SIMPSON GRIERSON

# Litigation Outlook

January 2026

# Contents



# Introduction

**In 2026, New Zealand's litigation landscape is being shaped by heightened director and shareholder risk, a shifting regulatory environment, and a move towards leaner litigation. Our team looks at six key litigation trends for the year:**

1. **All eyes on the boardroom:** Personal liability for directors is expanding beyond traditional boundaries and the Law Commission's review of directors' duties signals potential legislative change
2. **Escalating class actions and shareholder activism:** The growth of class actions continues to shape New Zealand's litigation landscape. Shareholders and consumers are increasingly taking collective action, giving rise to heightened risk for boards and their directors
3. **A new era of regulatory enforcement:** Structural reforms are reshaping New Zealand's regulatory architecture. The FMA is poised to take over CCCFA enforcement, AML/CFT supervision consolidates under the DIA, and the CoFI regime enters its active enforcement phase. Meanwhile, maximum penalties under the Fair Trading Act will increase fivefold for individuals to $1 million
4. **Cyber, AI and digital risks intensify:** The swift proliferation of AI in New Zealand exposes organisations – and their boards – to new types of legal risks, from liability for inaccurate AI-driven decisions to claims under the Fair Trading Act for misleading representations based on unchecked outputs
5. **Infrastructure disputes in the pipeline:** New Zealand's ambitious infrastructure programme creates opportunity - and dispute risk. Major projects involving PPPs, tight timelines and fast-track consenting inevitably generate pressure points around variations, delays and regulatory challenges
6. **Litigation gets leaner with major High Court shake-up:** Once-in-a-generation changes to the High Court Rules take effect in 2026, introducing an evidence-first model and enhanced emphasis on proportionality and early settlement

These themes don't operate in isolation. They intersect and compound.

*"The message for 2026 is clear: proactive risk management, robust governance, and dispute readiness are not optional. They are essential to navigating New Zealand's increasingly complex litigation and regulatory environment."*

That is why early, strategic advice matters. Our litigation team works with general counsel, directors and boards to get ahead of these risks. We have been at the forefront of these issues and understand how the risks intersect because we see them play out in real time.

We welcome the opportunity to discuss these trends with you and your team. Whether you're facing an immediate issue or looking to strengthen your governance framework, please get in touch.


**Nina Blomfield**
*Head of Litigation*

# All eyes on the boardroom

Director liability is firmly in the spotlight as expectations of accountability evolve in an age of growing complexity. Rising claims for breaches of directors' duties, intensifying stakeholder pressures, shifting regulatory settings, more assertive regulators, and accelerating technological disruption are combining to create a governance environment that is both more demanding and significantly less forgiving.

Against this backdrop, we expect further claims against directors this year as we await the outcome of the Law Commission's review of director duties and liabilities under the Companies Act in 2027.

## Claims for breaches of directors' duties

Over the past year, directors faced claims for breach of duty from both creditors and shareholders:

### Creditors

Following the 2023 Mainzeal decision, which confirmed that creditors can bring personal claims against directors for breaches of certain duties, we have seen an increase in creditor-initiated actions.

In a recent case, two unsecured creditors of a small construction company successfully pursued its sole director for reckless trading. The director had entered into construction contracts with family trusts associated with the plaintiffs, accepted substantial deposits, and then used those funds to pay existing debts, service liabilities and support personal interests.[1] With insolvency levels still elevated relative to pre-pandemic norms, further claims of this kind are likely.

### Shareholders

Growing shareholder activism is sharpening the focus on directors' liability, leading to more scrutiny of board decision-making, increasing the likelihood of challenges to governance practices, and fuelling claims (including derivative actions) in which shareholders allege breaches of directors' duties. For more detail on shareholder activism trends, read our chapter here.

## Regulatory changes

Changes proposed by the Government signal a clear regulatory shift towards greater personal accountability for misleading and deceptive conduct by individuals, including significantly increased Fair Trading Act penalties (from a maximum of $200,000 to $1 million for individuals). For more detail on regulatory reforms, see our chapter on regulatory enforcement here.

## Increasingly assertive regulators

A more assertive regulatory stance has led to directors increasingly facing personal consequences – from criminal charges and banning orders to substantial financial penalties.

For example, the Commerce Commission recently:

- Obtained a conviction against the director of a construction company for bid-rigging of publicly funded projects
- Secured fines against the director of a debt collection company for making misleading representations when collecting debt about possible consequences for failing to pay and what debt collectors could do when chasing payment
- Obtained declarations against the director of a cleaning company for engaging in cartel conduct (price fixing and market allocation) with a competitor.

