

CAPABILITY STATEMENT

# Commercial Division

INTEGRITY  
EXCELLENCE  
COURAGE

**McCabes**

McCabes Lawyers



McCabes is an ambitious and growing law firm with industry leading mid-market capabilities. We have a national footprint with a boutique culture; we are big enough to service your legal needs, without losing our personalised touch. We form genuine partnerships with our clients.

Our clients operate across every industry. They include ASX-listed companies, multi-national corporations in the public and private sectors, insurers, government departments, SMEs, family-owned enterprises and entrepreneurs. McCabes has existing relationships with law firms around the globe. We frequently partner with those firms should the legal needs of our clients expand beyond Australia.

# Why do clients choose McCabes?



# About McCabes

**At McCabes, our Commercial Division stands as the cornerstone of our legal domains, consisting of seven practice areas, each specialising in a wide range of legal subjects. These specialised practice areas are fortified by an assembly of dedicated, client-centric, and experienced legal professionals.**

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Our Commercial Division acts as the dynamic core of McCabes, providing comprehensive legal solutions across a spectrum of industries and sectors. These seven practice areas have been meticulously developed to address the multifaceted needs of our clients.

Below you will find an overview of the practice groups within the Commercial Division here at McCabes. Following this will be a comprehensive summary of each practice group's offering, recent matters and team expertise. If you require any further information on any of our practice group, we encourage you to reach out to the relevant contacts shown for that group.





# Litigation & Dispute Resolution

**McCabes' Litigation & Dispute Resolution Group combines in-depth commercial knowledge with technical excellence to deliver outstanding legal services for clients.**

A focus on quality aligned with a pragmatic approach has seen the group develop into one of Australia's leading commercial litigation practices.

The group distinguishes itself from other legal advisors by working with clients to develop and execute strategies that are tailored to their current and future needs.

In addition to litigation, the group has significant experience in mediation and arbitration, and it regularly advises businesses on regulatory changes and litigation risk management.

Our principals are hands on and work closely with clients throughout the process. This allows clients to gain legal advice from our most senior and most experienced practitioners.

The group's knowledge and experience span a wide range of jurisdictions and industries including manufacturing, retail, property, insurance, finance and agriculture.

## Recent Matters

- Representing various corporate entities in a dispute against former employees and their related entities for breaches of duties in contract and equity arising from misuse of confidential information including obtaining search orders, freezing orders and related urgent injunctive relief from the NSW Supreme Court.
- Representing the liquidator of a company in the High Court of Australia in proceedings for the recovery of real property which a director of the company had fraudulently transferred from the company to himself and his wife as joint tenants and then to his wife as the sole proprietor.
- Representing a shareholder in a derivative suit against the director of a company for oppression and breaches of fiduciary duties in the Supreme Court of NSW.
- Representing a high net worth individual and related corporate entities in a dispute arising from matters relating to the control and management of a family trust in the Supreme Court of NSW.
- Representing a sub-contractor for the construction of warships in claims for damages under contract and the Australian Consumer Law in the Supreme Court of NSW.

## Expertise

- Litigation
- Dispute Resolution
- Contract Disputes
- Insolvency and Debt Recovery
- Intellectual Property
- Directors' Duties
- Corporations Act disputes
- Competition and Consumer Act disputes
- Partnership disputes
- Property disputes
- Board advisory and regulatory training
- Wills and probate disputes



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# Corporate

**McCabes' Corporate Group brings a sophisticated, commercial mindset to the legal aspects of corporate transactions, with a wealth of experience across a range of sectors, including manufacturing, retail, hospitality, insurance, financial services, technology, health, energy and resources, agriculture, real estate, transport and aviation, construction, education, and government.**

The group supports clients to address the increasingly complex corporate and regulatory environment in Australia, and provides legal advice on corporate governance, regulatory and compliance advice and approvals, and general Corporations Act and ASX Listing Rules advice.

