

CAPABILITY STATEMENT

MO

**Professional Indemnity
Insurance**

**prepared for
SUNCORP**

Inside MO

Services and reach	<p>A full-service premium mid-tier commercial law firm with a national client base, over 100 partners and more than 700 staff servicing clients in all capital cities and a number of regional centres.</p>
Mission	<p>To deliver our clients top-tier quality legal advice at mid-tier pricing. We deliver on this mission by offering a superior service experience and operating an efficient business model that enables us to contain costs for clients, without compromising quality.</p>
Technical excellence and a stable team	<p>Top-tier legal experts with in-depth industry knowledge and experience who work as a team to achieve our clients' goals.</p>
Client base	<p>We act for a wide range of corporate, private, government and not-for-profit clients. Our client base includes some of Australia's leading companies such as, Qantas, Citigroup, Suncorp, IBM, Investa, and many others.</p>
Superior service standards	<p>We operate a sophisticated client service and feedback program for all partners and staff called 'Service 360', which is designed to deliver a systematic and seamless service experience for clients.</p> <p>Feedback surveys have found clients value Mills Oakley's technical skills, strategic and outcomes-based focus to support clients' business objectives, accessible culture and competitive pricing.</p>
Recent awards	<p>2019 Finalist, Law Firm of the Year – Australasian Law Awards</p> <p>2019 Australasian Lawyer, Innovative Law Firms list</p> <p>Recognised as one of 6 firms globally directly investing in New Law development – <i>Law.com</i></p> <p>2018, 2016, 2015 Top 10 Attraction Firm (Employer of Choice) – <i>Lawyers Weekly</i> Top 25 Attraction Firms Survey</p> <p>2017 – Law Firm of the Year – <i>Australasian Law Awards</i></p>

Mills Oakley has an award winning, dedicated insurance team of 11 partners and 52 lawyers, plus support staff and other resources, operating from five offices to service a national insurance practice. Together our team has:

- Worked on the legal panels of most major insurers in Australia, so we can draw on a vast repository of knowledge and experience to share and implement with our clients;
- Undertaken panel work in other countries particularly the UK, giving us an understanding of the global marketplace and how it impacts insurance trends in Australia;
- Seen the evolution of panel engagements and the changing needs of insurers to manage claims with cost efficiencies and quality resolutions.

The team has been recognised and acknowledged for its leading position in the Australian market for insurance law by industry bodies such as the Insurance Council of Australia and the Financial Services Council, to whom we provide strategic advice on industry-wide issues.

The breadth of our expertise is unique in the Australian market and, unlike boutique insurance firms, our national insurance practice group is supported by a full service firm. This gives us the ability to draw on a depth of specialist expertise in every category of law to address any insurance issues our clients face - a service boutique law firms cannot offer.

Mills Oakley has a forward thinking and progressive culture where new technology is embraced, and innovation is a hallmark of our strategic approach. We invest our own capital and co-create with our clients in developing New Law applications such as artificial intelligence applications and shared claims management platforms. We adopt a modern approach to people, knowledge, upskilling and rewards. This has seen us well placed to meet the black swan event which is COVID-19.

We have undertaken matters successfully at all levels, including Courts of Appeal and the High Court of Australia, in cases that have set precedents on how the law is applied, including high profile civil and coronial cases. Our clients include some of Australia's leading insurers including Suncorp.

Our national insurance team is independently recognised for its expertise as a Leading Professional Indemnity Law Firm in *Doyle's Guide 2019* and a Leading Insurance Team in *Legal 500 Asia Pacific 2019*.