In addition to this, the Financial Markets Authority:

- Obtained a conviction against Peter Huljich, a former director of Pushpay Holdings Limited, for insider trading in relation to the sale of his 9% shareholding in the company
- Obtained a $1.4 million penalty against the former managing director of CBL Corporation for multiple continuous disclosure and fair dealing breaches.[2]

## Technological disruption

For detailed analysis of how AI and cyber risks create exposure for directors, see our chapter here.

## Law Commission Review

The Law Commission's review of directors' duties and liabilities under the Companies Act 1993 is underway. If the Commission concludes that reform is necessary, it will recommend specific amendments in its final report to the Government, expected in 2027. Although the review is supported by the Supreme Court, the Institute of Directors, and the wider legal community, any substantive legislative change remains some distance away, meaning directors must continue to operate under the current framework for the foreseeable future.

1. *Batley v McDonald [2025] NZHC 974.*
2. *Simpson Grierson acted in these proceedings.*

# Escalating class actions and shareholder activism

Class actions continue to be a prominent feature of New Zealand's litigation landscape, with a notable increase in major claims commenced in 2025 and more predicted for 2026. As representative proceedings have become increasingly entrenched, shareholders and consumers are now frequently acting collectively to attempt to hold companies and directors to account. Those actions are typically supported by sophisticated and well-resourced litigation funders.

In addition, and consistent with global trends, shareholder activism in New Zealand is on the rise. We expect to see continued growth in activism over the coming year, accompanied by a corresponding increase in claims brought against companies and their directors.

This trend is reflected in the New Zealand Institute of Directors' 2025 Director Sentiment Survey, which identifies shareholder and member activism as a significant pressure point for boards, with 44% of directors expecting moderate or high impact from activism over the next two years. That concern reflects the marked increase in observable activism in New Zealand last year, with campaigns centred on board composition, shareholder litigation, and coordinated consumer action.

## Class actions

Class action risk in New Zealand has increased following court decisions confirming the availability of opt-out class actions and permitting common fund orders at the start of proceedings. These developments make class actions more attractive to litigation funders by expanding the potential claimant pool and providing greater certainty of recovery.

New class actions filed in 2025 included claims against:

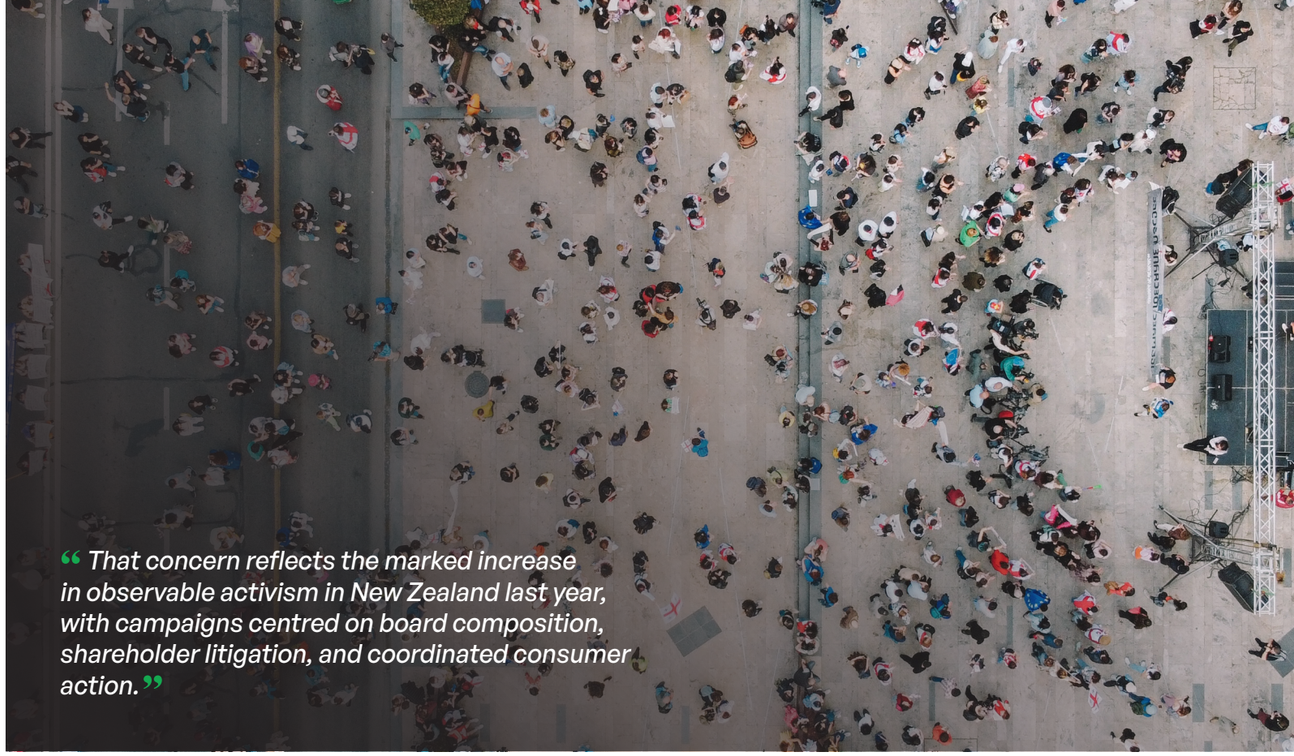
- Hino Motors (a Japanese manufacturer) and Hino's New Zealand distributor by purchasers or lessees of Hino trucks[3]
- Johnson & Johnson by purchasers of cold and flu products containing phenylephrine, an active ingredient alleged to be ineffective when taken orally
- Transpower and Omexom by businesses in the Northland region who allegedly suffered losses as a result of the power outage connected with the failure of a transmission tower.