## Recent Matters\*

- Acquisition of PaulCamper by Camplify for cash and scrip consideration valued at \$48 million, and associated \$10.5 million capital raising by Camplify
- Sale of VisionFlex by Adcock Private Equity (and others) to ASX-listed 1st Group for scrip consideration
- Dowra Education's sale of Macleay College to The Fashion Institute
- IPO and ASX listing of Gold 50
- Sale of Gradability (Performance Education) to Seek

\*Includes matters undertaken by members of the team at previous firms



## Expertise

- Mergers and acquisitions, disposals, and demergers (public and private)
- Commercial contracts and arrangements
- Capital raising for both ASX listed and private entities, including IPOs, rights issues, and secondary raisings on ASX
- Joint ventures, shareholder arrangements, partnerships, management and operational structures
- Capital management initiatives, including share-buybacks and capital returns
- Australian regulatory approvals, including ASX, ASIC and foreign investment
- Corporations Act and ASX Listing Rules compliance issues, including continuous disclosure, corporate governance and directors' duties
- Corporate restructures
- Employee incentive plans for public and private entities

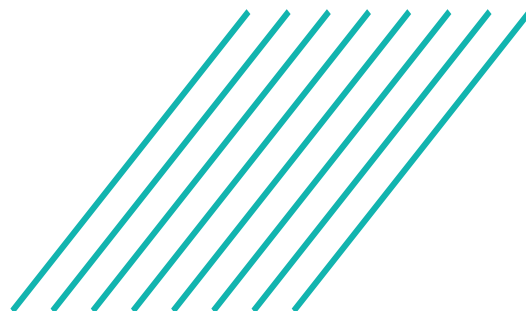


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# Employment, Workplace Relations & Safety

**McCabes Employment, Workplace Relations and Safety Group assist employers by helping them navigate the heavily regulated and ever-changing area of employment law.**

The group guides clients through times of growth and change with precise and timely commercial advice on contentious and non-contentious matters that span the life cycle of the employment relationship. Its aim is to help clients forge ahead despite the external pressures of the dynamic employment environment.

The group has experience across most industries, including government, insurance, security, clubs, hospitality, retail, health, manufacturing, clerical, transport and logistics, real estate, building and construction, schools and higher education.

As well as the provision of solutions-focused advice, the group educates employers through its board advisory and compliance/regulatory training, newsletters, and seminar series, and provides face-to-face and virtual training to clients on a variety of employment, industrial and safety law topics.

## Recent Matters

- Providing employment advice throughout COVID-19, including issues with working from home, vaccinations, work health safety issues, JobKeeper and other programs
- Acting for the University of Technology, Sydney in a range of unfair dismissal, general protections, discrimination and other actions
- Acting for CSR regarding the termination of contracts of carriage
- Acting for a large supermarket chain in claims for reinstatement of injured workers, including before the Full Bench in Hickey v Coles Group Supply Chain
- Acting for the security industry in Full Bench proceedings regarding rostering practices and in relation to whether a low paid authorisation should issue



## Expertise

- Employment agreements from factory floor to C-suite
- Contractor agreements
- Workplace policies
- Boardroom disputes and severance claims
- Employee benefits and executive compensation, including incentive plans
- Statutory compliance
- Workforce planning, management and disputes
- Termination of employment
- Workplace investigations, including in respect of bullying, discrimination, harassment, employee misconduct and employee complaints
- Management of injured workers
- Business protection through mechanisms such as post employment restraints
- Defence of all employee claims, including unfair dismissal, general protections, discrimination and breach of contract



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# Intellectual Property

**McCabes' Intellectual Property (IP) Group is a fully integrated intellectual property strategy, protection, commercialisation and enforcement practice.**

We form long-lasting relationships with our clients who rely on us to help them protect their brands, ideas and inventions, to maximise their value.

Our extensive cross-border engagement in contentious and commercial IP matters across numerous industries stands testament to our depth of experience.

The group's fundamental strength and expertise lie in IP strategy, IP risk counselling, worldwide brand management, commercialisation and enforcement of IP rights.



## Recent Matters

- Advising one of Australia's most successful commercial buyers' agencies on brand strategy and general intellectual property matters; managing the client's brand portfolio
- Acting for an Australian alcoholic beverage brand in relation to the licensing and assignment of its trademarks
- Acting for a clinical psychology services provider in successfully opposing a third-party trade mark application and preventing it from being registered; IP portfolio structuring advice
- Advising a private investor consortium on IP strategy and commercialisation matters with respect to an invention; representing the client in associated commercial negotiations with one of the largest sovereign wealth funds in the world
- Advising a former professional National Rugby League footballer and media personality on IP strategy, IP asset portfolio structuring, protection and commercialisation matters with respect to an invention; representing the client in associated commercial negotiations with investors

