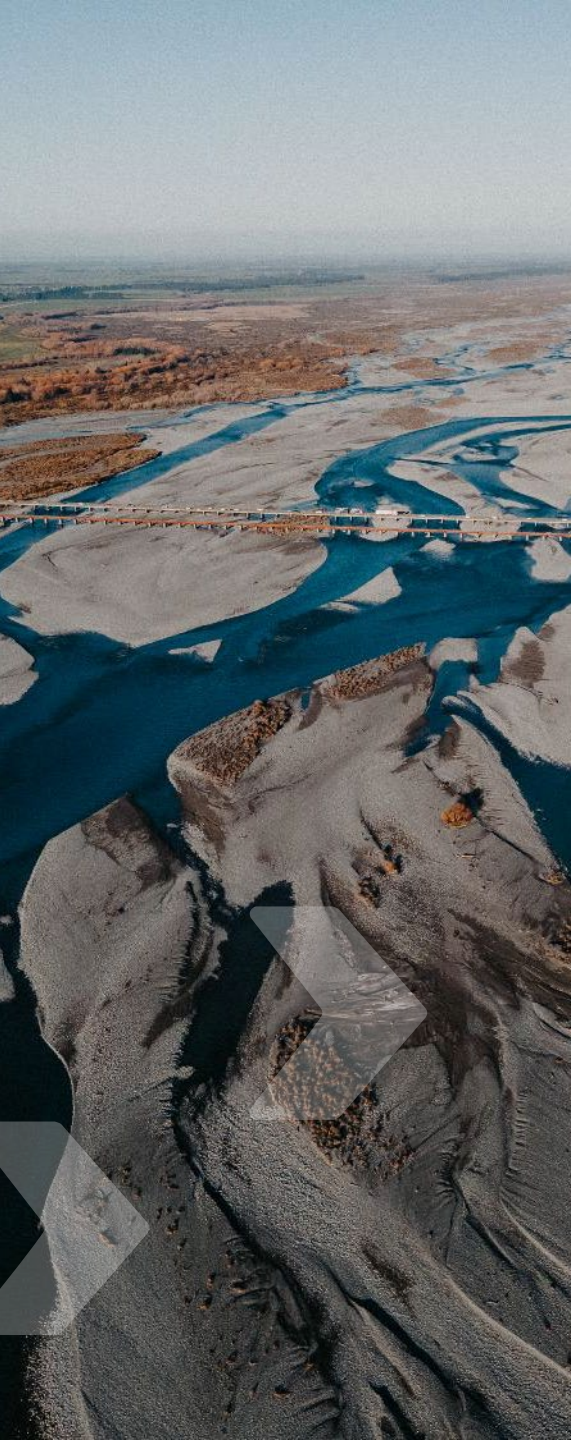
WOTTON KEARNEY

New Zealand Insurance Market Trends Update 2026



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Welcome to our 2026 New Zealand Insurance Market Trends update

We are pleased to present Wotton Kearney's 2026 Insurance Trends Report, an in-depth analysis of key developments shaping the insurance industry in Aotearoa New Zealand over the last year.

This report provides insights into the legal trends, claims activity, and legislative and regulatory changes that are influencing insurers, underwriters, brokers, and corporates operating in our market. In addition, we explore significant Court decisions that have impacted the sector, offering a perspective on how these rulings may guide future practices and policies.

Key highlights include:

- New High Court Rules and what you can expect from this 'once in a generation reform'.
- An update on the Contracts of Insurance Act 2024, now we are one year on.
- Key employment and statutory liability legislative changes.
- Claims trends: An overview of the types of claims that are shaping the market and the implications for underwriting and risk assessment.
- Legislative and regulatory developments: Updates on recent reforms and regulatory priorities, with a focus on compliance challenges and opportunities.
- Significant decisions: Analysis of landmark cases and their implications for insurers and the broader marketplace.
- How the Cyber landscape is evolving and why regulatory reform is needed.

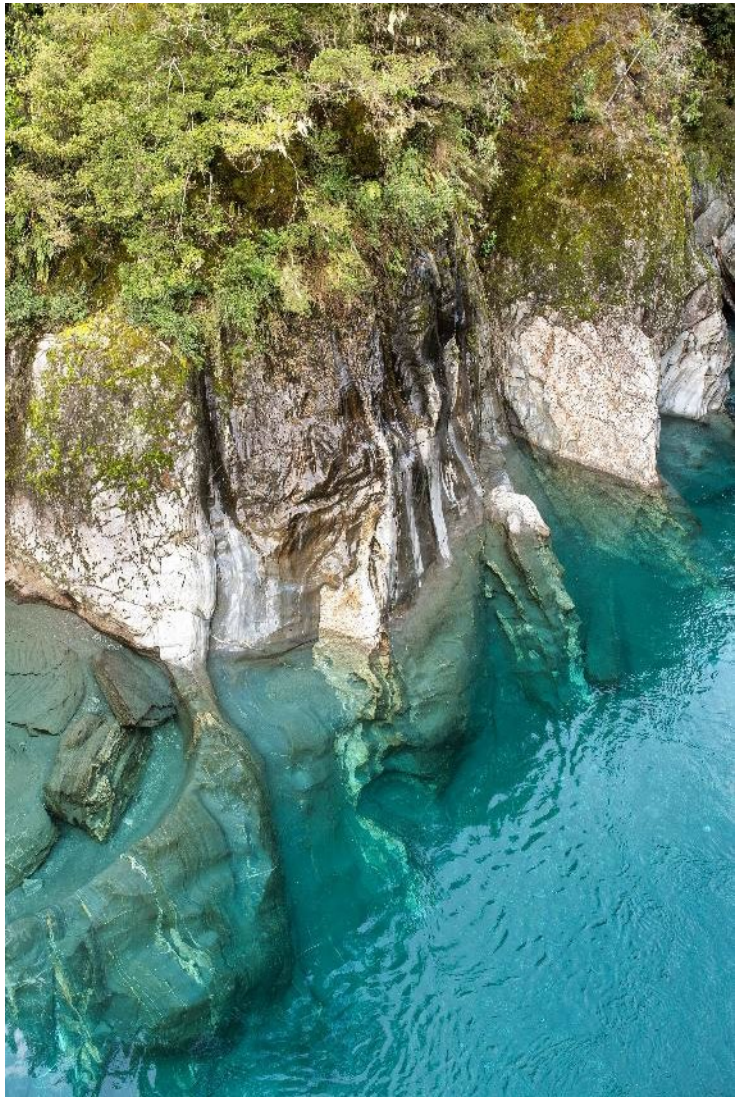
In an environment of constant change, it is critical for industry participants to stay informed and prepared.

This report is designed to support your strategic decision-making and provide actionable insights to navigate the complexities of the insurance landscape in New Zealand.

We trust you will find this report valuable and insightful.

Should you have any questions or wish to discuss any of the topics further, please do not hesitate to reach out to one of our WK partners.

Antony Holden
Managing Partner
New Zealand



Wrap up of Trends in 2025's report

Wotton Kearney's 2025 Trends Report covered several key changes that impacted New Zealand's insurance industry in 2024.

Contracts of Insurance Act and how it modernises the industry by consolidating six Acts, changing disclosure rules and introducing fairer remedies for policyholders.

Directors & Officers face increased liability for climate reporting, AI risks, and workplace safety, alongside proposed reforms to the Companies Act.

Key Court rulings for **Construction PI**, including the 10-year longstop, producer statement liability, and time-barred claims that clarify risk and limitation periods.

Financial Services PI highlighted increased claims for accountants, ongoing disciplinary risks for auditors (with heightened FMA scrutiny), climate-related obligations, continued regulatory pressure as well as higher dispute resolution caps for financial advisers.

In **Property PI** an increase in disciplinary charges against real estate agencies, debates over the scope of agency work, legal decisions that increase the likelihood and financial impact of compensation in disciplinary proceedings, and the decision not to regulate property managers.

For **Employment Practices Liability** legal cases and reforms raised the bar for employer conduct and followed a trend of significant compensation awards for workplace breaches, in anticipation of upcoming changes to employee rights, contractor status, and income dismissal protections.

General Liability saw an increase in claim notifications, especially from construction and infrastructure projects and underground service damage, emphasising the need for careful coverage navigation as claim volumes rise but values remain steady.

Product Liability & Recall noted a rise in claims involving defective products and lithium battery fires, alongside an increased interest in first-party recall cover and evolving legal views on property damage and recall costs.

In **Life Sciences** the Therapeutic Products Act repeal, plans for a biotech regulator, and a strong clinical trial environment, created a mix of opportunity and uncertainty for insurers and biotech businesses.

The **Statutory Liability** section explained legislative changes, including the repeal of RMA reforms, ongoing reviews of health and safety law, and interpretations of liability for officers and trustees, which impact compliance, enforcement, and insurance coverage for statutory breaches in New Zealand.

For **Property & Energy** there was a surge in fraudulent claims amid economic challenges, key legal decisions clarifying the burden of proof for property damage, and legislative changes affecting fire service levies and natural hazards insurance.

Health saw a sharp rise in complaints and disciplinary actions against health practitioners, longer resolution times for health PI claims, and ongoing debates about informed consent and the use of puberty blockers, all within a context of evolving regulatory reviews and sector-wide stress.

Cyber & Technology highlighted the new privacy management framework, a light-touch approach to AI regulation, and a rise in privacy-related litigation, signalling higher expectations for privacy compliance and legal risk management.

For more in-depth reading you can find the 2025 report on the website: New Zealand Insurance Market Trends Update 2025: The key developments shaping the industry in Aotearoa - Wotton Kearney.

Major themes & highlights from the last 12 months

Last year Wotton Kearney covered a number of changes and outcomes of interest.

- **Regulatory reform:** Major changes across insurance law, RMA penalties, proposed proportionate liability, and tougher environmental enforcement.
- **Litigation procedure:** High Court Amendment Rules introduce an 'Evidence First' model and stronger cooperation duties, reshaping litigation strategy.
- **Liability exposure:** Risk allocation is changing for councils, insurers, and professionals, with uncertainty around valuation conflicts.
- **Industry trends**: AI regulation, freedom of expression issues, disciplinary exposure, employment claims, and real estate sector risks.

Highlights and more detail from conference presentations

- Contracts of Insurance Act modernises insurance law, requiring some changes to policy terms, disclosure and underwriting process. Key reforms under the Contracts of Insurance Act, including disclosure duties, remedies for misrepresentation, late notice, statutory charges and unfair contract terms. Comes in 15 November 2027.
- High Court Amendment Rules addresses changes needed to the NZ litigation system. Reform underpinned by Overriding Objective and general duty to co-operate.
- Analysis on two UK decisions interpreting insurance contract reforms, providing early guidance on fair presentation of risk, disclosure obligations, proposal wording and insurer delay under legislation similar to the Contracts of Insurance Act.
- Cyber developments in New Zealand, including ransomware, business email compromise and payment fraud trends, and their implications for insurance coverage, claims handling and the Contracts of Insurance Act reforms.
- Employment liability trends in New Zealand, including proposed unjustified dismissal reforms, privacy-related employment disputes and flexible working litigation trends affecting EPL exposure.

Articles & updates

- From 'joint and several' to proportionate liability in the building sector: A movement towards the Australian model: Proportionate liability proposal may shift risk; hybrid models under review.
- RMA changes set to reshape statutory liability cover: RMA fines increase substantially; insurance for fines prohibited.
- NZIV v Kenny: The latest word from the Valuers Board of Appeal on conflict of interest: overturns conflict finding but offers limited clarity for valuers.
- Environmental Liability in Australia and New Zealand – Reference Guide 2025: stronger enforcement and higher penalties.

High Court Rules

New High Court Rules: A ‘once in a generation reform’

The High Court (Improved Access to Civil Justice) Amendment Rules 2025 came into force on 1 January 2026. These reforms represent a significant change to how civil cases in the New Zealand High Court are managed, with the aim being to minimise all aspects of High Court litigation that have made it become unduly expensive, protracted and delayed.

We explain the key change and outline what can be expected for clients involved in High Court litigation in the future.

Key changes

Proportionality and the duty to cooperate

The new rules are intended to bring about a change in litigation culture by encouraging parties to identify the key issues in dispute and focus on these at an earlier stage in a proceeding.

To advance this culture change, the rules include a new overriding objective, which is a guiding principle introduced to ensure that the just resolution of a proceeding is determined in the most speedy and inexpensive manner possible. This is not an aspirational aim, but the anchor point that will guide judicial decision making throughout the lifecycle of a proceeding.

There is also a new general duty on parties and their lawyers to cooperate with each other, and with the Court, to achieve this overriding objective. This contemplates direct communications by way of telephone discussions or meetings.

It will no longer be sufficient for the parties to exchange assertive correspondence which can have the effect of hardening stances rather than facilitating communications which distil the matters that are truly of importance. Direct discussions will therefore be required to try and reach sensible agreements about matters of procedure and the substantive dispute.

Evidence first model

Approximately 90% of all High Court matters settle prior to trial.

The new rules therefore attempt to get parties to place greater focus on the key issues at the outset of proceedings so that matters which are going to settle in any event, settle earlier. This will mean the parties spend considerably less time, effort and money on litigation. Furthermore, precious Court hearing time can be freed up, and earlier hearing dates can be allocated to those cases that do require a substantive hearing.

> *“…a guiding principle introduced to ensure that …a proceeding is determined in the most speedy and inexpensive manner possible.”*

To facilitate this, the new rules largely adopt the evidence first model pioneered in the NSW equity division. The key features of this model include:

New disclosure rules

The current discovery regime is being replaced with an enhanced initial disclosure process. This will require parties to disclose documents when they file their first pleadings, now including all adverse documents, as well as documents which are referred to in the pleadings or that parties intend to rely on at trial.