Our partners are also individually recognised:

David Slatyer, Partner

- Recommended Lawyer, Professional Indemnity, *Doyle's Guide*
- Recommended Lawyer, Insurance Law, Personal Injury Litigation and Product Liability Litigation, *Best Lawyers in Australia*
- Recommended Lawyer, Insurance, *The Legal 500 Asia Pacific*

Mark Civitella, Partner

- Recommended Lawyer, Insurance Law, *Best Lawyers in Australia*
- Recommended Lawyer, Workers Compensation (Defendant), *Doyle's Guide*

Louise Cantrill, Partner

- Ranked Lawyer, Insurance, *Chambers Asia Pacific*

- Recommended Lawyer, Insurance Law, Litigation, Medical Negligence and Professional Malpractice Litigation, *Best Lawyers in Australia*
- Recommended Lawyer, Medical Negligence, Professional Indemnity, Public Liability, *Doyle's Guide*
- Recommended Lawyer, Insurance, *The Legal 500 Asia Pacific*
- Leading Lawyer, Insurance and Re-insurance, *Euromoney's Expert Guide*

Daren Curry, Partner

- Recommended Lawyer, Insurance, *The Legal 500 Asia Pacific*

Michael Down, Partner

- Recommended Lawyer, Insurance Law, *Best Lawyers in Australia*
- Recommended Lawyer, Insurance, *Legal 500 Asia Pacific*

Stuart Eustice, Partner

- Recommended Lawyer, Insurance, *The Legal 500 Asia Pacific*
- Recommended Lawyer, Product Liability Litigation, *Best Lawyers in Australia*

Nieva Connell, Partner

- Recommended Lawyer, Insurance Law, *Best Lawyers in Australia*
- Leading Lawyer, Defendant Public & Product Liability (Victoria), *Doyle's Guide*
- 50 Women to Watch, *Australasian Lawyer Magazine*

David McKenna, Partner

- Recommended Lawyer, Insurance, *The Legal 500 Asia Pacific*
- Leading Lawyer, Dust Diseases (Defendant), *Doyle's Guide*
- Recommended Lawyer, Professional Indemnity, *Doyle's Guide*

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What we do

Professional Indemnity and Corporate Liability

We have advised on professional indemnity and corporate liability (financial lines) claims as both coverage and defence counsel for over 30 years, acting in prominent matters for Australia's largest insurers.

Our dedicated team has 28 lawyers undertaking work for seven insurers across five jurisdictions. This team is complemented by our full service national practice offering in areas such as corporate advisory, financial services, property, construction, employment/industrial relations, delivering a complete, specialist skill-set for insurers and insureds.

Over the past three years we have undertaken over 320 professional negligence claims, spanning more than 15 different professional sectors such as health and medical, financial services, construction, engineering, architecture, corporate and management, legal, real estate/property, and employment.

We regularly advise boards and management on claims ranging from breach of continuous disclosure obligations, employment practice breaches, fraud perpetrated both on them and by one of their members (including CEO fraud), regulatory obligations such as anti-money laundering and anti-slavery provisions, environmental liability and data security/privacy.

Recent matters include:

- Representing a solicitor of the Crown in the Royal Commission into Child Sexual Abuse (NSW) in relation to his defence of the State;
- Defending a claim lodged in the Australian Human Rights Commission (AHRC) against an insured that included allegations of sex discrimination, sexual harassment and victimisation during the course of the claimant's employment with the insured;
- Advising an insurer on coverage under professional indemnity and management liability policies for a \$70m claim against insolvency practitioners involving dishonest director conduct, non-disclosure and late notification;
- Representing the insurer of a national association in defamation proceedings brought by one of its former members against the association in the NSW Supreme Court and on appeal in the NSW Court of Appeal where the association was wholly successful;
- Acting for directors in "Operation Credo" ICAC investigation and inquiry;
- Acting in the \$22m Brisbane River Boardwalk claim including breach of professional duties;
- Advising on CBA's liability in relation to anti-money laundering breaches in relation to the AUSTRAC prosecution of CBA;
- Advising on continuous disclosure obligations and breach of directors' duties including misleading and deceptive conduct in relation to class actions involving Leighton Holdings (CIMIC);
- Advising on professional liability for an accounting firm in relation to breach of privacy and data security obligations and improper use of data licencing for service products used by it in undertaking work for its clients;
- Representing the digital service provider in relation to the Red Cross data breach which was at the time Australia's largest. This has included risk mitigation, Privacy Commissioner investigation and subsequent claims management;
- Defending and advising mortgage brokers regarding various liability issues, including defending claims arising from fraud in underlying documents and using this knowledge to draft agreements underpinning mortgage broker activity.
- Defending and advising on insurance broker liability including breach of duty for failure to obtain adequate or appropriate insurances, failure to comply with underwriting and claims management protocols and drawing on this experience to advise on binders and agreements;
- Acting for companies and their directors/officers in various unfair dismissal proceedings, for example, a non-performing senior manager who alleged discrimination and sexual harassment after being performance managed, an investigation into workplace bullying following the suicide of an employee;
- Advising not-for-profit organisations in relation to various disputes including member disputes, defamation and governance procedures, for example, a Sydney based rowing club which