## Expertise

- Strategy and counselling
- Policy and best practice advice
- Audits and due diligence
- Clearances, Freedom to Operate, and availability searches
- Risk advisory and market intelligence
- Prosecution and management of IP
- Drafting and negotiating a full suite of IP-related contracts (including in relation to acquisitions/divestments, licensing, non-disclosure, cooperation, co-existence, product development, manufacturing, options and talent/influencers)
- Litigation and alternative dispute resolution
- Disputes with regulators
- Anti-counterfeiting

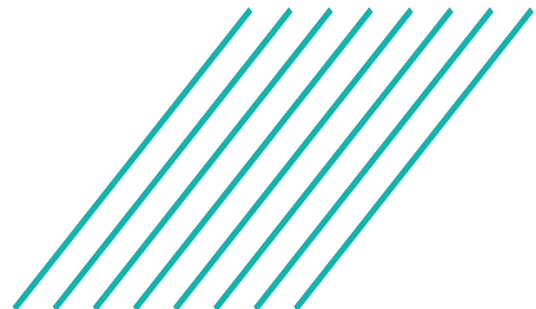


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# Property

**McCabes' Property Group has experience offering a comprehensive range of legal property services across the public and private sectors and in a broad range of industries. Our experienced team enables us to deliver practical, cost-effective, timely solutions for our clients.**

Australia has a dynamic property and leasing environment where legislative requirements and industry practices are evolving. Our group has advised on routine and complex commercial and retail leasing across all Australian jurisdictions.

Our group is committed to investing in innovation and technology to be able to provide a better transactional experience. We work closely with our clients to determine the best approach for each property transaction. We do this by actively engaging with our clients to anticipate project costs, identify risks and implement strategies to prevent issues from escalating and disrupting the progress of a transaction.

Our group are highly skilled negotiators with significant expertise in major residential and commercial property developments, including advising on structuring, funding, site acquisition/ due diligence, sub-division and preparation of off-the-plan contracts for sale, and divestment of strategic sites to developers in an effective manner for our clients.

## Recent Matters

- Acting for a property developer in respect of its proposed site acquisition, including advising on the proposed terms of offer and structure of the proposed transaction documents
- Acting for a property developer in respect of acquisition of a development site, including due diligence enquiries and preparing call option deeds that allowed the client to lodge any application for development approval
- Acting for a vendor selling by tender 5 non-contiguous floors in a strata-titled CBD office building, including preparing tender documentation enabling sale of all lots in one line, sale of lots individually, or sale of a combination of lots, as well as complex disclosures relating to fire safety orders and unauthorised use of common property
- Acting for a landowner on the sale of a strategically significant site to an ASX-listed developer, including advising on proposed terms of offer and structure of transaction documents with substantial re-drafts to better protect vendor-client, including advice on sensitive tenancy matters affected by sale
- Drafting Instruments creating drainage easements, rights of way and other rights

## Expertise

- Acquisitions and sales, including due diligence and report preparation
- Building and construction contracts
- Company title
- Compulsory acquisition
- Conveyancing
- Crown land leasing
- Leasing and licensing
- Strata and community title advisory, by-law preparation, and disputes
- Property management and development
- Property trusts and joint venture structures
- State taxes, GST and capital gains tax advice
- Syndicated property investments
- Telecommunications leasing, licensing, and associated

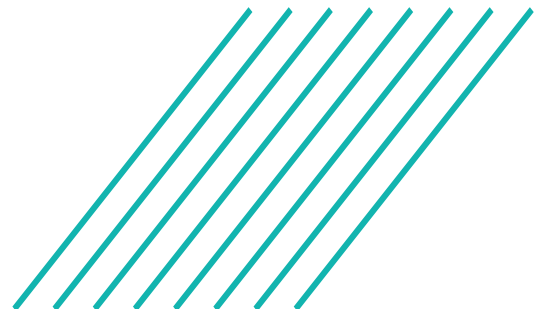


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# Private Clients

**The Private Clients Group specialise in estate and succession planning, asset protection structuring and business succession planning for high net wealth individuals, family businesses and large corporate entities.**

Led by senior practitioners with in-depth commercial knowledge and strong technical expertise in all areas of estate and trust law, our focus on quality, confidentiality, and attention to detail has allowed the group to develop a reputation for excellence and discretion.

All our lawyers work hard to understand the specific needs and requirements of our private clients. Working closely with our clients' other professional advisers (including accountants and financial planners), we provide strategic, timely and bespoke advice across an extraordinarily broad range of practice areas to ensure that our clients' personal wealth is protected and preserved for future generations.