The rationale for this change is to reduce the excessive amount of documentation currently produced in litigation while also making sure that relevant and essential documents are made available to the parties at an early stage in the proceeding.

These changes will require more frontloading of disclosure and will mean that defendants, in particular, will need to be quick to locate and disclose all required documents for disclosure alongside their statement of defence. Ideally, defendants will have started this process before proceedings are even issued.

Earlier service of factual evidence and chronologies

Briefs of Evidence will be replaced by *Witness Statements*. Witness statements will be shorter and address only issues of fact, rather than refer at length to documentary evidence. There is an emphasis on witness statements being less adversarial than the current briefs of evidence.

Factual witness statements and standardised chronologies will now be served much earlier in the proceeding:

- For plaintiffs - within **25** working days of the last pleading;
- For defendants - within **45** working days of the date they receive the plaintiff's evidence.

Factual witness statements must be confined to the witnesses' personal knowledge and should not simply recite or summarise documents. If parties want to set out the events arising from the documentary record in narrative form, that is the job of the chronology.

It is hoped that by preparing and exchanging factual witness statements and draft chronologies earlier in a proceeding's lifecycle, parties will be able to understand each other's cases more fully so that the true issues in dispute are better understood at an earlier stage.

Judicial issues conference

A key feature of the new rules is greater involvement of judges through the introduction of judicial issues conferences.

A judicial issues conference will be set down after the exchange of pleadings, initial disclosure, factual witness statements and draft chronologies. This will be a substantive fixture before a judge (or associate judge) which will focus on narrowing the issues, resolving interlocutory matters, considering whether alternative dispute resolution (like mediation) is appropriate and setting an efficient timetable to trial.

A day of judicial resources will be set aside for the judicial issues conference, including time in the morning for the judge to read parties' 10-page Position Papers. In this way, these conferences are not merely a set piece; they are an opportunity for parties to narrow the issues in dispute, clarify their position and advocate for their interests ahead of trial.

Our thoughts

The new rules are aimed at streamlining litigation and reducing costs. However, there will certainly be much more up-front work and therefore costs. There will also be an even greater premium on organisation and early notification of claims, given the compressed timetable for disclosure and the exchange of factual witness statements and draft chronologies. That said, we are hopeful these changes will be a positive step toward resolving claims much sooner and/or reducing the time and cost it takes for cases to get to trial.

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Contracts of Insurance Act

Contracts of Insurance Act 2024: One Year On

What you need to know and how it might impact you

The Contracts of Insurance Act 2024 (COIA) and its accompanying Contracts of Insurance (Repeals and Amendments) Act 2024 (Repeals Act) represent one of the largest legislative changes in insurance law history in New Zealand. As insurance industry stakeholders grapple with what they will need to do to ensure they comply with the Acts prior to 15 November 2027, this article focuses on the most significant workstreams associated with the new law.

Key features of the Acts

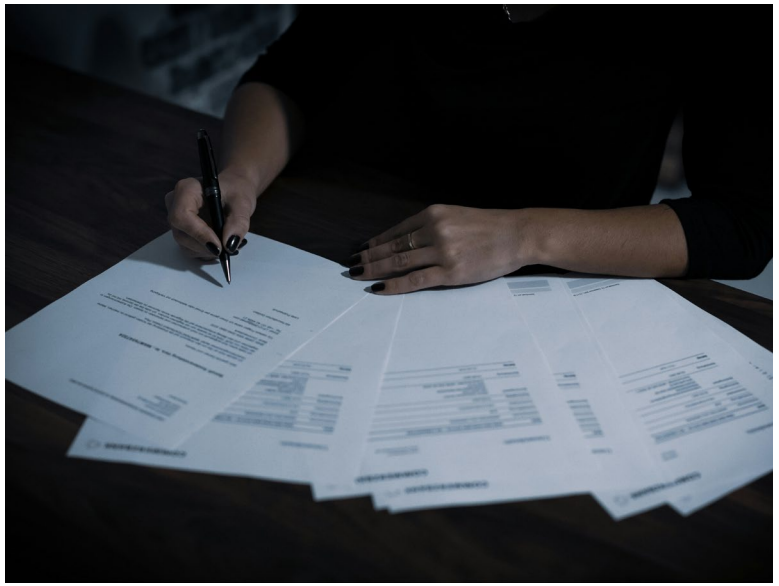
The Acts were introduced to modernise insurance law, promote confident and informed participation in the insurance industry, and ensure that the provisions of contracts of insurance, and the practices of insurers, operate fairly.[1] Among the most notable reforms are:

Duty of Disclosure: COIA redefines the duty of disclosure based on whether policies are consumer or non-consumer policies. For consumer policies, part 2 of COIA now requires insureds to take reasonable care not to make a misrepresentation, rather than imposing a broad duty to volunteer all material information. For non-consumer policies, COIA requires a 'fair presentation of the risk.'

Proportionate Remedies for Non-Disclosure and Misrepresentation: COIA has introduced a proportionate remedies regime with remedies that are designed to strike a better balance than simple avoidance of the contract of insurance.

Duty to assist policyholders to understand insurance contracts: Subpart 6B of the Repeals Act introduces into the Financial Markets Conduct Act a duty to assist policyholders (consumers or life/health insurance policyholders) to understand insurance contracts.

Unfair Contract Terms: The Repeals Act brings more insurance contracts within the scope of unfair contract terms legislation.



Insurers are making the changes necessary to comply with the Acts

Policy inception

COIA requires insurers to strike a difficult balance between asking clear and specific questions, and making sure they obtain all of the information that they need. Rather than relying on broad duties of disclosure, insurers are starting to develop more refined proposal documents that target specific underwriting information.

We expect to see insurers and brokers training their client-facing teams on the new duties of disclosure, and the increased expectations on them to ask the right questions and to follow up vague or ambiguous answers.

Wording changes

Policy wordings will require sweeping changes to comply with COIA:

- We are aware of insurers who are already considering changes to the disclosure sections of their policies including the new obligation to inform policyholders of their disclosure duties and the consequences of non-disclosure.
- Policy wordings require significant changes around access to and use of third party information.
- Many insurers (particularly members of ICNZ who have signed up to the Fair Insurance Code) have already carried out wording reviews to ensure that policies are in plain language. However, the new duty to assist policyholders to understand insurance contracts is prompting another round of reviews.

1 Contracts of Insurance Act 2024, s 3.

Contracts of Insurance Act 2024: One Year On

- The inclusion of unfair contract term protections has also prompted a review of policy terms and conditions. Insurers have been scrutinising their standard form contracts to identify and amend any terms that could be deemed unfair, such as unilateral rights to amend the contract, broad exclusions, or disproportionate remedies for breaches.
- Although the changes required to non-consumer policies are not quite as significant as consumer polices, there are some complex and technical issues for insurers to consider. These include redrafting notification provisions for claims made policies and addressing the new third party claims regime.

Brokers with their own broker wordings will need to work closely with insurers to make sure broker wordings also comply.

Process changes

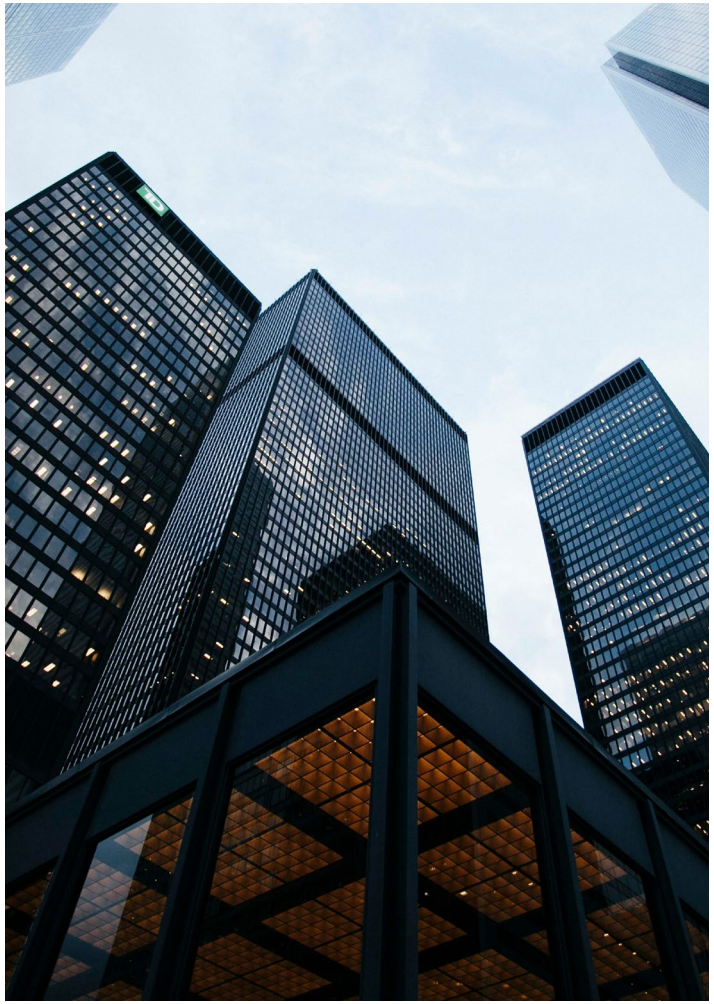
Insurers will need to consider systemic process changes to ensure that there are no teething issues under COIA.

COIA introduces an implied duty to pay claims within a reasonable timeframe.[1] Again, for those who are signed up to the Fair Insurance Code, these changes may not appear too significant. However, insurers will be wanting to ensure that they have robust processes in place to ensure prompt claims processing.

A reasonable timeframe to pay claims will obviously depend on the circumstances. As part of checking their processes are fit for purpose, we expect that insurers will want to ensure that they are documenting the reasons for unavoidable delays and staying in touch with policyholders.

We also understand that many insurers are starting to consider training regimes for their claims teams on the new disclosure duties and remedies. While non-disclosure used to be relatively simple from a factual point of view, insurers will now need to take a more investigative and nuanced approach to considering whether to rely non-disclosure and any applicable remedies.

> “Insurers will need to consider systemic process changes to ensure that there are no teething issues under COIA.”



1 Contracts of Insurance Act 2024, s 66.

Contracts of Insurance Act 2024: One Year On

Questions remain about regulations

On 28 October 2025, MBIE released a paper directed at making regulations under COIA. The paper sought to submit the draft regulations to the Cabinet Legislation Committee on standard form disclosure duties and various life insurance matters by the end of 2025. No further update has been provided.

Insurers will be looking forward to the release of regulations as the Acts signal several areas where regulations will be required to provide a prescriptive means of compliance for insurance. The most pressing area is disclosure duties.

Section 57 of COIA enables insurers to meet their disclosure obligations by providing information in a manner provided for in any regulations.

This means that, rather than being required to draft their own explanation of relatively detailed disclosure obligations, insurers may be able to include prescribed explanations into their policy wordings. Aside from reducing workload, this provides peace of mind to insurers who may be concerned that their wording does not comply with COIA.

There are several other areas where regulations are likely to be provided, including:

- Requiring insurers to provide certain information, such as claim acceptance rates, time to settle claims, contract cancellations and complaints (refer: s 20 of the Repeals Act).
- Various provisions relating to life insurance and genetic testing (refer: subpart 5 of COIA).

Conclusion – dealing with the details

Insurers should now have a good understanding of the law changes contained in COIA and the Repeals Act. We expect that insurers, brokers and other key stakeholders will spend the next year considering and implementing the practical steps that are required before November 2027. This process will be assisted by the release of regulations.

We expect a flurry of activity towards the end of 2026 as insurers implement significant staff training programmes and finalise new wordings and processes.

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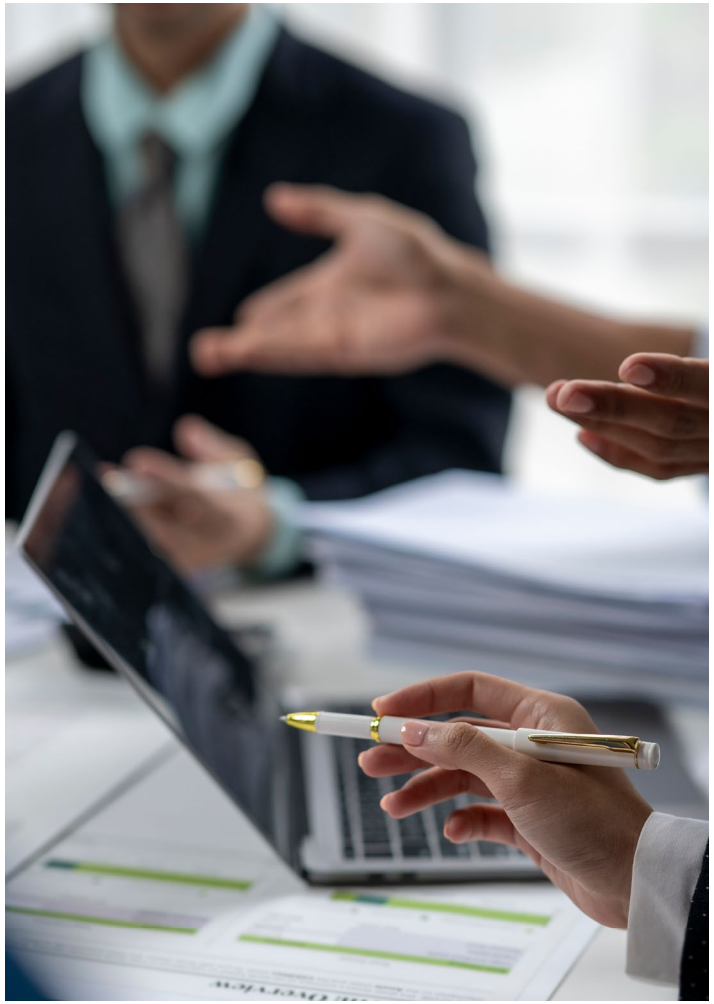



Financial Lines

Directors & Officers

> "There has been sustained change to the D&O landscape in New Zealand over the last few years. Directors are increasingly operating against high expectations shaped by statutory duties, heightened regulatory enforcement, and risks with financial distress. The year ahead will be no exception."