withdraw membership for aggressive behaviour by two members who then sued the board for improper procedures and defamation;

- Acting for an architect in respect of an aircraft hangar which partially collapsed, resulting in litigation against the contractor, engineers and architect;
- Defending a claim brought against a hydraulic engineer by the Department of Defence concerning damage to a battleship fire control director as a result of an incorrect hydraulic cleaning procedure;
- Acting for the insurer of an owners' corporation executive committee in ACAT defending claims brought by a lot owner for the appointment of a compulsory manager and alleging bullying, harassment and misuse of sinking funds';
- Defence of an accountant in a Supreme Court claim involving ANZ and borrowers for \$3m;
- Defence of numerous retail investor cases, including in the Federal Court for \$11m resolving 26 claims involving 40 plaintiffs;
- Defence of a claim for superannuation fund managers in relation to tax advice;
- Defence of an accountant regarding deficient advice and audit services in a Supreme Court action involving Westpac;
- Defence of mortgage broker regarding loan preparation and fraudulent property transactions claim in Supreme Court.

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Our team



David Slatyer

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Background and Experience

David is a partner and leader of our Insurance practice in Queensland.

David specialises in helping Australian and global insurers and their customers, as well as self-insured companies and statutory bodies, to best manage their losses and resolve disputes.

Having 24 years in practice, David has resolved thousands of cases and legal disputes involving insurance for professional liability, public liability, life and total and permanent disability, property and ISR, directors, management and employment liability.

In professional indemnity David has experience on professional conduct inquiries, D&O, employment liability, most professionals including barristers, health, engineering, construction, real estate,

financial services.

David and his expert legal team manage schemes or portfolios of claims, material litigation, class actions, inquests and professional inquiries, as well as the drafting of insurance products, providing advice and assistance with all manner of insurance, liability and risk questions.

His approach is to be fair and consistent, striving for resolution at good value. David regularly presents for clients and industry seminars and is recognised by his industry as a leading lawyer in his field.

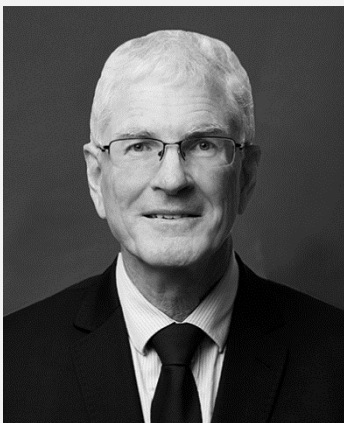
Recent projects

- The 2018 Dreamworld Inquest – failure of the Thunder River Rapids Ride, leading to four fatalities and other injuries;
- Defending a barrister in relation to alleged unconscionable conduct in the Supreme Court;
- Financial advisors – resolved \$60m class action against financial advisors in the Federal Court.
- Mining consultant – defended \$28m claim for alleged negligent advice on structural support to mine.
- Engineer's Design – \$10m claim involving design of pedestrian walkway on the Brisbane River.
- Architects – multi-million dollar claims including redevelopment of theme park, large shopping centre, public amenities, and an 18 party litigation involving a major tourist resort.
- Medical specialists – professional disciplinary proceedings and public inquiries, and various allied health professionals and institutions in a vast array of medical malpractice claims and medical product claims.
- Employment practices – policy coverage and defending a sensitive case against directors and the national agency under D&O and EPL policies.
- Supreme Court and Court of Appeal hearings for the superannuation Trustee in claim for TPD benefits of \$1.3m. Important question of obligation to reconsider an application if new evidence is supplied, with laws of trust, equity and superannuation;