2025 also saw two significant developments in relation to the settlement of class actions:

- Intueri Education Group Limited: In February 2025, the High Court approved a pro rata distribution of settlement proceeds to the plaintiffs based on their alleged loss. This was a claim by investors in Intueri Education Limited in connection with the initial public offering (IPO) of its shares, brought against the IPO promotor, AWN Holdings Limited, and various directors of both AWN and Intueri[3]
- ASB Bank: In October 2025, ASB agreed to pay $135 million to resolve the claim brought against it by customers in relation to its alleged failure to make required disclosures under the Credit Contracts and Consumer Finance Act 2003 when borrowers made changes to their loans. The High Court has recently approved the settlement.

3. *Simpson Grierson has acted or is acting in these proceedings.*





*"That concern reflects the marked increase in observable activism in New Zealand last year, with campaigns centred on board composition, shareholder litigation, and coordinated consumer action."*

## Shareholder activism

### Board composition battles

Shareholders have a strong incentive to pursue activist campaigns where they perceive shortcomings in governance or strategy, or where a company's share price or asset base is underperforming. Last year, several campaigns focused on board composition:

- Bremworth: Four directors resigned following pressure from a minority shareholder group
- Rakon: Major shareholders opposed the appointment of independent directors, resulting in those candidates choosing not to stand for election
- NZME: An activist shareholder was elected to the board after seeking to remove existing directors.

### Shareholder litigation

Shareholders also turned to litigation to pursue complaints and, in some cases, to defend the company:

- FNZ: Shareholders issued proceedings purportedly on behalf of employees against the company and 17 current and former directors, alleging improper share dilution through capital raises[3]
- Drylandcarbon GP One: A 50% shareholder and director successfully brought a derivative claim against two other directors, with the Court finding they had diverted a corporate opportunity by establishing a separate forestry investment. The Court ordered the defendant directors to account to the company for the profits obtained
- SkyCity Adelaide: A shareholder sought leave in Australia to bring a derivative action against former executives and board members after the company received AU$67 million in regulatory penalties for anti-money laundering breaches
- Du Val Property Group: Minority shareholders unsuccessfully pursued a representative claim against the Financial Markets Authority, alleging it failed to exercise reasonable care in investigating Du Val entities. The High Court struck out the claim.

### Emerging activist tactics

Activists are increasingly leveraging the internet and social media to amplify their influence. The reach of online platforms gives activists greater ability than ever to shape public opinion and impact market sentiment.

Companies must recognise that a single motivated activist can rapidly generate significant online momentum, increasing the risk of class actions as larger claimant pools incentivise litigation funders to pursue proceedings.