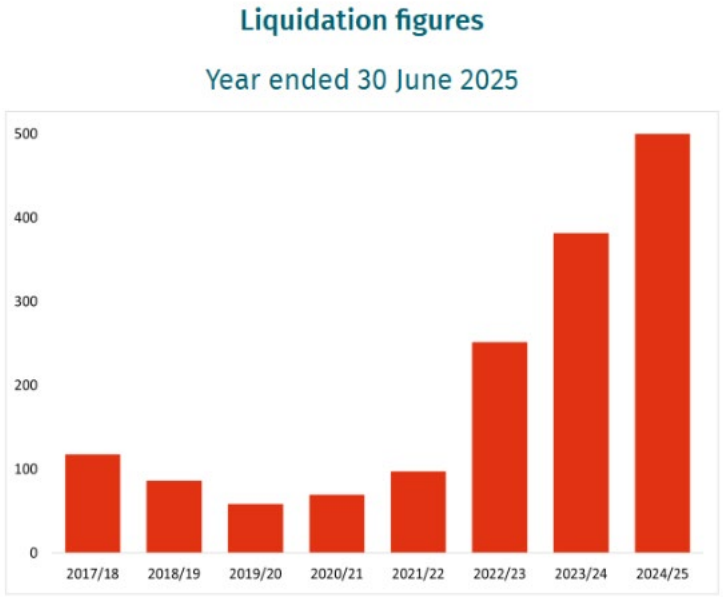
Reconsidering Directors' duties and implications in financial distress

In August 2025, the Law Commission launched its comprehensive review of directors' duties and liabilities under the Companies Act 1993 and across wider statutory regimes. The scope of this review is significant: it revisits foundational principles governing directors' conduct including the core duties, enforcement mechanisms, and whether the current balance between director accountability and commercial flexibility remains fit for purpose.

The Law Commission anticipates providing an issues paper in 2026 for public discussion followed by a final report in 2027.

This review follows comments by the Supreme Court in *Mainzeal* on the "*general incoherence*" between the core duties for directors of a company in financial distress and distribution of proceeds of a successful claim.[1] The Supreme Court endorsed the call for a review of the Companies Act to ensure a coherent and practically workable regime.[2]

That incoherence may cast a longer shadow while the review is underway. The Insolvency and Trustee Service say liquidations for the year ended 30 June 2025 are up, and significantly so – 586 compared to 381 for the year prior, as shown in the bar chart.



Source: https://www.insolvency.govt.nz/about/statistics

The Supreme Court in *Mainzeal* offered guidance for directors facing financial distress. Directors should squarely face up to the financial situation and assess the risk of serious loss to creditors. Continuing to trade without considering alternatives is not permitted. Those alternatives should not include simple substitution of creditors. If that sober assessment leads the directors to believe the company might not return to solvency, the directors must cease trading or appoint administrators.

This guidance is welcomed, though the reality remains that aggrieved stakeholders may still challenge the sober assessment and its outcome. Recent litigation concerning Wellington Combined Taxi's (WCT) illustrates this well.[3] After increased competition from ride-sharing apps, and business disruption with restrictions from COVID-19, WCT's financial position weakened. In September 2004, following advice from BDO, directors appointed voluntary administrators. The High Court appears to have endorsed that sober assessment.[4]

However, since appointing administrators, aggrieved WCT shareholders have (unsuccessfully) mounted successive challenges and appeals on the appointment of administrators and the administration process.[5] In October 2025, over 12 months after the insolvency process began, WCT's business was sold and liquidators appointed.

Further claims around the WCT directors' assessment are possible. The aggrieved shareholders intimated further claims against the directors for alleged breach of their duties and shareholder oppression, as well as possible claims against administrators.[6]

If claims are filed, they will be worth watching for further judicial comment on the *Mainzeal* guidelines and their application. It is also hoped that the Law Commission's review of director duties may prompt clearer articulation of potential safe-harbour models and expectations of directors as companies approach insolvency.

1. *Yan v Mainzeal Property and Construction Ltd (in liq)* [2023] 1 NZLR 296 (SC), at [376].
2. *Yan v Mainzeal Property and Construction Ltd (in liq)* [2021] 3 NZLR 598 (CA), at [12] and [297].
3. *Rahman v Shephard* [2025] NZHC 1452 (Watershed and termination decision); and *Rahman v Shephard* [2025] 3141 (DOCA decision).
4. Watershed and termination decision, above, at [54] and [60].
5. See DOCA decision, above, at [13].
6. See DOCA decision, above, at [27], [66] and [81].

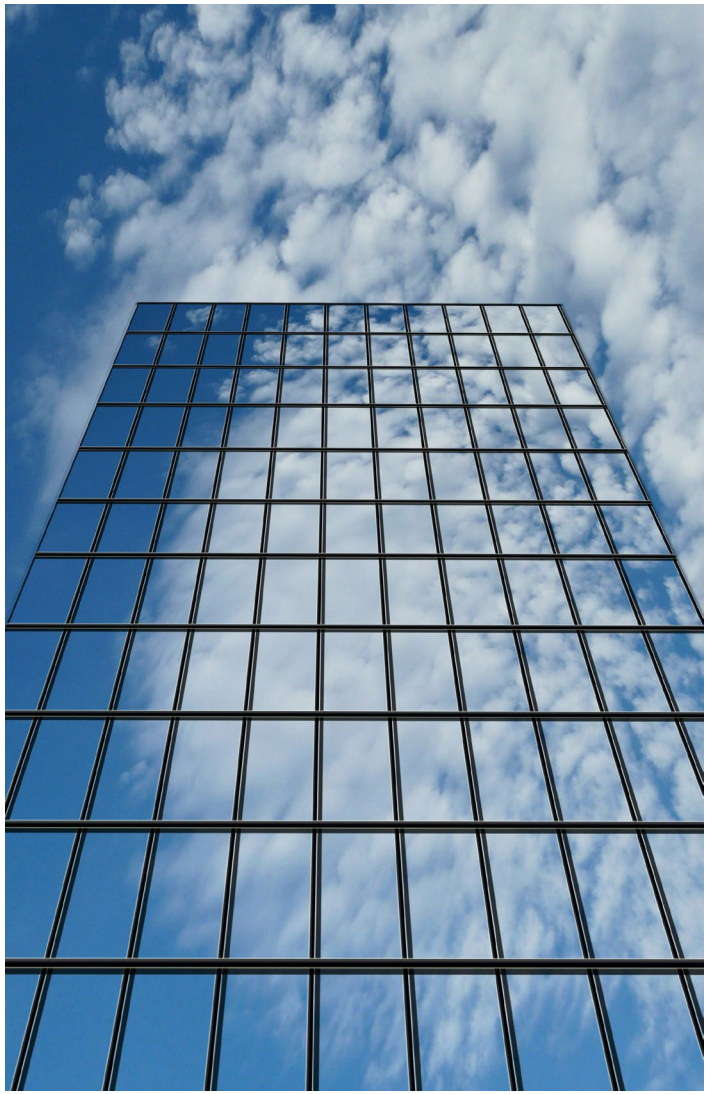
D&O risks and the Contracts of Insurance Act 2024

With commencement of the Contracts of Insurance Act 2024 (COIA) scheduled for November 2027 at the latest, insurers and brokers need to prepare for the replacement of statutory charges under s9 of the Law Reform Act 1936 (LRA) with a new third party claim regime.

Under the current regime,[1] combined liability and defence costs policy limits cannot be eroded by insurers advancing defence costs where the insured's alleged liability exceeds policy limits. The market's response to this saw local underwriters adopt mechanisms to ring-fence defence costs, including through separate defence costs policies or towers. This was notable in D&O policies, given statutory charges most frequently arose in claims against directors and officers.

The COIA repeals s9 LRA[2] and replaces it with a new regime allowing third party claimants to make claims directly against insurers where the insured is insolvent. While there are some limits on payments an insurer can make when a third party claim is made under the Act,[3] the COIA permits erosion of policy limits by advancing defence costs to insured directors (other than for a Specified Policyholder).[4]

Unlike the previous regime, the new third party claim regime can apply offshore.[5] Given that change, and the changes allowing erosion of combined limits, we are discussing a variety of policy wording options with local and offshore underwriters as they adapt their products to meet the COIA.



1. *BFSL 2007 Ltd v Steigrad [2014] 1 NZLR 304 (SC).*
2. *More specifically, the Contracts of Insurance (Repeals and Amendments) Act 2024, s3.*
3. *Contracts of Insurance Act 2024, s94.*
4. *Contracts of Insurance Act, Part 3 Subpart 6.*
5. *Contracts of Insurance Act, s97.*

Limited partnerships and lessons from *Drylandcarbon*

We continue to see an increase in limited partnerships in New Zealand, particularly as vehicles for investments, joint ventures, and primary sector initiatives. Their growing popularity has highlighted questions about director duties when risks crystalise.

Limited Partnerships are governed in New Zealand by the Limited Partnerships Act 2008, and the limited partnership's partnership agreement. Broadly, a general partner must be appointed, who manages the venture and carries all liability. The liability of other partners is limited to their capital contribution (limited partners).

Limited partnerships offer some advantages, causing their increased use, including the greater limitation of liability for those involved, tax benefits, privacy, and increased ability to raise capital without relinquishing control.

However, they come with some disadvantages, including management control resting only with the general partner, difficulties transferring ownership, and the risks arising from their different structure. Often that risk involves the tension of potential conflicts of interest amongst parties within and outside the limited partnership. For example, joint venture partners might have different interests brought to the limited partnership.

Some of the risks and issues with limited partnerships are discussed in the substantive judgment of *Drylandcarbon*.[1] *Drylandcarbon* concerns the fallout amongst the three founders of a carbon fund investment: a limited partnership model in which a general partner would buy carbon-sequestering forests, with limited partners receiving carbon credits to account for their greenhouse gas emissions.

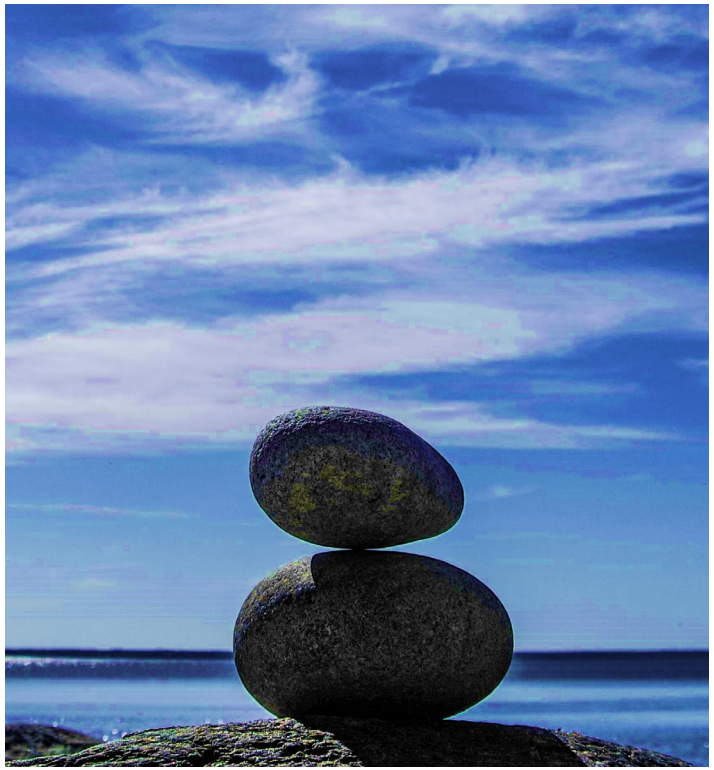
There was strong demand for the fund so two of the founders established another fund, without the third founder. The omitted founder obtained leave to commence a derivative action of wrongful diversion of assets[2] and pursued shareholder oppression claims in his own name.

The judgment discusses the law on diversion of opportunity and the duty to account for profit as it applies to directors, including in the dynamic of a limited partnership. It ends in a helpful summary,[3] broadly that:

- a director has a duty not to profit personally from their position as director.
- the duty is strict, so is engaged even if there is no dishonesty, disloyalty or conflict, or even damage to the company.
- it will be engaged when a reasonable person, reflecting on the particular facts and circumstances, would think there is a real sensible possibility of conflict.
- it is not necessary that the opportunity 'belonged' to the company. There is no need to address whether the company could or would have pursued the opportunity itself.
- the duty might be limited by the company's informed consent.

The judgment is also notable for finding that breaching this duty resulted in a constructive trust over the diverted corporate opportunity in the new fund rather than a strict account for profits or the need for equitable damages. An order was made for present and future profits from the new fund to be accounted to the original fund, less an equitable allowance.[4]

As limited partnerships have become prevalent for a range of purposes, we expect to see closer review of director duties in these varied applications when disputes amongst partners arise.



1. *Drylandcarbon GP One Ltd v Leckie* [2025] NZHC 2915 (Drylandcarbon).
2. *Beverley v Drylandcarbon GP One* [2022] NZHC 3606; *Leckie v Beverley* [2023] NZCA 570.
3. Drylandcarbon, above, at [306].
4. Drylandcarbon, above, at [456] to [465].

