and construction of an interlocking pavement at the plaintiff’s container yard. • Acting for an accountant in a claim involving the provision of alleged incorrect advice relating to capital gains tax. • Acting for an accountant in relation to a potential claim relating to accounting services provided to a business with a complex corporate structure and advice provided in respect of the distribution of profits to entities within the group and the deductibility of interest paid to those entities. • Acting for a fire engineer in a multi-party dispute arising out of the design and construction of a residential development . The matter involves cladding issues, as well as other alleged design and building defects. • Acting for numerous allied health professionals in professional conduct inquiries. • Acting for an architect in a claim by a school arising out of the design of a building that is alleged to incorporate “combustible” cladding and requires replacement. • Acting for underwriters in the Banksia class action, which arose out of the collapse of Banksia Securities Ltd. Underwriters were joined to the proceeding on the basis that the professional indemnity section of the financial institutions policy responded to the claim by the class action plaintiffs against the company. • Acting for a solicitor in a claim by a high net worth individual in relation to a financial agreement between the claimant and his former wife, which was held to be invalid. • Acting for a solicitor in relation to alleged negligent advice given in relation to overage provisions in a contract.

Team member	Brief introduction
	<ul style="list-style-type: none"> • Acting for an accountant who was appointed the executor of an estate of a high net worth individuals. The plaintiff - a beneficiary of the estate – sought orders including the removal of the accountant as executor of the estate. • Acting for an insurance broker in a claim arising out of the placement of contract works policies. The contract works policy was initially placed on a transfer basis, but in a subsequently policy year was changed to a contracts commenced basis, which resulted in a gap in cover for some construction projects.
<p>Summer Dow Senior Associate, Sydney</p> 	<p>Summer Dow has over 11 years' post qualification dispute resolution experience, defending professional negligence claims and complaints to professional oversight bodies.</p> <p>Categories of professionals:</p> <ul style="list-style-type: none"> • Allied health • Accountants • Architects and draftsman • Barristers and solicitors • Building and construction • Engineers • Financial services • Medical • Real estate, including property valuers
<p>Kristie Swainston, Senior Associate, Brisbane</p> 	<p>Kristie practises in general insurance litigation with a particular focus on professional indemnity and public liability matters. She has extensive experience advising insurers and other participants in the insurance sector as well as advising a range of professionals in the property, construction, legal and medical/allied health industries.</p> <p>Categories of professionals:</p> <ul style="list-style-type: none"> • Allied health • Accountants • Architects and draftsman • Barristers and solicitors • Building and construction • Engineers • Financial services • Medical • Real estate, including property valuers

Team member	Brief introduction
<p data-bbox="252 264 432 338">Alicia Pull Solicitor, Perth</p> 	<p data-bbox="564 264 1430 412">Alicia has acted on major construction and infrastructure disputes across all Australian jurisdictions, including in litigation, arbitration and statutory adjudication proceedings and is certified by the Chartered Institute of International Arbitrators (CI Arb) in International Arbitration.</p> <p data-bbox="564 450 927 477">Categories of professionals:</p> <ul data-bbox="564 499 1150 943" style="list-style-type: none"> <li data-bbox="564 499 895 526">• Allied health specialists <li data-bbox="564 544 922 571">• Auditors and Accountants <li data-bbox="564 589 735 616">• Architects <li data-bbox="564 633 895 660">• Barristers and solicitors <li data-bbox="564 678 1150 705">• Construction and Infrastructure professionals <li data-bbox="564 723 735 750">• Engineers <li data-bbox="564 768 932 795">• Financial service providers <li data-bbox="564 813 847 840">• Local Governments <li data-bbox="564 857 1023 884">• Mining & Resources Professionals <li data-bbox="564 902 922 929">• Real Estate Professionals
<p data-bbox="252 985 464 1093">Melissa Zenel Senior Associate, Melbourne</p> 	<p data-bbox="564 985 1430 1093">Melissa Zenel has 8 years' experience as a litigation lawyer specialising in insurance and, in particular, professional indemnity claims. She joined DLA Piper in 2017 and has practised in Queensland and Victoria.</p> <p data-bbox="564 1131 927 1158">Categories of professionals:</p> <ul data-bbox="564 1180 826 1552" style="list-style-type: none"> <li data-bbox="564 1180 735 1207">• Allied health <li data-bbox="564 1225 687 1252">• Medical <li data-bbox="564 1270 715 1296">• Architects <li data-bbox="564 1314 815 1341">• Building surveyors <li data-bbox="564 1359 810 1386">• Project managers <li data-bbox="564 1404 815 1431">• Insurance brokers <li data-bbox="564 1449 751 1476">• Veterinarians <li data-bbox="564 1494 826 1520">• Child Care Centres

www.dlapiper.com