### Board readiness

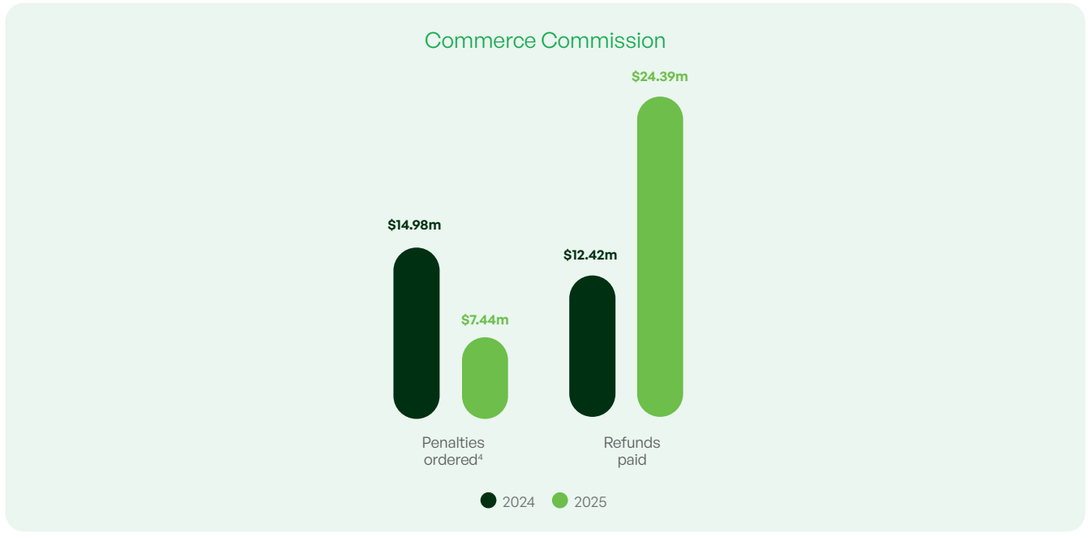
Activism in 2025 has shown a clear move toward more engaged and assertive stakeholders, a trend expected to continue into 2026. Boards should anticipate sustained pressure and adopt a proactive approach to engagement with investors, consumers and other key stakeholders. This includes strengthening governance practices and developing robust strategies to respond to activist demands.

# A new era of regulatory enforcement

### Enforcement activity at a glance in 2025

2025 saw heightened activity from both the Commerce Commission and Financial Markets Authority, and the financial impact of their regulatory enforcement was substantial.

Together, these regulators obtained over $42 million in penalties, fines, and payments to the Crown in lieu of penalties, and secured over $74 million in refunds to affected parties. This is a clear indication that their enforcement action is delivering tangible outcomes.





4. *Includes pecuniary penalties, fines, and payments to the Crown in lieu of penalties.*

This enforcement activity shows no sign of abating over the next 12 months as the Commission and FMA become more targeted and more willing to pursue individual accountability. As at December 2025, the Commission alone had 116 open investigations and proceedings.

In addition, regulatory activity in 2026 will be influenced by significant institutional changes that will reshape New Zealand's regulatory scope and priorities.

### Commerce Commission

Key enforcement highlights for the Commission in 2025 include:

- Jetstar: $2.25 million fine for misleading compensation claims in breach of the Fair Trading Act, along with refunds of over $1 million to affected customers
- A name-suppressed company: concluded the first criminal cartel prosecution, resulting in a $30,000 fine being imposed (on the basis that was all the company could pay and a fine of $595,000 would otherwise have been appropriate)
- Auckland International Airport: 11% reduction in passenger charges after the Commission found the Airport had earned excessive profits of $190 million
- Alpine Energy: secured an agreement for a $16.9 million refund to 33,800 customers who were overcharged.

The Commission will hand over approximately 24 active Credit Contracts and Consumer Finance Act 2003 (**CCCFA**) investigations and proceedings when enforcement responsibility transfers to the FMA (see the 'Legislative amendments' section over the page for details).

The Commission has identified six specific enforcement priorities for 2026:

1. Cartels, with a particular focus on bid-rigging in infrastructure projects
2. Online sales conduct, including fake reviews and subscription traps
3. Grocery sector breaches
4. Telecommunications sector breaches
5. Motor vehicle sales and finance, particularly regarding vulnerable consumers
6. Unconscionable conduct.

These priorities sit alongside the Commission's enduring focus on cartels, anti-competitive markets, product safety and the protection of vulnerable consumers.

## Financial Markets Authority

2025 saw enforcement action in respect of multiple fair dealing breaches against insurers and banks resulting in:

- IAG: $19.5 million penalty and $21 million refunded to 269,000 customers
- ANZ Bank: $3.25 million payment to the Crown in lieu of a pecuniary penalty and $5.39 million in refunds
- Westpac: $3.25 million penalty and $6.35 million refunded to 24,621 customers
- Southern Cross Travel Insurance: $1.105 million payment to the Crown in lieu of a pecuniary penalty and $3.5 million in discount remediation
- Tower: $7 million penalty and $11.7 million in refunds.

Three significant actions by the FMA to watch in 2026 are:

- CBL: Civil proceeding against company and two former directors alleging misleading IPO offer documents, with a hearing in April 2026[5]
- Booster Investment Management: Civil proceeding alleging numerous breaches of the Financial Markets Conduct Act by the company and its directors and senior managers in connection with investments in related party transactions
- Du Val Group: Ongoing investigation into Du Val and its directors Kenyon and Charlotte Clarke following 2024 statutory management.