Developing climate risks

The New Zealand Government intends to reform the climate-related financial disclosures (CRFD) regime. The proposed changes announced include:[1]

- increasing the threshold for mandatory reporting, from market capitalisation of NZ$60 million to NZ$1 billion for listed companies.
- no longer deeming directors liable solely because their reporting entity breached the CRFD regime.
- no longer requiring directors and reporting entities to show the same level of evidence for CRFD as they do for other financial disclosures. The Government notes that, *"climate reporting involves future-focused and uncertain information, unlikely financial reporting, which draws on historical information"*.
- removing the requirement for managed investment schemes to prepare annual climate statements. Currently, schemes with more than NZ$1 billion in total assets must prepare those statements.

While these adjustments may outwardly lift compliance burdens, the trajectory of directors being expected to understand and articulate climate risks as part of mainstream governance remains.

Notably absent from the announcement was any addition of a due diligence defence for reporting entities. The announcement also confirmed that liability for misleading or deceptive conduct, and for false and misleading statements under Part 2 of the Financial Markets Conduct Act, will remain for the CRFD regime. Directors will, therefore, need to be mindful of any representations their company intends to make on climate risk.

The issues with climate risk representations are exemplified in the case against Z Energy for its advertising campaign between 2022 and 2023, settled at the end of 2025. In 2023, Consumer NZ and two environmental groups issued proceedings against Z Energy claiming the campaign was misleading and greenwashing. Z Energy advertised itself as "Moving with the Times", and "in the business of getting out of the petrol business" with an emphasis on sustainability and reducing emissions, allegedly contrary to its actual operations, emissions and plans.

On 2 November 2025, Z Energy issued an apology for any confusion caused by its advertising campaign. This followed an agreement to settle the proceeding, with an agreement to disagree, no admission of liability and no payment.[2]

While directors have not yet been included in any proceeding in New Zealand to date, given the increased attention on greenwashing and mandatory reporting obligations, we suspect it is on the horizon.

> "Directors... need to be mindful of any representations their company intends to make on climate risk."

1. https://www.mbie.govt.nz/business-and-employment/business/regulating-entities/mandatory-climate-related-disclosures
2. https://www.rnz.co.nz/news/business/577520/z-energy-apologises-for-2022-ad-campaign-after-legal-action.

Cartel conduct

The Commerce Commission has intensified its focus on cartel conduct. The last 18 months demonstrate the sharpest uplift in enforcement activity since criminalisation became effective.

In December 2024, the Commission achieved its first criminal conviction for cartel conduct. A company and its director were prosecuted for bid-rigging roading infrastructure contracts. The company and its director pleaded guilty to four charges of price fixing for two projects. Following that plea, the company's fine was reduced from a probable NZ$1 million to NZ$500,000 and the director's possible imprisonment was reduced to six month's community detention and 200 hours community work.

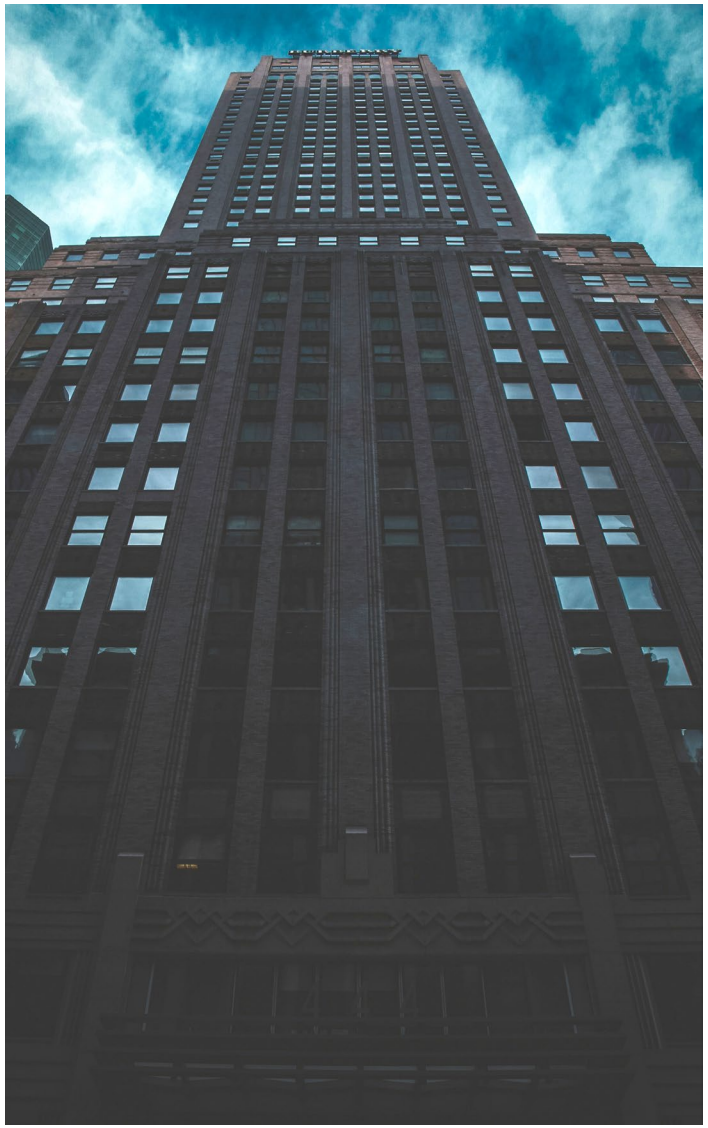
In September 2025, after a three-year investigation, the Commission filed proceedings against several Christchurch Harcourts agencies and their franchisor.[1] The Commission alleges price-fixing arising from regional meetings and long-standing group policies aimed at ensuring compliance within the franchise model. The allegations are denied. A central issue will be the Commerce Act's collaborative activity exception,[2] allowing cartel conduct reasonably necessary for a legitimate collaborative enterprise. The Commission intimates substantive penalties will be sought, likely exceeding that sought in its last major price-fixing case.[3]

The Commission recently signalled an upcoming case alleging customer allocation agreements, a relatively new form of cartel conduct where anti-competitive effect is presumed. This will likely test the boundaries of the provision and signal enforcement priorities.

We also continue to advise clients in ongoing investigations by the Commission on alleged cartel conduct, including against allegations across a range of industries of price fixing, restriction of output, and market allocation.

These matters reflect the diverse range of sectors facing scrutiny and the maturing sophistication of the Commission's cartel enforcement unit.

> "The last 18 months demonstrate the sharpest uplift in enforcement activity since criminalisation became effective."



1. Wotton Kearney acts for one of the defendant franchisees.
2. Commerce Act 1986, s31.
3. See *Commerce Commission v Lodge Real Estate Ltd* [2020] NZHC 2329; *Commerce Commission v Property Brokers Ltd* [2017] NZHC 681; and *Commerce Commission v Barfoot & Thompson Ltd* [2016] NZHC 3.

Representative actions

The development of New Zealand's representative action environment continues to be left to the Courts. The Law Commission's 2022 recommendations on legislating a regime remain in limbo, having been accepted but not actioned by the previous government. We expect, however, some significant (albeit ad-hoc) developments in the coming year from actions making their way through the Courts.

FNZ

Past and present employee shareholders of financial services firm FNZ filed a representative action against FNZ and 17 of its current and former directors.[1] 2700 or so employee shareholders take issue with capital transactions allegedly benefiting institutional shareholders at the expense of diluting employee shareholder holdings. The employees allege shareholder oppression under s174 Companies Act, with allegations of directors acting in conflicts of interest and contrary to their duties under the Companies Act.

The quantum sought is extraordinary: US$4.6 billion. It is expected that, with a claim of this size, the New Zealand representative action environment will be tested at every turn.

Banking class action

One piece left to the Courts, and closely watched, has been the development of common fund orders. The opt-out action against ASB and ANZ, alleging unlawful 'cost of borrowing' charges under the Credit Contracts and Consumer Financing Act 2003, took up this issue. As mentioned in our 2025 update, the Supreme Court upheld common fund orders made by the Court of Appeal.

Since then, ASB has settled its part of the representative action paying NZ$135,625,000.[2] The settlement requires approval of the High Court, which is yet to be provided at the time of writing (though is expected to be given).

ANZ continued to defend the claims.

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1. https://www.reuters.com/en/nz-wealth-management-firm-fnz-faces-46-billion-lawsuit-employee-shareholders-2025-07-28/
2. https://www.asb.co.nz/documents/media-centre/media-releases/asb-and-plaintiffs-to-settle-cccfa-class-action.html

Construction PI

New Zealand's move to a proportionate liability regime

New Zealand has long operated a joint and several approach to liability for civil claims. In the construction sector, this has often meant the well-heeled and/or insured, have picked up the tab for insolvent, uninsured or otherwise absent responsible parties for defendants.

That is all set to change, as the Government has signalled legislation to replace the joint and several liability regime, with a proportionate liability regime.[1]

Under joint and several liability, one party can be held responsible for the full value of a claim, regardless of its respective culpability in contributing to a loss. In practice, this often results in the last man standing, or those with the deepest pockets, meeting a disproportionate share of the loss.

Proportionate liability shifts this approach by making each defendant responsible only for its relative share of the loss. Plaintiffs will need to recover their losses from each joint tortfeasor individually.

This inevitably shifts some risk to homeowners. To mitigate this, the reform will be accompanied by consumer protection measures, including mandatory home warranties and professional indemnity insurance for construction professionals.[2]

These measures are intended to increase the pool of defendants with funds available to satisfy judgments – although whether the insurance market is prepared to step in and provide home warranty cover, and if so on what terms, remains to be seen.

While the wording is not yet available, the implications of the shift are likely to be far reaching, and may include:

- More finite risks for insurers to quantify, as insureds will only be responsible for their share of liability (rather than the potential to be exposed for an entire project).
- Greater scope for defendants to settle based on likely apportionment, rather than the total claim value. This may also make it easier for defendants to settle their share of liability early, rather than being 'dragged through' the process with the other defendants.
- Front-loaded legal costs, as early identification and joinder of all potentially responsible parties becomes critical (in conjunction with the new HCR provisions – see page 6).
- Greater reliance on expert evidence to assess relative responsibility, and scope for experts and lawyers to argue the point on relative culpability, at least until the Courts have set some clear benchmarks.
- Potential reductions in rates and construction costs as councils face lower consenting risk.

1. A Building Amendment Bill is intended to be enacted at some stage during 2026 with a one-year transition period before the new regime becomes operational.
2. This excludes builders.

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Implications of 'evidence first' HCRs and proportionate liability in post-*BECA* landscape

The High Court has, as of 1 January 2026, adopted an 'evidence first' model in its revised Rules. The Government intends to pass legislation introducing proportionate liability regime for the building and construction sector. We look at the implications of these changes for construction professionals operating in a 'post-*BECA*' landscape.

The landscape

By end of 2024, the Supreme Court had confirmed, in *Beca Carter Hollings & Ferner Ltd v Wellington City Council* [2024] NZSC 117 (BECA), that contribution claims are not subject to the Building Act 2004 10-year longstop.

Effectively, the decision eliminated certainty of the 10-year longstop, exposing construction professionals to long tail risk. The flipside appeared to be that defendants could avoid a 'shotgun' approach to joining all parties to avoid limitation defences, and rely instead on contribution claims, which can be brought anytime within two years of a settlement or a judgment. Theoretically, that seemed to suggest there would ultimately be fewer third-party claims, but those made having stronger merit.

The changes

The introduction of the new 'evidence first' High Court Rules forces parties to front-load trial preparation by exchanging factual witness statements, draft chronologies, and key documents (including adverse) early in the process. Arguably, the new Rules favour well-resourced plaintiffs (with funds and time). Those plaintiffs can pre-load as much preparation in advance of issuing proceedings, including expert evidence, to put maximum pressure on responding defendants.

Under the proposed proportionate liability regime, each party involved in defective building work will only be responsible for the losses of their own contribution to a defect/error/damage.

This is different from the current joint and several liability approach. Plaintiffs will no longer be able to rely on suing one party in time, and having that party bringing everyone else to the settlement table for contribution. Plaintiffs will want to ensure they name all possible defendants and not be left short-changed. In other words – the Plaintiffs will be incentivised (again) to adopt the 'shotgun' approach.

In addition, there will be a tension for plaintiffs between (a) the time it takes to properly examine the basis of claims with expert investigations, so that they are properly ready to issue proceedings under the new Rules, and (b) making sure proceedings are issued against all possible defendants, given the importance of naming them all to avoid a proportionate liability shortfall, before the expiry of the 10 year longstop.

Takeaways for defendants

A well-armed and ready to go plaintiff will cause real difficulty for defendants in complex multi-party construction claims. As expert involvement is usually critical to investigating complex issues of fact and causation, and determine strategy for defence, defendants should not pause expert instruction.

It will likely be challenging for defendants to get timetable extensions akin to the amount of time construction cases have historically taken to be investigated (with the assistance of experts) and resolved.

Defendants will have to convince the Court that it is necessary to depart from the default timetable under the new Rules (by reference to the overriding objective to secure the just resolution of any proceeding by proportionate means, including by securing its speedy and inexpensive determination (HCR1.2)).

Defendants will also be under timetable pressure to identify and investigate the merits of claims against third parties not already defendants, even though there is no longer limitation pressure. However, when the proportionate liability regime comes into effect, there may be good reason not to issue (and incur the cost and distraction of) contribution claims.

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The impact of proportionate liability on the recognition of non-delegable duties in NZ construction

With a shift towards a proportionate, rather than joint and several, liability regime, we think that there will be more incentive than ever for parties to recognise the existence of non-delegable duties (NDDs) to avoid situations where poorly resourced subcontractors must be pursued for their share of the damage.