Our expertise is on providing certainty for our clients and pragmatic legal advice, with a focus on:

- Estate planning to achieve asset protection and tax efficiency
- Asset protection to reduce risk exposures
- Business succession planning
- Estate administrations and estate disputes
- Trusts advice – including discretionary, unit, hybrid or special trusts

## Recent Matters

- Preparation and drafting of testamentary trusts and capital protected trusts linked with detailed memoranda of wishes and reasons (in anticipation of claims for provision under the Succession Act)
- Preparation and drafting of discretionary trusts, unit trusts and hybrid trusts with unit holder agreements (and linked shareholders agreements for corporate trustees)
- Refinancing, restructuring advice, including succession planning and corporate structure advice to clients
- Acting on behalf of a beneficiary of a multi-million-dollar trust/estate in highly contested proceedings commenced by the trustee pursuant to s63 of the Trustee Act 1925 (NSW)
- Administration of large estates, including an estate recently administered to probate with assets in excess of \$70 million including hotel-related assets



## Expertise

- Wills, including testamentary trusts
- Enduring Powers of Attorney and Appointments of Enduring Guardian
- Superannuation and Life Insurance
- Memoranda of Wishes and Reasons
- Asset Protection and Business Succession Planning
- Binding Financial Agreements
- Loan Agreements and Mortgage documents
- Business succession and buy/sell arrangements
- Ancillary funds and charities
- Deeds of Family Arrangement
- Probate and Letters of Administration, including resealing of grants and complex applications
- Rights and duties of executors and trustees

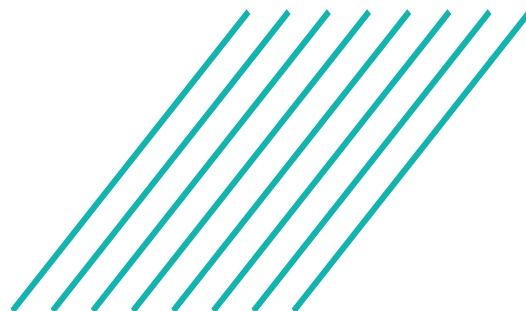


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# Financial Services Advisory

**McCabes' specialist Financial Services Advisory Group delivers expert commercial and regulatory advice to our insurance and financial services clients.**

Led by Principal Mathew Kaley, who joined McCabes from Allianz Australia in 2019, the practice offers a distinct advantage to our clients. We combine in-depth legal capability and an understanding of the insurance industry with extensive, hands-on experience. We advise insurance clients across specialist areas, including regulatory compliance, regulatory inquiries and disputes, insurance product disclosure and marketing, insurance distribution arrangements, commercial ventures and commercial disputes.

We also provide advice to our corporate clients concerning their insurance arrangements, including their external insurance programs, captive arrangements, and insurance disputes. In all cases, our advice is based on a careful understanding of our client's business needs and a focus on providing practical solutions.

## Recent Matters

- Advising the Insurance Council of Australia and its members on various regulatory change matters, drafting several applications to ASIC for industry relief and meetings with regulators in relation to same
- Assisting several insurers and intermediaries to obtain or vary their existing AFS Licence and implement insurance claims handling requirements from 1 January 2022
- Preparing a revised Obligations Register for a leading retail insurer and advising on practical aspects of implementation
- Reviewing and advising on Product Disclosure Statements for insurers and discretionary mutual funds, including with respect to unfair contract terms and its associated Target Market Determinations
- Representing an insurer in relation to ASIC investigations regarding potential unfair contract terms in a Product Disclosure Statement

## Expertise

- Regulatory compliance
- Distribution arrangements and commercial ventures
- Insurance product disclosure and marketing
- Mergers and Acquisitions
- Regulatory inquiries and disputes
- Corporate Governance
- Privacy Act compliance and advice

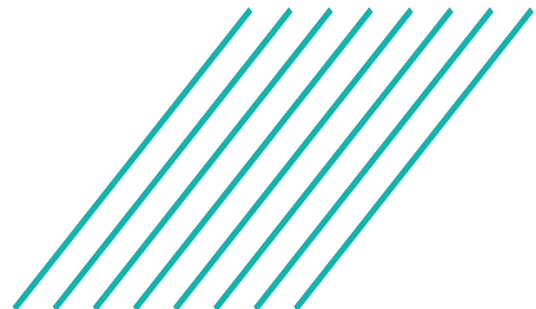


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