## Legislative amendments and structural changes

### The CoFI regime

The Conduct of Financial Institutions (CoFI) regime was officially introduced in March 2025 and is expected to be an ongoing focus area for the FMA in 2026, particularly as the FMA confirmed in its Financial Conduct Report 2025 that conduct gaps remain.

### AML/CFT consolidation

- Stage 1: Anti-Money Laundering and Countering Financing of Terrorism (Supervisor, Levy, and Other Matters) Amendment Bill awaiting final reading
- Stage 2: Intended commencement on 1 July 2026, with the current three supervisor system (Reserve Bank of New Zealand, FMA, and Department of Internal Affairs) to be consolidated under the DIA who will have sole responsibility for supervising and enforcing the AML/CFT regime, as well as introduction of industry levy.

### CCCFA transfers to FMA

The long-awaited transfer of regulatory responsibility for the Credit Contracts and Consumer Finance Act 2003 is expected to take effect in 2026, moving oversight from the Commerce Commission to the FMA.

Approximately 24 active CCCFA investigations are expected to shift from the Commission and continue with the FMA.

We see this as a sensible change with the FMA already regulating the conduct of financial institutions in a number of areas that overlap with the provision of credit.

### Fair Trading Act penalties

A bill is to be introduced in early 2026 proposing to increase penalties under the Fair Trading Act 1986

- Maximum penalties for individuals would increase five-fold from $200,000 per contravention to $1 million
- Maximum penalties for companies would increase from $600,000 per contravention to the greater of: $5 million, three times the commercial gain, or the value of the transaction.

These changes would significantly increase exposure for corporates, directors, senior executives, and other individuals who breach the Act.


5. *Simpson Grierson is acting in this proceeding.*

*“The message is unambiguous: inadequate governance, whether through failure to implement appropriate security measures, ignoring known deficiencies or mishandling responses, can trigger personal liability for directors under their duties to act with care, diligence and in the company’s best interests.”*

# Cyber, AI and digital risks intensify

For some time now, New Zealand organisations and their leaders have been increasingly aware of litigation risk arising from the use of technology, with a particular focus on cyber breaches. The swift proliferation of AI in New Zealand means that a new area of potential liability is steadily coming into view.

Regulators are watching and litigation is bubbling to the surface. Organisations need to develop strong AI and cyber governance frameworks and monitor these proactively. As these threats intensify and legal consequences crystallise, technology governance has moved from technical concern to boardroom imperative. Directors and organisations who fail to recognise this do so at their peril.

## AI risk: key liability areas

There is no doubt that AI introduces a new lens on legal risks.

### Director liability under the Companies Act

Directors face potential personal liability for both AI and cyber-related failures under existing Companies Act duties. At the forefront are the statutory duties to act in the best interests of the company and to exercise reasonable care, diligence and skill. AI systems can produce inaccurate, biased, or incomplete recommendations, and directors remain accountable for decisions based on those outputs.

Equally, a failure to implement and monitor appropriate oversight, risk management and compliance can lead to direct breach of duties, including in relation to financial disclosure and reporting obligations of listed companies.

The message is unambiguous: inadequate governance, whether through failure to implement appropriate security measures, ignoring known deficiencies or mishandling responses, can trigger personal liability for directors under their duties to act with care, diligence and in the company’s best interests.

### Privacy and cyber governance

Recent publicity around the Manage My Health and Neighbourly data breaches has once again brought cyber risk to the forefront for boards. AI is often associated with privacy and cyber risks, and for good reason. Poor governance of AI tools can lead to unlawful use or failure to protect personal information. It has also underpinned a wave of technologies used by bad actors in cyber-attacks. In both scenarios, organisations and boards may find themselves liable if they fail to take adequate measures to mitigate these risks.

### Fair Trading Act exposure

Liability under the Fair Trading Act may arise where use of AI results in deceptive conduct or false or misleading representations. Examples include misrepresentations resulting from inaccurate AI outputs, such as chatbots, and AI-generated advertising that uses misleading statements or imagery.

### Intellectual property breaches

Poor governance of AI use can lead to infringement of intellectual property rights. Many AI models are trained on data sets scraped from the internet, meaning that in response to prompts they may generate images or texts, brand names or logos that reproduce trademarks or copyright material. This is a rapidly developing risk area, with several large and high-profile law suits pending around the world.