- Several claims against a Dam manufacturer and its insurer from the family of a young girl who perished when the dam failed, and safety prosecution by the State Government;
- The Ravenshoe gas explosion which killed two persons and injured 17 when a vehicle collided with a gas bottle at a café, and unprecedented catastrophe in the community with significant media attention;
- Litigation regarding a business policy, whether included cover for privately owned power network. Judgment received and resolved with notice of appeal pending.

Recognition

- Recommended Lawyer, Professional Indemnity, *Doyle's Guide*.
- Recommended Lawyer, Insurance Law/ Personal Injury Litigation/ Product Liability Litigation, (Brisbane), *Best Lawyers in Australia*;
- Recommended Lawyer, Insurance, *Asia-Pacific Legal 500*.



David McKenna

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Background and Experience

David is a recognised leader in the insurance industry in Perth. He acts for and advises insurers on commercial claims in the categories of professional liability, general liability, property and business interruption as well as acting for a major former asbestos manufacturer in relation to industrial diseases. He regularly acts as counsel in litigated matters and has been instructing solicitor and junior counsel in a number of leading High Court cases in the area of Local Government liability and dust diseases.

David has been involved in the management of professional indemnity claims involving finance brokers, psychologists, chiropractors, physiotherapists, nurses, architects, surveyors and veterinarians, including claims to their professional bodies as well as liability claims.

David has successfully defended insureds in claims to the Disability Commission, Human Rights Commission and Privacy Commissioner. He has managed claims involving management liability for schools, nursing homes, unincorporated associations and others. David successfully defended defamation claims in the Supreme Court on a number of occasions and appeared in the WA Industrial Commission and Fair Work Commission, including wrongful dismissal and adverse action claims. He has considerable

experience in occupational safety and health claims and claims involving transport of goods by road and rail.

David also has considerable experience in policy interpretation and is regularly involved in providing complex indemnity advices to insurers. He is also recognised for his expertise in policy drafting and interpretation.

He has a great understanding of the needs of his insurance and other clients and leads a team which is dedicated to cost efficient resolution of claims. His reputation has always been that the settlement he will provide for his client will be “firm but fair.” However, if a matter warrants defending, then he is recognised for his determined advocacy on behalf of the client.

Recent projects

- Acting to defend a claim of negligence against a barrister for failing to ensure that written heads of agreement were signed at mediation, in circumstances where the plaintiff subsequently sought to resile from the agreement at mediation and litigated her claim to trial. The claim involved issues of the application of barrister’s immunity, causation and determination of the trigger point for commencement of the limitation period;
- Acting in respect of major bushfire litigation on behalf of multiple insurers seeking to recover amounts paid out to insureds from the responsible party.

Recognition

- Recommended Lawyer, Insurance, *Asia-Pacific Legal 500*;
- Leading Lawyer, Dust Diseases (Defendant, WA), *Doyle’s Guide*;
- Recommended Lawyer, Professional Indemnity (WA), *Doyle’s Guide*.



Mark Civitella

Partner | Perth

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Background and Experience

Mark is an insurance expert who has practised exclusively in insurance litigation over a 20-year career focussed on the Perth market.

Working across all aspects of insurance law, Mark has expertise in professional indemnity, workers' compensation and employers' indemnity, public and products liability, property damage, motor vehicle, occupiers' liability and engineering and contract works claims.

Mark handles all variety of workers' compensation claims with a special expertise in the fast developing area of psychiatric injury claims.