The existing New Zealand law on NDDs

The New Zealand Courts have recognised the existence of NDDs for certain parties in construction projects. As the name suggests, a NDD ensures that liability rests with a certain party and is not passed down the contractual chain to other parties or contractors. These duties have been described as problematic and "of a special and 'more stringent' kind, namely a 'duty to ensure that reasonable care is taken.'" In New Zealand, NDDs have been recognised for:

1. **Territorial Authorities** – statutory obligations and the corresponding duty of care under the Building Act cannot, generally, be contracted out of. [1]
2. **Developers** – on the basis that they have a primary business interest, involving the construction of homes for sale to the public, which necessitates a higher standard of responsibility. [2]
3. **Head Contractors** – on the basis that, in some cases, they have responsibility for, and direct control over, construction of a building and for ensuring its compliance. [3]

Why proportionate liability may intensify the role of NDDs

The Government's move away from joint and several liability toward proportionate liability will significantly shift insolvency risk. Under proportionate liability, each defendant only pays their assessed share. Claimants are therefore likely to frame more claims around NDDs, as this could result in full liability being imposed on a single defendant, despite others' involvement. Larger contractors will be expected to have better cover and/or financial resources to meet any claims.

Pleading NDDs against these contractors may be a way to circumvent the Court's assessment of proportionate liability when there are concerns about the solvency of minor parties.

We also expect that claims against construction professionals who assume responsibility for significant aspects of projects may be framed as NDDs. This will require the Courts to consider the bounds of NDDs and whether there are good policy reasons for expanding their scope.

What this may mean for construction participants

Developers – Contractual allocation of responsibility will be more important than ever (however, it is not certain how the Courts will interpret limitation clauses in light of proportionate liability). Careful consideration will need to be given to warranties, PL/CWI cover, and identification of who is responsible for key compliance items.

Contractors – Contractors should expect more attempts to characterise coordination or supervisory roles as giving rise to NDDs. Contractual responsibilities must be precise, and subcontractor vetting should be reinforced.

Councils – Councils remain exposed, but the move to proportionate liability significantly reduces the extent of Councils underwriting insolvent co-defendants. There are significant changes coming for Councils (including possible self-certification regimes), however there will still be a clear need for Councils to maintain good risk management procedures including detailed inspection records and ensuring Producer Statements and professional certifications are obtained before issuing approvals.

Insurers – Insurance policy wordings and underwriting criteria will need to be carefully considered in light of the changes to proportionate liability. Insurers should also anticipate more claims being framed as NDDs and consider whether this may have any impact on coverage (for example, in terms of exclusions for assumed contractual obligations).

1. *Southland Indoor Leisure Centre Charitable Trust v Invercargill City Council* [2017] NZSC 190 at [67].
2. *Mount Albert Borough Council v Johnson* [1979] 2 NZLR 234.
3. *Body Corporate 406198 v Argon Construction Ltd* [2025] NZCA 684 at [96] and [102].

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Implications of new High Court Rules for solicitors

The new High Court (Improved Access to Civil Justice) Amendment Rules came into force on 1 January 2026, substantially changing the procedure of ordinary civil proceedings in the High Court. The Courts will also encourage existing proceedings to adopt this new framework (refer to the full article earlier in this publication on page 6).

Some of the changes under this new regime that increase the risk of complaints and claims against barristers and solicitors practicing litigation include:

- That parties will be working to truncated timeframes with increased frontloading of costs. This means more scope for frustration from clients due to increased costs incurred in litigation. Client expectations will need to be carefully managed, and the cost-benefit analysis of proceedings clearly explained.
- Compliance with the new Rule 1.2 which introduces a new overriding objective for the 'just resolution' of proceedings by 'proportionate means'. That will mean clients who want a 'no stone unturned' approach to litigation, will need to have their expectations carefully managed, and understand the risks of taking such an approach.
- Compliance with the new Rule 1.2A. This introduces an overarching duty of co-operation requiring parties to co-operate with one another and requires direct discussions between parties to attempt to agree how the proceeding will be conducted. Again, these obligations will carefully managed when acting for a client that seeks to be heavily involved in decision-making and keeps their lawyer on a 'tight leash'.

Lawyers will need to be across the new changes, including the duty of co-operation and tighter timeframe, make sure they comply fully. If they don't, their clients may be exposed to cost orders which will be directed back to them by the client, or the Court may in exceptional circumstances, order costs against the lawyer personally.

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Challenges and risks of large multi-party litigation

The Body Corporate from Spencer on Byron has failed to obtain leave to appeal the Court of Appeal's decision vindicating Grimshaw & Co from negligence. In 2010 Grimshaw drafted a Conduct and Distribution Agreement (CDA) for the owners of Spencer on Byron governing the distribution of any settlement proceedings. Common property was owned by the unit owners under the Unit Titles Act 1972 so the CDA provided proceeds would go directly to the plaintiff owners who had signed on to the proceeding and would be put towards each owner's contribution to the cost of repairs. When the Unit Titles Act 2010 came into force in 2011 it transferred ownership of common property from the unit owners to the Body Corporate. Spencer and Byron settled in 2013 but Body Corporate in-fighting meant remediation was delayed until 2018, driving up the cost. The Body Corporate sued Grimshaw for failing to advise on the 2010 Act changes which it said made the CDA invalid or ineffective. The High Court found Grimshaw negligent. The Court of Appeal overturned the decision instead finding that the CDA remained valid and effective under the 2010 Act, as it did not affect accrued rights under the 1972 Act, and Grimshaw had not caused the losses claimed.

In *Body Corporate 207624 v Grimshaw & Co* [2026] NZSC 5 the Supreme Court declined leave for the Body Corporate to appeal the CA's decision on the following basis:

- No matter of general or public importance was raised.
- There was no clear and significant error by the CA.
- The Body Corporate did not make out its argument that Grimshaw ought to have given the advice suggested. The SC agreed the 2010 Act did not affect accrued rights under the 1972 Act.
- Even if Grimshaw acted negligently by failing to advise the Body Corporate to seek amendment to the CDA, no loss was proven because the Body Corporate could not evidence that an amendment to the CDA would have been agreed by the 202 signatories.

While the decision is a win for the solicitors, it demonstrates the challenges and risks of taking on large multi-party litigation, particularly when acting for more than one plaintiff. Similar risks will apply to plaintiff firms taking on class actions as these become more common in the New Zealand litigation landscape.

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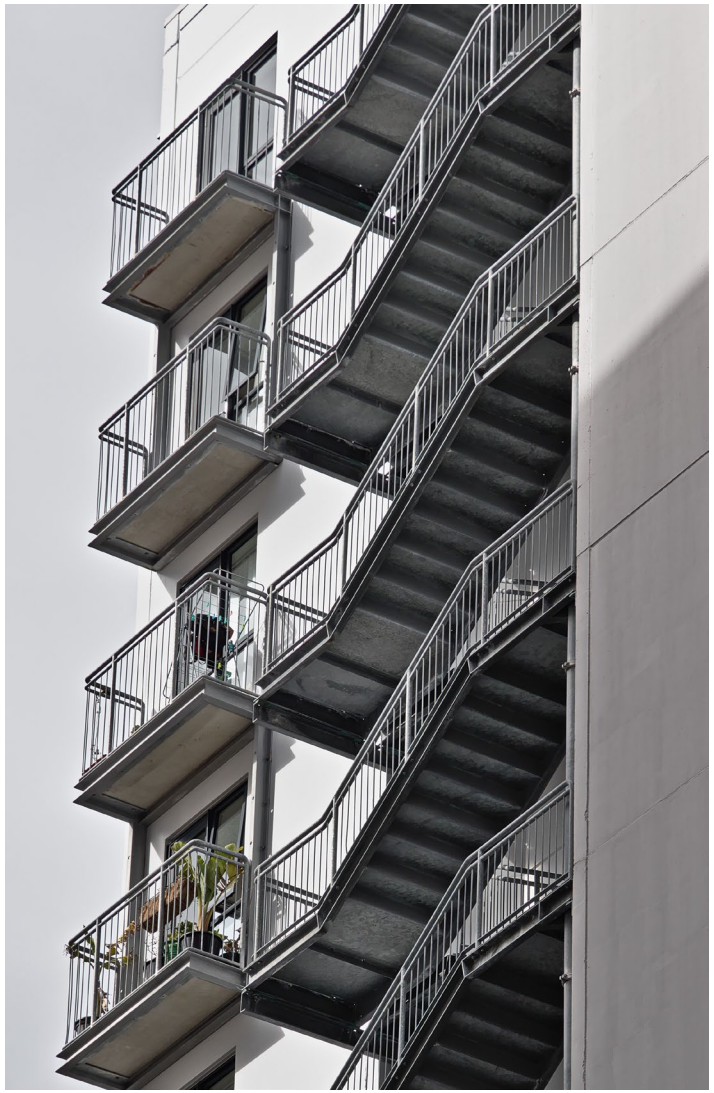

Lepionka v Gibson Sheat - Settling with clients and the limits of independent advice

The Court of Appeal's decision in *Lepionka & Company Investments Ltd v Gibson Sheat* [2025] NZCA 469 provides important guidance on lawyers' professional obligations when resolving disputes with their own clients.

The case arose from alleged negligent advice given by the plaintiff's then firm of solicitors, Gibson Sheat, in a complex property and mortgage transaction. When advice from senior counsel suggested that Gibson Sheat's position may have been flawed, a conflict of interest emerged because Gibson Sheat owed duties of loyalty and independence to LCIL while facing potential liability for its own advice. The parties negotiated an oral agreement under which Gibson Sheat reduced its fees substantially and LCIL agreed to settle any claims against the firm. Years later, LCIL argued the settlement was unenforceable because it had not received independent legal advice and accordingly could not have provided informed consent to settle.

The Court of Appeal rejected this argument. It confirmed that lawyers owed strict fiduciary duties when their personal interests conflicted with those of their client. Discharging these duties involved full and frank disclosure of the conflict to the client and a prompt to obtain independent legal advice so the client could make a fully informed decision regarding how to proceed. The Court was satisfied on the facts that Gibson Sheat had done this. It further reasoned that although LCIL did not subsequently obtain independent legal advice, it had in fact already received such advice from external senior counsel warning that Gibson Sheat's earlier advice might be wrong. That knowledge, paired with LCIL's status as a commercially sophisticated operator meant it entered into settlement with Gibson Sheat with its eyes wide open.

The decision is a useful example of correctly managing a personal interest conflict for practitioners. However, it should also be treated with caution. This was a case decided on a unique set of facts involving many experienced counsel and a sophisticated client. Had that not been the case, the result would likely have gone the other way. Best practice still dictates that independent advice must be sought after the nature of the conflict and the risks involved are disclosed. Anything less risks the client proceeding without informed consent.

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> "Best practice still dictates that independent advice must be sought after the nature of the conflict and the risks involved are disclosed."

Accountants, auditors and financial advisers

AI use by claimants - Accountants, Lawyers and Financial Advisers

Consumers are increasingly using AI tools to support their complaints to regulators, which is driving up the cost of the disciplinary process.

Traditionally, complaints were concise and based on the complainant's direct experience. Regulators did not expect legal terminology or structured arguments. Now, complainants are increasingly submitting lengthy AI-generated narratives that resemble professional submissions.

This presents several challenges:

- AI-generated submissions tend to obscure the core issues, reframing simple grievances into speculative case theories. More time must be spent distinguishing relevant facts from conjecture.
- This material often sounds authoritative while misstating legal principles or industry standards. This can create unrealistic expectations for complainants, and requires more time to verify claims and correct misunderstandings.
- AI allows complainants to quickly re-word or re-submit multiple versions of similar allegations, resulting in iterative or 'bulk' complaints, which adds procedural complexity.

This use of AI is merely driving up the cost of defending disciplinary complaints. Regulators are often requiring responses to all issues, even those that are not particularised and are clearly AI-generated. These issues will generally fall away as they are unsupported, but time and care still needs to be taken when preparing the initial response.

Accountants and Tax Agents – increased claims arising from increased number of audits

We expect an increase in the number of claims against accountants and tax advisors arising from the increased number of audits carried out by Inland Revenue. Inland Revenue received increased funding from the government in 2025 and as a result they allocated NZ$35 million in additional funding towards audit and debt collection. In 2025, this resulted in 7,641 audits opened which was 49% more than 2024. We expect that Inland Revenue will continue to receive increased funding.

The increased audit activity by Inland Revenue means that there is increased scrutiny of tax positions taken by taxpayers to ensure they are correct. If they are incorrect, they will reassess taxpayers resulting in additional tax payable, and potentially interest and penalties. A taxpayer in this position may raise a PI claim against their accountant or tax advisor if they relied on their advisor's advice when filing that tax return. Particular focus areas for Inland Revenue include:

- Business restructures, for example whether imputation credits and tax losses could be carried forward.
- Crypto-assets and the failure to declare income derived from crypto-assets.
- Property sector, including the bright-line rule and correct reporting of GST and income tax by property developers.
- Whether businesses are correctly treating sums received or paid as capital (non-taxable) or revenue (taxable).

Accountants – increasing number of disciplinary claims relating to conflict of interest

We expect to see a continuing increase in disciplinary complaints involving conflicts of interest.

The number of complaints received by the New Zealand Institute of Chartered Accountants (NZICA) has been on the rise in recent years. In 2024, NZICA received 155 complaints, up from 139 received in 2023. Data for 2025 has not been released yet, however, in 2025, we saw an increase in the number of complaints against accountants which related to accountants continuing to act where there was an alleged conflict of interest.

This increasing number disciplinary claims involving a conflict of interest is reflective of the state of the economy. Economic downturns often put significant financial pressure on relationships both personal and business.