### AI risks in the public sector

AI use across the public sector is increasing at a remarkable pace. Given the low trust that New Zealanders reportedly have in AI,[6] public decisions using AI are likely to be challenged by disaffected parties. These challenges may arise through judicial review, particularly where AI creates material error resulting from AI hallucinations, or lack of procedural fairness where AI is used as a substitute for proper consideration by a natural person.

### Signals from overseas

Regulators globally are sharpening their expectations. ASIC, the Australian securities regulator, has highlighted the use of AI and director conduct as a focus area in its 2025-26 Corporate Plan, and has warned that failing to prioritise cyber-security exposes directors to breach of duty claims. In New Zealand, both MBIE and the Institute of Directors have urged boards to build AI literacy, assess AI-related risks, and ensure they have appropriate governance structures.

Recent research in the United States identifies more than 50 federal securities class actions since 2020 relating to AI use, many alleging that directors failed to disclose AI vulnerabilities, overstated capability or placed excessive reliance on flawed models. Yahoo’s former directors settled cyber-related claims for US$29 million.

New Zealand courts have not yet confronted these issues. However, given expanding AI use and low public confidence in it, it appears inevitable that such cases will eventually reach the courts.

6. *Trust, attitudes and use of artificial intelligence | KPMG NZ*

# Infrastructure disputes in the pipeline

New Zealand's commitment to large-scale infrastructure investment is set to define the foreseeable future. Transport, water, energy and social infrastructure projects are moving from planning to delivery at pace. This surge brings both opportunity and complexity. Where projects are ambitious, multi-party, and high-value, disputes are not just possible: they are a natural feature of the landscape.

### Pressure points in delivery

Major projects often involve tight timelines and evolving scopes. These dynamics can lead to disputes over variations, extensions of time and cost adjustments. Parties that fail to anticipate these issues in their contracts and/or manage them proactively during delivery risk finding themselves in more serious disputes.

### Common flashpoints include:

- Scope changes and variations: Design evolution, unforeseen site conditions, and regulatory changes frequently require contract variations. Disputes arise when parties disagree on whether changes fall within the original scope, the methodology for pricing variations, or entitlement to time extensions
- Programme delays: Infrastructure projects operate on interdependent timelines. Delays in one area cascade through the programme, creating disputes about responsibility, costs and extension of time claims
- Cost overruns: Budget pressures intensify when costs exceed projections. Disputes emerge over who bears additional costs, whether they result from design deficiencies, contractor performance or external factors.

### Public-Private Partnerships (PPPs) and funding models

PPPs and other innovative funding structures remain central to delivering infrastructure at scale. They offer flexibility and access to capital, but they also introduce layers of contractual and governance complexity. Disputes in this space typically arise from risk allocation and performance obligations.

The long-term nature of PPPs means disputes can emerge years into a project's operational phase, not just during construction. Service delivery standards, maintenance obligations, and changed circumstances all create potential for disagreement between public and private parties.