Mark's advice is frequently sought in matters of statutory interpretation, policy indemnity issues, quantum for catastrophic claims and complex liability disputes. He acts for a range of insurers, self-insured corporations, insurance schemes and Local and State Government bodies.

Recognition

- Recommended Lawyer, Insurance Law (Perth), *Best Lawyers in Australia*;
- Recommended Lawyer, Workers Compensation (Defendant) (Western Australia), *Doyle's Guide*.



Stuart Eustice

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Background and Experience

Stuart has recognised experience in many forms of insurance disputation and advises Australia's leading insurance companies in all aspects of liability insurance litigation.

He brings particular expertise in defence of injury and professional risks and regularly advises in relation to specialty and complex claims.

He is renowned for his easy to follow advice and exceptional client service, aimed at successfully steering complex litigation toward a timely resolution.

Stuart's clients include national and ASX listed Insurers, private clients and self-insureds.

Recent projects

- Indemnity dispute for injury claim resulting from minors

driving an unregistered motor vehicle on private property;

- Indemnity dispute regarding liability to a third party for property damage, late notification and dual insurance;
- Defence of claim arising from failed modifications to a motor vehicle;
- Litigation and regulatory inquiries on behalf of health practitioners including malpractice and/or privacy breaches;
- Numerous Supreme and County Court Litigation matters.

Recognition

- Recommended Lawyer, Insurance, *Asia-Pacific Legal 500*.



Louise Cantrill

Partner | Sydney

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Background and Experience

Louise has over 20 years' experience as an insurance and risk specialist as both a specialist litigator and front-end technical advisor. Louise has particular expertise in transforming liability and risk into solutions and opportunities for insurer, corporate and individual clients.

Louise brings a wealth of experience navigating disputes, complex transactions and technical insurance requirements to deliver strategic and client focused outcomes. Louise is known for the depth of her expertise across a broad range of professional and corporate risk scenarios.

Louise manages all claims cost effectively and efficiently to achieve resolution, from small, unlitigated matters to complex, multi-party matters in the District, Supreme and Coronial Courts, including catastrophic injury, class actions and high profile cases.

Louise uses her extensive litigation experience to inform her transactional and technical insurance advice to provide strategic and transformational business solutions.

Recent projects

- Representing organisations and various directors and senior managers of over 100 organisations involved in the Aged Care Royal Commission;
- Defending a board of directors in relation to claim for wrongful dismissal brought by CEO;
- Acting for service provider to Red Cross in relation to

regulatory and civil claims arising from a major data breach;

- Defending medical practitioners and allied health professionals across broad range of specialties in Supreme and District Courts;
- Representing real estate agent in high profile Coronial Inquest into death of child relating to controversial issues regarding failure of a fire alarm;
- Advising on various Commonwealth Bank matters including the AUSTRAC prosecution, class action, bank bill swap rate prosecution and Royal Commission;
- Reviewing a multi-million dollar primary and excess insurance program for an Australian international construction and retail business;
- Advising board of an international food and agriculture business on an annual risk assessment program for board due diligence;
- Advising developer of large residential development on bespoke insurance and indemnity clauses in a specialist multiparty design, construct, operate and maintain contract.

Recognition

- Ranked Lawyer, Band 4, Insurance, *Chambers Asia-Pacific*;
- Recommended Lawyer, Insurance Law/Litigation/Medical Negligence,/Professional Malpractice Litigation (Sydney), *Best Lawyers in Australia*;
- Recommended Lawyer, Medical Negligence/ Professional Indemnity/ Public Liability (NSW), *Doyle's Guide*;
- Recommended Lawyer, Insurance, *Legal 500 Asia-Pacific*;
- Leading Lawyer, Insurance and Re-insurance, *Euromoney's Expert Guide*.



Daren Curry

Partner | Sydney

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Background and Experience

Daren has 20 years' experience as an Insurance lawyer, acting for leading Australian insurers and government departments in the areas of Builders Warranty, Property, Motor, ISR, Contract Works, Construction & Engineering and Professional Indemnity.