Often accountants continue to act for both parties when they are aware of relationship breakdown issues. Given the continued strain in the economy, we expect to see an increased number of conflict-of-interest disciplinary complaints over the next year, particularly if interest rates rise again.

Auditors – disciplinary claims

We expect to see increased disciplinary complaints against auditors. As highlighted last year, the Financial Markets Authority (FMA) has changed its approach to monitoring registered audit firms, and it is now conducting annual reviews for most registered audit firms, when previously this had been conducted every two or three years.

FMA's Audit Quality Monitoring report was released in November 2025. This year's audit quality reviews identified five non-compliant files. While this is the same number as last year, it is based on a smaller review sample (14 files, compared to 19 in 2023/24), meaning the overall percentage of non-compliant files had increased from 26% to 36%.

The smaller review sample was due in part to their focus on large bank audits, which require more resources because of their size and complexity. That said, it does highlight the simple fact that more reviews will identify more issues, and increase the prospect of more claims.

Financial Advisers – increased FMA activity

We expect the FMA to continue to be very active investigating complaints over the next 12 months, particularly where there is a possibility of systemic behaviour and vulnerable grounds. More investigations increase the chances of more enforcement action.

Our observation is that Dispute Resolution Schemes are passing on almost everything to the FMA, including claims resolved at the early stage before the DRS open a complaint. These clients are then subject to detailed practice views, which increases the prospect of enforcement action.

The FMA appears to be increasingly using s25 notices to obtain information, often accompanied by confidentiality orders, which can impact notification and increase the prospect of prejudice. Hundreds of such notices have been issued in recent years; an OIA response by the FMA indicated that the use of notices rose from 140 in 2019 to 222 in 2022, an increase of more than 50 percent. We saw unprecedented use of s25 notices by the FMA in 2025 and expect the focus on information gathering and resultant regulatory action to increase in 2026.

While there is a hesitancy to get involved early in FMA investigations, if not handled correctly by the Insured can increase the chances of enforcement action and erode any cost savings.

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Valuers - Approach to duty of care breaches

It may come as a surprise, but the New Zealand Courts have never properly considered the approach to be taken when considering whether a valuer has breached their duty of care. There are two potential options:

- The English approach which places almost sole emphasis on a margin of error from an objectively correct value.
- The Australian approach which also recognises a margin of error concept, but less deterministically, with an emphasis on the method rather than the result to determine negligence. A valuation inside the range may still be negligent if the underlying methodology is flawed, and a valuation outside the range is not automatically negligent.

The English 'margin of error' approach was recently confirmed by the Court of Appeal in *Bratt v Jones* [2025] EWCA Civ 562, which clarifies the legal test for valuers negligence claims in the UK.

The defendant valuer assessed the market value of a development site at £4.075 million. The claimant alleged that the true market value was materially higher, and that the valuation was negligently low.

At first instance, the trial judge applied a 15% margin of error, consistent with established UK valuation principles for complex development sites. Because the valuation fell within this range, the negligence claim failed.

On appeal, the claimant argued that a valuation outside the 'correct' figure should itself give rise to an inference of negligence, or shift the burden to the valuer to justify their approach. The Court of Appeal rejected this argument, and affirmed the established two-stage test:

- Does the valuation fall outside a reasonable margin or 'bracket' of acceptable valuations? This is a question of fact based on expert evidence.
- If it falls outside the bracket, did the valuer act negligently in method or judgment? The burden of proof remains on the claimant.

The New Zealand position is still developing, and a formal doctrine has not been adopted. Wotton Kearney have been involved in a number of cases that have either resolved before or during trial, but there are two proceedings which are due to be heard this year and could give clarity to this issue.

If the Australian approach is adopted by the New Zealand Courts, it will have implications for disciplinary claims, as the Valuers Registration Board follows the English approach.

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Trends in complaints to the REA

Complaints in the real estate PI space have seen a sharp increase in volume in recent years. However, initiatives by the REA have seen a drastic improvement in resolution times for lower-level complaints.

The Real Estate Authority (REA) reported it had experienced a 35% increase in complaints during the 2024/2025 financial year. Common complaint themes related to customer service, skill and care, disclosure, misleading advertising, and broader concerns about poor communication. Notably, only 9% of complaints resulted in disciplinary findings against licensees for engaging in unsatisfactory conduct or misconduct.

Despite the increase in volume, improvements to the REA complaints system in 2023 are now becoming apparent when resolution times are considered overall. The REA was able to resolve 467 complaints and close 79% of complaints within one year. Additionally, to combat the increase of complaints, the REA implemented several initiatives to engage with both real estate agents (such as delivering a continuing professional development programme) and the public (including launching an Instagram account to promote its consumer website Settled.govt.nz).

A reduction in congestion at the investigation stage has allowed the REA's decision-making bodies, the Complaints Assessment Committees (CACs), to address backlog. CACs issued 145 decisions, and the Real Estate Agents Disciplinary Tribunal (READT) issued 43 decisions. Even so, agents continue to experience delays once an investigation is underway.

There has also been an observable increase in complainants seeking compensation. The CAC has been taking a more liberal approach in making referrals to the READT to consider compensation, in cases of both unsatisfactory conduct and the more serious misconduct. When considering referral to the READT, the CAC applies a low threshold and in the 2024/2025 year, the READT considered 16 compensation referral matters. We expect this to continue to increase and absorb a large amount of the READT's resources.

While there is no public data available regarding the reasons for the increase in complaints (including the seeking of compensation), anecdotal evidence suggests the cooling of the housing market following the 2022 peak may have resulted in an element of buyers' remorse.

> "The Real Estate Authority reported… a 35% increase in complaints during the 2024 / 2025 financial year."

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Tenancy Tribunal claims against property managers - trends and tips & tricks

Recent Tenancy Tribunal decisions provide some guidance on the Tribunal's approach to breaches of the Healthy Homes Standards, particularly where a landlord (which can include a property manager) relies on Healthy Homes assessment reports. Additionally, we have seen an increase in Tenancy Tribunal awards in comparison to previous years.

Reliance on Healthy Homes assessment reports

As part of an on-going drive to improve the standard of residential rentals in New Zealand, properties are assessed against Healthy Homes Standards. From 1 July 2025, all residential rentals must meet the Healthy Homes Standards. Many landlords obtain Healthy Homes assessment reports to guide them on whether properties comply.

Even if a Healthy Homes assessment report is later shown to be inaccurate, a landlord can point to a report to show that a breach of the standards was unintentional. In some cases, this closes the door to a claim for exemplary damages.

The Tribunal has made it clear that landlords cannot blindly rely on assessment reports, particularly where there are red flags indicating that the property may not be compliant. A claim for exemplary damages may succeed where there is an unjustified reliance on an (incorrect) report. For example, where:

- The Healthy Homes assessment assesses the property as exempt (due to access issues etc) but it later becomes evident that access is possible.
- Continuing concerns are raised by the tenant.
- Aspects of the property appear to be breaching the Healthy Homes Standards.

> "...landlords cannot blindly rely on assessment reports, particularly where there are red flags..."

Upwards trend in damages awarded

We have also seen a general uptick in the damages awarded to tenants. In one instance, where there was no intentional breach, the Tribunal awarded NZ$15,000 in general damages for pain, suffering and emotional distress (plus NZ$4,200 in compensation) for a landlord's failure to keep the premise in a reasonable state of maintenance and repair.

Tips & tricks

Landlords cannot simply rely on Healthy Homes assessment reports to satisfy themselves that a property is, and remains, compliant with the Healthy Homes Standards. If the property shows signs of possible non-compliance or indicators that the assessment is incorrect, landlords should obtain an independent updated assessment and investigate and address any issues raised by tenants.

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Routhan & Anor as Trustees of the Kaniere Family Trust v PGG Wrightson Real Estate Limited [2025] NZSC 68

In June, the Supreme Court delivered a long-awaited judgment which closed the chapter on a protracted dispute over the purchase of a farm.

The decision has attracted significant attention for its treatment of professional liability when negligent information induces a property transaction, and crucially for its stance on the SAAMCO[1] principle in New Zealand law.

Why it matters

At the heart of the case was a critical question: How far does a professional's duty of care extend when inaccurate information influences a purchase? The Court not only addressed this but also clarified how damages should be measured in such circumstances.

The SAAMCO principle, originating from UK law, rests on two key principles:

1. Scope of duty – Liability is limited to losses arising from risks the defendant assumed responsibility for.
2. Liability cap – The Court assesses whether losses would have occurred even if the information had been correct.

Background

The Routhans bought a dairy farm in 2010, relying on the representation by the agent, PGG Wrightson, that milk production averaged 103,000kg annually. In reality, production had been declining for years. The farm's performance deteriorated, leading to significant financial losses. The Routhans sued for negligent misstatement and under the Fair Trading Act 1986, claiming they would never have purchased the farm had they known the true production levels.

Journey through the Courts

The High Court awarded damages of NZ$2.1 million for the Routhans' overpayment for the farm, and for lost equity and capital investments. This was later reduced to NZ$1.7 million on the basis of contributory negligence.

On appeal, the Court of Appeal reduced damages to NZ$300,000, applying SAAMCO to confine liability to the overpayment only. This was on the basis that PGG's duty did not extend to the wider risks of operating the farm after purchase.

The measure of damages was appealed, and the Supreme Court took a different view.

The Supreme Court

The majority (Miller, Kos, Glazebrook JJ) ruled that PGG's liability extended beyond overpayment. While PGG was not responsible for advising on whether to buy the farm or farming practices, it had assumed responsibility for production data, knowing that it would inform the Routhans' business plans. By carelessly allowing the Routhans to believe the data was verified, PGG exposed itself to broader liability for post-purchase losses.

The result was a damages award of NZ$780,500, covering costs including fertiliser and re-pasturing aimed at achieving the promised production levels. Other losses, such as revenue shortfalls and capital improvements, were rejected as too remote or unsupported.

The minority (Winklemann CJ and Ellen France J) disagreed, favouring the narrower approach of the Court of Appeal.

1. *South Australia Asset Management Corp v York Montague Ltd* [1997] AC 191 (HL)

Key takeaways on SAAMCO

SAAMCO's scope of duty principle has been affirmed as part of New Zealand negligence law. Liability should be confined to the harm resulting from the risks that made the conduct negligent.

The 'liability cap' has been rejected as a 'normal measure' of damages in complex cases where contractual context shapes the duty of care and establishes what the defendant promised to do, and the likely consequences of a breach of duty.

What this means for professionals

Professionals need to understand why the information or advice is being sought, and how it will be used, being mindful of possible consequences of that information being inaccurate.

If the information being provided has not been verified, say so, clearly.

Retainers should be reviewed carefully, as how clients intend to rely on the information or advice can expand liability.

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Employment

Navigating uncertainty: Why 2026 will be a defining year for employment law in Aotearoa

Employment law in Aotearoa enters 2026 as an area to watch. Recent landmark rulings, economic headwinds and legislative change demand alert risk management.

Late 2025 brought two Supreme Court decisions that broadened employment obligations and risks to non-traditional work relationships: *Fleming v Attorney-General* confirming family carers can be 'homeworkers' and employees under the ERA, and the Uber decision cementing gig-economy drivers as employees.

However, legislative reform is underway. The Employment Relations Amendment Act introduces a gateway test for 'specified contractors', limits on remedies for serious misconduct, and contributory conduct, and an unjustified-dismissal threshold for high earners, each of which could reduce exposure. The implications are untested and grey areas will bring uncertainty.

Scrutiny on organisational conduct is intensifying. The McSkimming/IPCA and ACC/Bennett sagas underscore expectations of transparent, independent handling of misconduct at the top.

Bullying and sexual harassment remain high-risk areas, while awards for privacy breaches, discrimination and harassment continue to climb. Flexible work tensions further complicate compliance.

Labour-market signals are concerning. Unemployment reached 5.4% in the December 2025 quarter - near a nine-year high - with continued downsizing and a tighter job market. We expect more unjustified dismissal claims, especially where cost constraints compromise process and limited job prospects inflate quantum.

The message is clear: employment claim frequency remains a risk and severity is increasing. Fair, consultative, evidence-based employers are best-placed to withstand disputes. Legislative change is unlikely to deliver meaningful claim mitigation in the short term. Now is the time to rigorously test contracts, policies and processes, tighten culture and privacy controls, and for insurers to embed disciplined underwriting.

Our employment team examine these issues in the following pages.

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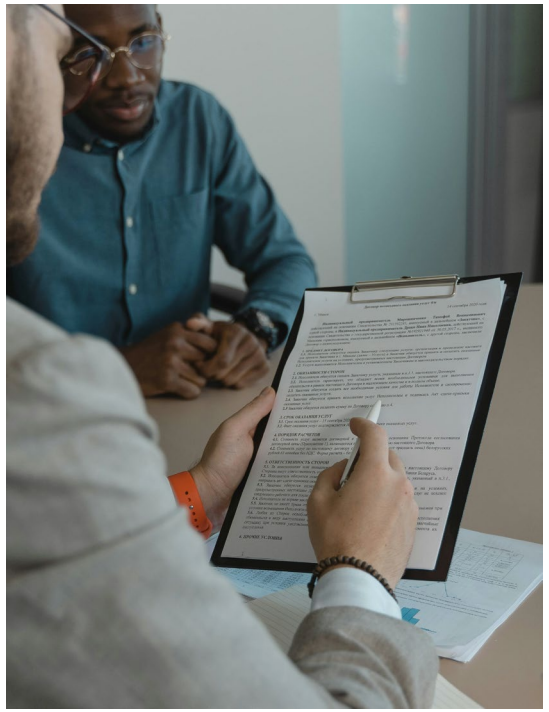
> "...employment claim frequency remains a risk and severity is increasing."



Employment legislative developments: fool me three times?