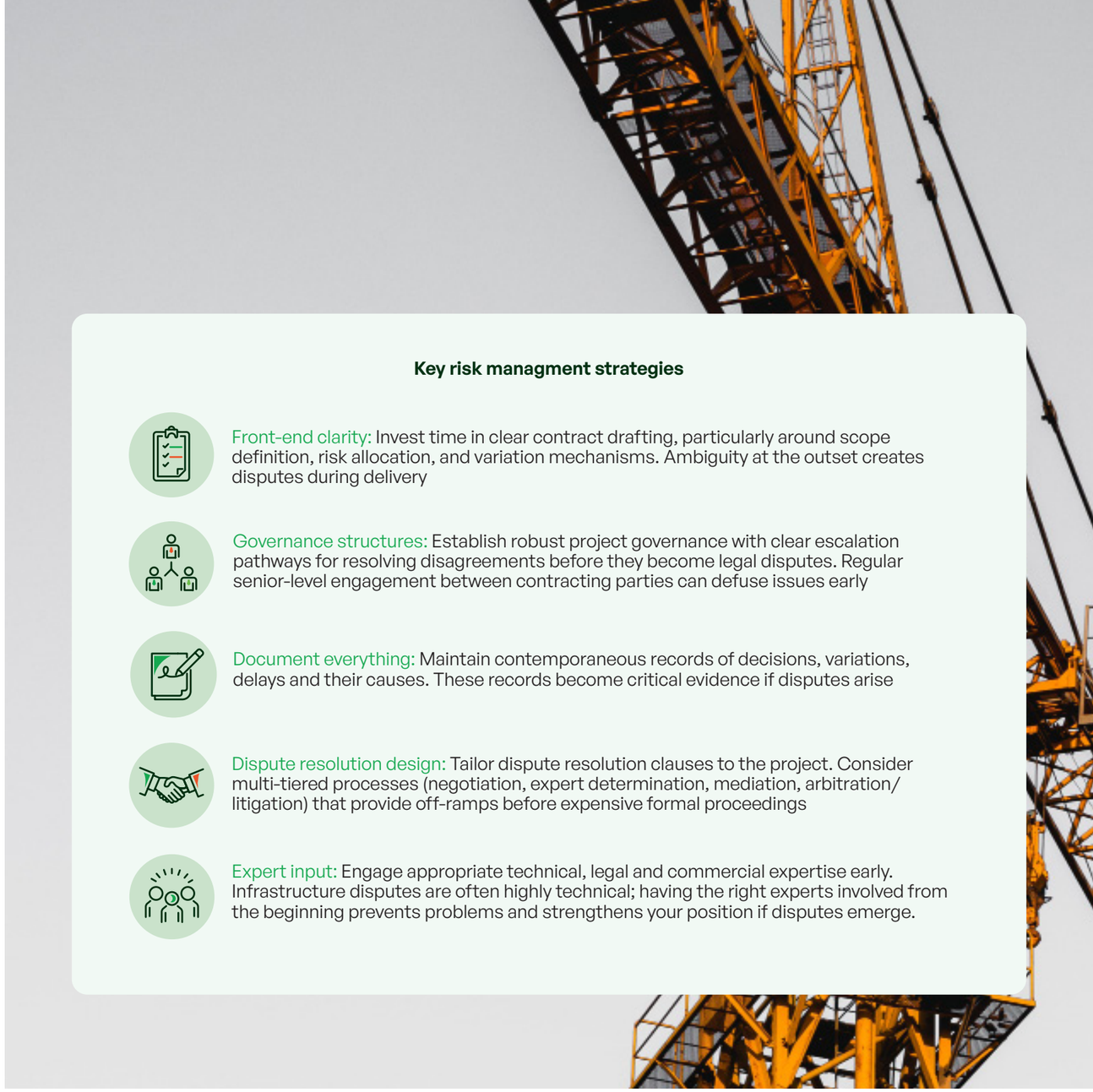
### Regulatory and stakeholder dynamics

Fast-track consenting and streamlined approval processes are designed to accelerate delivery, but they also risk compressing contracting arrangements and due diligence. This creates potential flashpoints, particularly where environmental or community interest groups are also seeking to challenge certain projects.

Judicial review, contractual claims for delay or disruption, and applications for injunctive relief are likely to be prominent in 2026 and beyond. The intersection of contractual and public law remedies creates particular complexity, for example: a party might simultaneously pursue contract claims for delay while facing judicial review challenges that created the delay in the first place.

### Managing the risk

The scale and ambition of New Zealand's infrastructure programme means that disputes will occur, but the risks surrounding them can be managed. Clear drafting, robust governance and early engagement on possible disagreements are critical. In particular, dispute resolution clauses should be more than boilerplate. They need to reflect the complexity of the relevant project and the interests of the parties involved.



### Key risk managment strategies

Front-end clarity: Invest time in clear contract drafting, particularly around scope definition, risk allocation, and variation mechanisms. Ambiguity at the outset creates disputes during delivery

Governance structures: Establish robust project governance with clear escalation pathways for resolving disagreements before they become legal disputes. Regular senior-level engagement between contracting parties can defuse issues early

Document everything: Maintain contemporaneous records of decisions, variations, delays and their causes. These records become critical evidence if disputes arise

Dispute resolution design: Tailor dispute resolution clauses to the project. Consider multi-tiered processes (negotiation, expert determination, mediation, arbitration/ litigation) that provide off-ramps before expensive formal proceedings

Expert input: Engage appropriate technical, legal and commercial expertise early. Infrastructure disputes are often highly technical; having the right experts involved from the beginning prevents problems and strengthens your position if disputes emerge.

Ultimately, infrastructure growth is good news for the economy and for those involved in delivering it. Participants should approach risk allocation and contract management with discipline and maintain strong records throughout the life of the project. For those who prepare well, disputes can often be resolved efficiently without derailing delivery. In this environment, dispute readiness is not pessimism; it is prudent planning.

# Litigation gets leaner with major High Court shake-up

As at 31 December 2024, there were 2,706 active civil cases in the New Zealand High Court. This caseload is split between 47 Judges and Associate Judges, with the judiciary being involved from start to finish. The average wait time for a scheduled hearing in the Auckland High Court was 627 days.