Daren brings particular expertise in litigious matters involving indemnity disputes, liability disputes and subrogated recoveries. Daren also advises insurers and industry bodies on policy drafting, legislative amendments, claims procedures and regulatory issues.

He is renowned for providing practical, commercially focussed solutions to complex problems, sharp legal and strategic advice and exceptional client service.

Daren's clients include major and boutique insurers, industry groups and government agencies including the Insurance Council of Australia, iCare, Suncorp, QBE, IAG, Calliden and the Building Insurers' Guarantee Corporation.

Recent projects

- Acted for an insurer in the defence of a builders warranty insurance claim in the NSW Supreme Court involving complex and untested issues including the interpretation of notification requirements under the policy and the NSW Home Building Act 1989 as well as intermingling of insured and uninsured works;
- Acted for an insurer of a contractor in respect of a claim by the Department of Defence concerning damage to military equipment by the contractor caused by faulty machinery;
- Acted in litigation between the insurer of a rubber compound materials contractor and a tyre retreading firm concerning faulty machinery that resulting in defective materials causing substantial damage to equipment and machinery supplied to the mining industry;
- Appointed by the NSW Home Building Compensation Fund (HBCF) to redraft the HBCF policy terms and conditions following amendments to the Home Building Act 1989 introduced in late 2017 and early 2018;
- Appointed by the Insurance Council of Australia to advise its members in relation to the regulation of credit hire and credit repair operators in Australia.

Recognition

- Recommended Lawyer, Insurance, *Asia-Pacific Legal 500*.



Michael Down

Partner | Sydney

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Background and Experience

Michael has three decades of experience in providing clients with legal services in relation to general liability, professional indemnity and insurance.

He regularly delivers presentations to legal audiences and local government bodies and at other fora, particularly in relation to developing case law, legislation and policies and procedures relevant to risk management.

Expertise

Michael's expertise includes:

- Insurance issues including policy interpretation and indemnity advice – liability policies;
- Litigation – High Court, NSW Court of Appeal, Supreme Court of NSW, District Court of NSW, Local Court of NSW, Coroners Court, NCAT;
- Presentations on Risk Management.

Recognition

- Recommended Lawyer, Insurance Law, Sydney, *Best Lawyers in Australia*;
- Recommended Lawyer, Insurance, *Asia-Pacific Legal 500*.



Nieva Connell

Partner | Melbourne

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Background and Experience

Nieva has significant expertise in liability insurance (injury, property damage, product liability and policy advice), and professional indemnity over nearly 20 years. She has a reputation as a highly capable and commercially astute lawyer who gets on the front foot with claims resolution.

Nieva's relevant experience includes representing the doctors and nurses on Manus Island pursuant to a professional indemnity policy.

Expertise

Nieva's expertise includes:

- Liability – Property Damage and Personal Injury
- Class Actions
- Professional Indemnity
- Policy advice.

Recent Projects

- Acting for medical professionals in class action arising from asylum seeker detention on Manus Island;
- Acting for real estate agent insurer in relation to indemnity denial arising from scheme by real estate agent's employee to grow cannabis in rental properties;
- Acting for a civil engineer in relation to an allegedly defective design leading to personal injury;
- Acting for building and design professionals in relation to \$30m claim arising from land subsidence issue on large construction site;
- Acting for numerous real estate agents in relation to issues arising in the course of provision of professional services;
- Acting for draftsman in relation to negligence claim arising from identification of incorrect title boundary, and subsequent adverse possession claim;
- Acting for strata manager in relation to negligence claim for failing to detect stair defect leading to personal injury.

Recognition

- President, Women in Insurance (Vic)
- Member of Australian Insurance Law Association
- Recommended Lawyer, Insurance Law, *Best Lawyers in Australia*
- Leading Lawyer, Defendant Public & Product Liability (Victoria), *Doyle's Guide*
- 50 Women to Watch, Australasian Lawyer Magazine
- Former lecturer in property law, University of Melbourne.