Three legislative developments signal a historic pivot toward employer flexibility. Whether they simplify matters remains to be seen.

Holidays Act replacement

The Holidays Act's intended replacement moves from weeks-based to hours-based leave accrual. A single payment calculation replaces the ordinary weekly versus average earnings comparison, whilst casuals receive a 12.5% loading on top of their hourly rate instead of accumulating leave.

Organisations employing variable hour workers should see reduced compliance risk. However, the 24-month transition will require historical underpayments be remediated under existing rules whilst employers prepare new systems.

Employment Relations Amendment Act 2026

The Supreme Court ruled Uber's drivers were employees, despite contractual language stating otherwise. Taking effect on 21 February 2026, this Act's 'gateway test' should bar similar cases where written agreements specify workers are 'not employees', and does not permit termination for declining additional work. While employers may vet subcontractors for qualifications or relevant criminal records, relaxed subcontracting restrictions may see many arrangements unable to pass the gateway.

The Act also removes remedies for employees dismissed for serious misconduct and who contributed to their grievance, amongst other limitations. 'Serious misconduct' being undefined creates uncertainty in the absence of Court guidance. Whether this applies retrospectively remains unclear, although existing case law suggests it may not.

Statutory unjustified dismissal protections being unavailable for employees earning NZ$200,000 (capturing bonuses, PAYE payments, and share schemes) may prompt creative responses. The 12-month lead-in will encourage negotiations for liquidated damages, extended notice periods, enhanced severance terms, or opt-ins back into the previous protections. Moreover, these employees could pursue disadvantage, discrimination, or contract claims if dismissed.

Termination by Agreement Bill

A rewrite of a Bill allowing protected discussions about termination of employment, even without a grievance, introduced safeguards around 'pre-termination negotiations'. Employers must obtain employee consent and avoid 'unfair' conduct, including approaching emotionally distressed employees.

Procedural breaches can also see negotiated agreements cancelled.

Uncertainty and challenge

Employers overlooking the nuances of these changes risk being fooled. Although some are phased in to allow for adaptation, most are in effect. Proactive employers can start by reviewing agreements, engaging high-earners, and updating policy definitions, especially for serious misconduct.

These provisions will be the subject of scrutiny by the Employment Relations Authority and Employment Court in due course, if they survive a new government, leading to uncertainty in the short to medium term for employers now navigating the new regime.

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Potential ramifications of legislative developments – the fallout

Although the legislative changes are, in the main, aimed at reducing the number and value of claims, the question arises whether they will achieve that aim. Given the employment law 'industry', we consider it likely that claims will not diminish significantly. If certain claims become unavailable, claimants will look to repackage claims to circumvent the restrictions.

Contractual claims on the rise

In terms of repackaging, we are already seeing a significant number of bullying and harassment claims relying on the implied contractual term of providing a safe work environment. Both *Parker v Magnum Hire Limited* and *Wiles v Vice-Chancellor of the University of Auckland* are good examples of claimants successfully establishing personal grievances and breach of contract claims in respect of the same conduct.

Contractual claims and unjustified disadvantage claims will still be possible, even if an employee earns more than NZ$200,000. We expect to see claims by high earners being brought as contractual claims, seeking special and general damages, even though they can't claim unjustified dismissal.

Discrimination claims

Where employees can point to a protected characteristic, we are likely to see claims of discrimination which will not be prevented by the new legislation. In *McGearty v New Zealand Air Line Pilots' Association* a claimant was able to successfully establish that he was unjustifiably disadvantaged and discriminated against on the basis of age.

Privacy claims

Personal information requests have been a mainstay of personal grievances for a long time, but we consider it likely that claimants will look to utilise failings in responses, or breaches of privacy by the employer to raise employment claims for unjustified disadvantage or complaints for compensation to the Office of the Privacy Commissioner.

Whilst the developments may result in fewer personal grievance claims, this won't necessarily decrease the frequency of EPL claims overall as we see a trend of repackaging into different causes of action. This will leave plenty for underwriters and brokers to consider under an insured's EPL Policy.

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> "If certain claims become unavailable, claimants will look to repackage claims to circumvent the restrictions."

Discriminate? Terminate? – or Accommodate?

Discrimination law in Aotearoa continues to evolve as Courts test how human rights principles operate in workplaces. Two recent decisions – *McGearty v Air New Zealand Ltd*[1] (EmpC) and *Doria v Diamond Laser Medispa Taupo Ltd*[2] (HRRT) – illustrate this.

In *McGearty*, an experienced Air New Zealand pilot reached the age at which international rules restricted him from flying certain routes. The collective agreement contemplated alternative options, but Air New Zealand failed adequately to inquire into reasonable adjustments and instead placed him on unpaid leave. The Employment Court held that he had suffered unjustified disadvantage and age discrimination, emphasising that compliance with anti-discrimination obligations cannot be contracted out of, or subordinated to collective interests.

Diamond Medispa concerned pregnancy discrimination. A beauty therapist was effectively forced into early parental leave and then out of her job after disclosing her pregnancy. The Human Rights Review Tribunal (HRRT) found unlawful discrimination on the ground of sex/pregnancy and awarded almost NZ$100,000 in damages. Diamond Medispa had previously tried to strike out the claim and then filed for judicial review arguing the HRRT did not have jurisdiction because the dispute ought to have been dealt with as a parental leave complaint through the employment jurisdictions. However, the High Court, and Court of Appeal, confirmed that HRRT jurisdiction is not ousted because the issues could also be framed as employment/parental leave issues.

These cases are real illustrations that discrimination may arise not only from prejudice, but also from poor process, failure to genuinely consult, and a reluctance to accommodate life-stage realities.

We predict questions about wider forms of discrimination may be broached in future. For example, could a failure to accommodate menopause-related symptoms be framed under existing discrimination grounds such as sex, age or disability? Research shows very low uptake of formal menopause workplace policies despite significant workplace impact, suggesting a gap between human rights principles and day-to-day practice. *CD v ACC*, whilst related to ACC cover, recognised early induced menopause as relevant to CD's incapacity for employment, hinting at judicial willingness to consider menopause in legal analysis. New Zealand case law is still thin, but we expect more grievances and Human Right Act 1993 complaints referencing menopause.

The cases on age and pregnancy, coupled with emerging commentary on life stages such as parenting and menopause, suggest employers should proactively identify and accommodate health and life-stage factors. Those who don't adapt face elevated discrimination claims risk, as the law, societal attitudes and education continue to develop.

1. [2025] NZEmpC 223
2. [2025] NZHRRT 12
3. [2021] NZACC 189

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Privacy risk: the underrated exposure for employers

Privacy remains an underestimated risk area for employers, yet recent trends show privacy issues are escalating. In the 2024/25 year, the Office of the Privacy Commissioner (OPC) recorded a 21% increase in privacy complaints compared to 2023/24 and a 43% surge in serious breach notifications.

For employers, privacy risk is multi-faceted. Casual attitudes toward employee information can have disproportionate consequences. Perceived privacy breaches can exacerbate tensions and move parties to adverse positions. Offhand comments - such as joking about an employee's sense of humour or sharing dismissal details with third parties - can lead to reputational harm and claims for humiliation.

Employment disputes frequently intersect with privacy. Privacy Act information requests are now routine in personal grievances, used strategically to obtain evidence for claims.

Responding is time-consuming, stressful, costly and can intensify risk - particularly when communications assumed to be privileged (e.g., with HR advisers) are not always legally protected. Disclosure of messages suggesting predetermination ('let's just fire them') can be devastating.

Recent Human Rights Review Tribunal decisions underscore the financial exposure. In *BMN v Stonewood Homes*, underhand and intrusive collection of personal devices during an investigation resulted in a NZ$60,000 award for humiliation. Similarly, in *Cummings v KAM Transport*, internal disclosure of sensitive disciplinary information breached IPP 11 of the Privacy Act, leading to NZ$30,000 in compensation. Even internal sharing can constitute a serious breach.

Privacy breaches are increasingly claim-drivers, inflating quantum and complexity and defence costs. Expect higher frequency as privacy issues are leveraged in grievances, and severity supported by HRRT awards. Underwriters should scrutinize privacy policies and practices - and the scope of privacy breach cover in EPL policies.

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> "Privacy breaches are increasingly claim drivers, inflating quantum and complexity and defence costs."

Return to work mandates, litigation awaits

In the past two years we have seen a push from employers to get employees back in the office. Employers want to foster culture and engagement, while some employees are reluctant to return to rigid pre-pandemic ways of working.

Litigation was inevitable. Two cases have come before the Employment Relations Authority on the topic:

Martick v First Credit Union:[1]

- The employment agreement allowed First Credit Union (FCU) to direct Ms Martick to work in any branch, subject to travel being reasonable.
- Ms Martick started work in 2021, working exclusively from home. In 2023 FCU directed Ms Martick to work in its Avondale branch, a significant distance from her home, without consultation.
- The Authority found Ms Martick's remote working arrangement was not an implied contractual term as it contradicted the express term allowing FCU to choose the location of work.
- However, that term required FCU to consider whether travel to work was reasonable, so it should have consulted before making that decision. Consultation was also necessary to comply with good-faith obligations. Ms Martick was therefore unjustifiably disadvantaged and awarded $12,000 compensation for emotional harm.

Petrie v Alphero Limited:[2]

- The employment agreement provided Mr Petrie's location of work was in the office.
- In 2022 Mr Petrie was assigned to a project that allowed 4 remote working days a week. Alphero made clear it was temporary and that it had discretion to alter the arrangement at any time.
- Alphero later ended that arrangement. As it was expressly temporary and discretionary, Mr Petrie was not unjustifiably disadvantaged.

More cases will likely follow in the coming years. For now, if employers want to mitigate risk the following is clear:

- Employers can require employees to return to the office unless there is express agreement saying otherwise.
- Employers must pay careful attention to contractual terms, and the conditions / circumstances of remote working before revoking that arrangement.
- Employers must act in good faith and should consult with employees before directing a return to work.

1. [2024] NZERA 511.
2. [2025] NZERA 350.

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Casualty

General Liability

Increase in general liability claims

The increase in general liability claims continued in 2025. In particular, we have seen:

- A continued increase in the number of fire damage claims. This includes fires resulting from lithium batteries. The disposal of lithium batteries poses a significant risk of harm to the surrounding environment, including possessing a high risk of combustion when crushed or punctured.
- A continued Australian interest in litigation related to PFAS (per- and polyfluroralkyl substances) chemicals. A major consumer-led class action against 3M Australia Pty Ltd commenced in December 2024 in Victoria, involving allegations of human health impacts linked to PFAS. While there has been interest in PFAS chemical litigation in New Zealand, avenues for legal action in New Zealand connected with human health are limited by our accident compensation regime. However, the risk is not removed all together given the possibility of non-health related claims as seen in negligence and nuisance cases-style cases for diminution of value, perceived degradation of land quality, loss of enjoyment of land and cultural loss claims brought in Australia.

We also anticipate a continued increase in infrastructure claims, as the government's infrastructure investment ramped up in the second half of 2025, with significant roading and health infrastructure projects getting underway. We expect that more projects will come online during the course of 2026 as the current government makes a case for re-election at the end of the year.

Coverage

Developments in case law indicate the loosening of threshold to establish 'property damage'.

AAI Limited v The Owners – Strata Plan No 91086 [1] concerned combustible aluminium composite cladding panels used in the construction of two high-rise residential buildings. The owners sought leave to bring proceedings against the insolvent manufacturer's insurers, which required them to prove there was an arguable case that the relevant policies responded. The Full Court of the Federal Court of Australia found on an application for leave to appeal that it was arguable that the affixation of panels constituted property damage, by creating screw/nail holes etc to the structure, an immediate physical alteration that arguably rendered the buildings less suitable for their use as residential buildings. This was despite the earlier finding of the Federal Court that there is no simple, coherent definition or universally applicable rules for determining the scope of property damage: *R & B Directional Drilling Pty Ltd v CGU Insurance Ltd* (No 2).[2]

This opens the possibility that policies may be triggered at the point of installation of an insured's product, where installation in some way changes the structure to which it was installed.

> "The increase in general liability claims continued in 2025."

1. [2025] FCAFC 6.
2. (2019) 369 ALR 137; [2019] FCA 458 at [101].

Product Liability and Recall

Recall and contamination costs increasing

Product recall numbers remain high, with an increasing tension between product safety regulation and the scope of cover afforded under General Liability policies for suppliers and importers alike. Recent voluntary recalls of kinetic sand and magnetic chess products, both involving children's products and contamination / ingestion risks, demonstrate the increasingly preventative approach taken by regulators where a product may pose a risk of serious harm. We anticipate that asbestos decontamination costs arising from the use of kinetic sand in classrooms are likely to be significant. Claims involving decontamination costs and the scope of any pollution exclusions / extensions will continue to be challenging in the general liability space.

Global supply chains are amplifying recall risk. Recent overseas incidents including food and fresh produce contamination affecting export markets, international fears of asbestos contamination, recalls of children's clothing, and manufacturing-related contamination of consumer and medical goods demonstrate how a single safety concern can trigger cross-border recall action across multiple jurisdictions. For New Zealand suppliers and importers, including those who distribute or repackage goods manufactured offshore, this can result in significant disposal, decontamination and overseas logistics costs. Given that recall and contamination losses can arise even where a business's involvement in the supply chain is limited, there is an increasing need for clarity for insureds around how recall exposure is allocated across global distribution arrangements.