But 2026 sees the introduction of a once-in-a-generation change to the High Court Rules intended to combat the expensive, complex and lengthy litigation process that currently characterises the majority of High Court litigation.

### A cultural shift

The Rules are now underpinned by a broader overriding objective, which places greater emphasis on proportionality and cost in proceedings, resolution (other than by trial) and speed.

The Rules also now impose a duty on the parties and their solicitors to co-operate with each other. This represents more than a technical amendment. It signals a fundamental shift in litigation culture. The judiciary has made clear that the historical approach of lengthy pleadings, extensive discovery, and later trial preparation must give way to a more proportionate, cost-effective model.

### Substantive procedural changes

From a procedural perspective, the changes introduce an "early evidence" model, with parties serving their fact evidence much sooner in the proceeding:

- Plaintiffs: serve fact witness statements and chronology within 25 working days of the last pleading
- Defendants: serve fact witness statements and chronology 45 days after receipt of the plaintiff's evidence
- Expert evidence: served later in the proceeding, with a presumption of only one expert per topic.

The assumption of lengthy discovery early in the proceeding has also been dispensed with. Rather, parties will be expected to provide enhanced initial disclosure at the time of filing their pleading (including known adverse documents), with the possibility to make subsequent applications for targeted further disclosure.

### The Judicial Issues Conference: the new fulcrum

The changes introduce the Judicial Issues Conference (**JIC**), which has been described by representatives from the Rules Committee as the "fulcrum" around which the procedural issues of the case rotate.

The purpose of the JIC is to, among other things:

- Identify the issues in dispute
- Consider the procedural requirements for fair disposition
- Consider whether parties should resolve proceedings by alternative dispute resolution.

Parties will file position papers and bundles of key materials before the conference and will be expected to use this JIC as their first advocacy opportunity. This early judicial engagement is designed to narrow issues, eliminate unnecessary procedural steps, and encourage settlement where appropriate. Parties may be required to attend the JIC in person (along with counsel). This will mean counsel can take instructions from clients during the course of the JIC, allowing matters to keep progressing.

### The trial

There are also changes to the trial process:

- Both parties will file openings in advance
- Parties will co-operate in preparing the common bundle
- Changes to the rules of giving evidence at trial to reduce the length of evidence given by witnesses.

### What does this mean for parties in litigation?

Overall, the changes are intended to reduce the time and cost involved for parties to litigation. The greater emphasis on alternative means of resolving disputes are designed to encourage parties to settle cases at an earlier stage of the proceedings.

The messaging from the judiciary has been that a significantly large number of cases settle before reaching trial, many of which do so at the very last minute. It is hoped that these changes will generate a move away from this. Ultimately, the intention is to reduce costs for parties and free up judicial resources.

There will be more upfront work and cost for parties, with parties needing to be prepared to hit the ground running when filing (or being served with) proceedings. The evidence-first model means parties can no longer use the discovery process to "build their case". Instead, they must have their evidence ready much sooner, requiring earlier and more focused investigation and preparation.

### Strategic implications

The new rules create both opportunities and challenges:

| Opportunities: | Challenges: |
|---|---|
| ✓ Earlier resolution of cases that should settle | ✗ Earlier case theory and evidence preparation required |
| ✓ More focused litigation on genuine issues in dispute | ✗ Front-loaded costs and resource commitment |
| ✓ Reduced overall costs for appropriately scoped cases | ✗ Less opportunity to use discovery to better understand opponent's case |
| ✓ Earlier judicial input on case management and settlement prospects. | ✗ Greater pressure to engage meaningfully in earlier settlement discussions. |

> *"For parties and their advisors, the message is clear: the new rules demand earlier preparation, genuine co-operation, and a proportionate approach to dispute resolution. Those who adapt quickly to this new paradigm will likely find more efficient paths to resolution."*

### Introduction of Commercial List in Auckland

October 2025 also saw the introduction of a new dedicated Commercial List in Auckland, with the aim of streamlining the resolution of commercial disputes. Proceedings on the Commercial List are managed by dedicated commercial judges, with expedited case management.

Proceedings eligible for the Commercial List include commercial disputes between parties where the value of the claim is not less than $1 million, applications for judicial review of certain regulatory decisions, claims or disputes in relation to intellectual property rights, and other proceedings of a commercial character that are of sufficient private or public importance.

# Contacts

If you'd like to understand how these developments could affect your business, or want support to strengthen governance, refine dispute strategy, and prepare for regulatory engagement, please get in touch with one of our experts. For more information on these and other expected litigation trends for 2026 please subscribe to our mailing list.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