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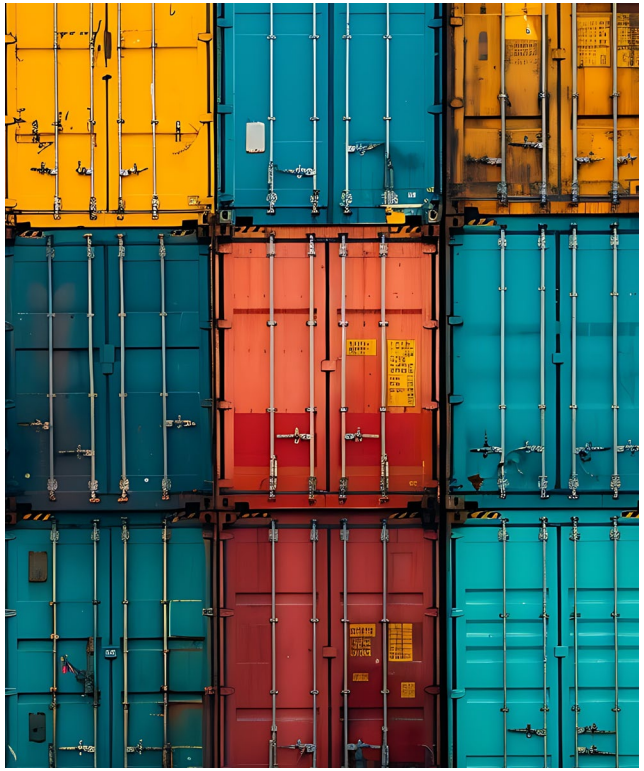
> "Global supply chains are amplifying recall risk."



Life Sciences

Clinical trials

A significant number of clinical trial sponsors conduct clinical trials in New Zealand. New Zealand's ethics approval process, regulatory framework and accident compensation scheme (ACC) provide a strategic advantage to clinical trials. However, it is important to note that ACC only covers non-commercial, publicly funded clinical trials.

There has been a recent interest in the extent of compensation available to participants who experience adverse reactions related to their involvement in a clinical trial. In 2025, we acted for a clinical trial sponsor in relation to declaratory judgment proceedings brought by trial participants. In August 2025, the High Court issued the below declarations by consent ([2025]NZHC 2251). The declarations summarise the current position of New Zealand law and industry standards.

1. The bar on proceedings for personal injury or death established by the Accident Compensation Act 2001 does not apply to injuries suffered by participants in commercial clinical trials.
2. Participants in commercial clinical trials who suffer personal injury or death as a result of their participation in such trials are entitled to bring proceedings in Court to claim compensation in tort or under any statute applicable to the circumstances.
3. In the case of tortious or statutory claims brought by or on behalf of injured participants in commercial clinical trials, the benefits that would have been available under the Accident Compensation Act 2001, if that Act had been applicable, do not limit the amount of compensation the injured party is entitled to recover.

It is yet to be seen whether the participant involved in that case will bring proceedings seeking compensation exceeding the ACC equivalent sum, which has already been paid to the participant by the sponsor. Any proceedings commenced will be of interest to commercial clinical trial sponsors as it will directly impact their risk exposure for trials conducted in New Zealand.

Though the High Court declarations do not extend beyond stating the current legal and industry position, the uncertainty as minimum compensation payable to participants may make New Zealand a less attractive trial site.

Medical products regulation

The Therapeutic Products Act 2023, drafted to replace the Medicines Act 1981 and Dietary Supplements Regulations 1985, was repealed in December 2024. Replacement regulation continued to be expected with the announcement that the Ministry of Health was developing a new Medical Products Bill to replace the Medicines Act 1981.

Cabinet has now released papers indicating the direction the Bill will take matters such as relaxing restrictions on pharmacy ownership and maintaining the current approach allowing direct-to-consumer marketing. The Bill is still being developed in relation to other matters and is expected to be introduced to Parliament this year.

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Statutory Liability – Health & Safety

HSWA reforms

Throughout 2025, the Government announced and consulted on proposed reforms to the Health and Safety at Work Act 2015 (HSWA). On 12 February 2026 the Health and Safety at Work Amendment Bill (Bill) was introduced and passed its first reading. It remains to be seen how much progress will be made before this year's election, and whether it will survive a potential change in government.

There are three major changes as we see it:

Cutting red tape

Government proposes that there should be a carve out of liability under HSWA for 'small PCBUs' [1] (with less than 20 workers). Specifically, such businesses will need to provide training, supervision and instruction on tasks that have critical risks (death, serious injury, serious illness, catastrophic equipment failure, and occupational diseases).

Importantly, the Bill does not allow small PCBUs to escape their other obligations under HSWA, rather it allows them to prioritise managing critical risks over those other obligations.

Additionally, the Bill proposes PCBUs should only be required to notify under HSWA where there is a fatality, serious injury / illness, or catastrophic failure of equipment. Currently notification requirements are much broader, importantly capturing lesser harm incidents as well as near misses (with no actual harm). Less notifications means less intervention, which will be welcomed by many businesses.

Clarity on what is 'reasonably practicable'

All duties owed under HSWA are prefaced by what is reasonably practicable, a test that comprises several factors. The Bill proposes a shift to an Approved Code of Practice (ACOP) model – if a business complies with an ACOP, then it will have taken all reasonably practicable steps to comply with its duties.

The challenge here is getting ACOPs up to date and, in many industries, creating new ACOPs. We note that while currently compliance with an ACOP is one facet of the test for what is reasonably practicable, in reality if a business complies with an ACOP fully they likely have a sound defence to a prosecution.

Clarity on governance obligations

In the *Gibson*[2] case, the District Court seemed to endorse that officer's duties under HSWA were not purely strategic / governance related, but also operational. That case was of course decided on its own facts, and is under appeal, but it made some noise in late 2024 in boardrooms around the country.

Government appears to have noticed. The Bill proposes that officers' duties relate to governance, and that officer duties do not extend to any other activities that person performs in the business. For example, if a CEO also has management duties, any breach of those management duties would be considered under duties of workers.[3]

We have observed a downward trend in prosecutions and enforcement over the last two years. We expect that will continue if the Bill is passed.

1. Persons Conducting Business or Undertaking.
2. *Maritime New Zealand v Gibson* [2024] DCR 246.
3. Section 45 HSWA, which is a section seldom used in WorkSafe investigations and prosecutions. It carries a maximum fine of $150,000, half of the $300,000 maximum fine for officers.

WorkSafe's new strategic direction

On 4 December 2025 WorkSafe issued its Statement of Intent 2025-2029 (SOI). It refers to '*a reset of our strategic priorities in order to improve the impact of what we do, with a much stronger focus on our educate and engage roles together with a more holistic and nuanced approach to our enforce role*'.

Our perception is that WorkSafe inspectors have been reluctant to commit to advising businesses as to whether their processes are compliant or not, fearing that such advice would then be used by way of defence in the event of injury or death. The obvious irony is that is that not all accidents or incidents at work arise from a lack of commitment to health and safety, and inspectors' advice, while not advocating a standard of perfection, should be able to be relied on. The SOI accepts that: 'As businesses are the primary duty holders, we have an important role in ensuring that businesses, and other duty-holders, know when they have done enough to manage their health and safety risks, reducing the potential for over-compliance and unnecessary costs to business'.

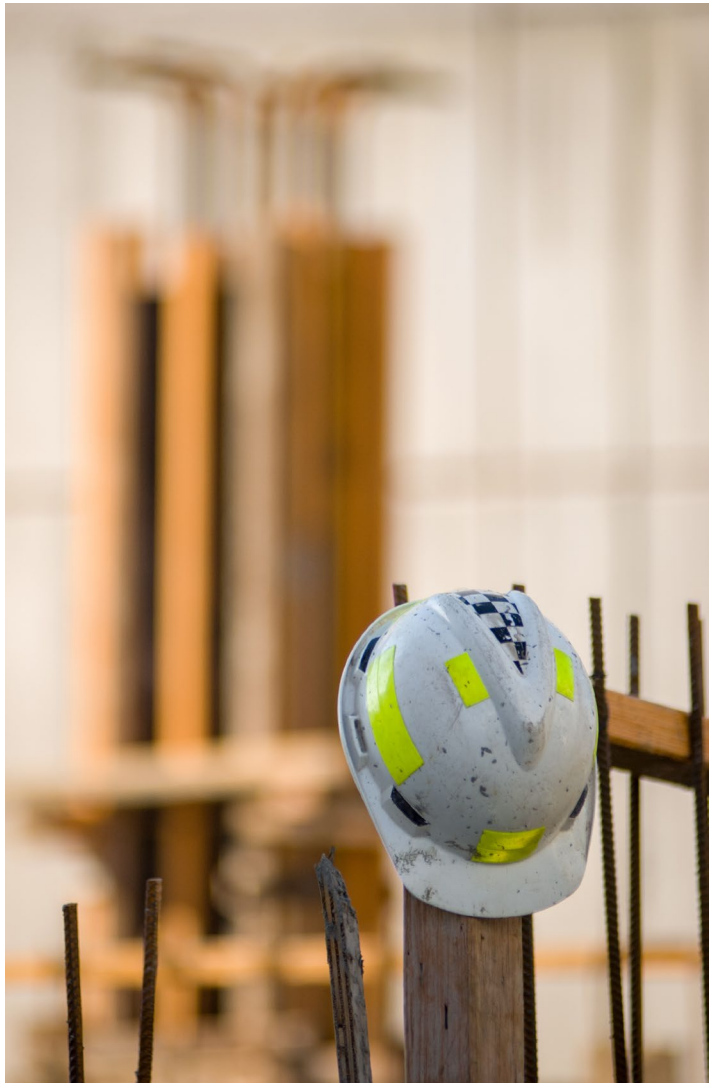
WorkSafe's focus will be acute, chronic and catastrophic harm and in four key sectors – agriculture, construction, forestry and manufacturing.

There is to be greater use of enforceable undertakings. WK acknowledges there has already been a shift in approach. We had two enforceable undertakings approved for clients in 2025, avoiding conviction and a fine. This is to be welcomed as, properly implemented, the enforceable undertaking is a powerful tool for effecting improvement in health and safety.

We look forward to assisting clients in this process with our expertise in this developing area of work.

WorkSafe states that prosecution action will still happen 'when there are serious breaches of the HSWA'. That might imply that serious injury or even death in the workplace means prosecution is not inevitable as was often the case in the past (in our experience). It appears the focus is less on gravity of effect and more on the nature and scope of the breach. In our view that is to be encouraged and will reward those who commit to safe systems of work.

Our experience in 2025 is that the shift in approach by the regulator has been clear for a while, but it is helpful to see that plan in writing. When an incident occurs at work we still work to support and advise careful engagement with the regulator while we investigate and assist clients in responding. It has been unlawful to insure a fine under HSWA for a long time but cover for official investigations / prosecutions and reparation for victims is still a valuable product at modest cost when there are unintended and unexpected incidents in the workplace.



Statutory Liability – Resource Management

Navigating new RMA maximum fines

2025 also saw major reforms to the Resource Management Act 1991 (RMA). As at 21 August 2025, penalties for offending have been uplifted to NZ$1,000,000 for individuals, a 3-fold increase and NZ$10,000,000 for corporations - a 17-fold increase. Seeking good advice early can help panel lawyers work with insureds to achieve good outcomes, including by use of alternate pathways that look beyond fines.

We do not know yet where the Court will land on uplifts for the average RMA offence. Using measures like a relative percentage of the maximum fine, as occurred when the penalties for Health and Safety offending increased, appears unlikely due to the lack of bands or tariffs in RMA offending, and the difference in the scale of the increases. The last increase[1] to these penalties was in 2009, at which time the maximum financial penalty for both individuals and corporations was NZ$200,000. An inflation adjustment might be justifiable given that 20-year hiatus.

Overall, however, the Courts will need to grapple with the fact the new maximums were intended to leave adequate scope for the most egregious offending on the upper end.[2] There is scope for prosecutors to draw on international caselaw in jurisdictions with comparable fines, noting New Zealand's international commitments to sustainable management. Any attempt to guess how fines will change at this stage is no more than crystal-ball gazing.

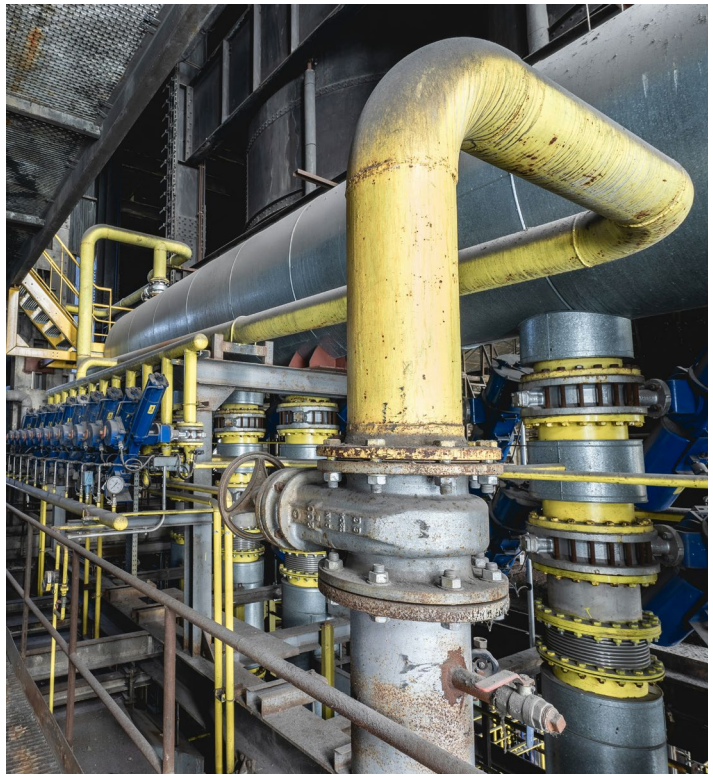
Alternate pathways

We recently acted on a case that provides a good example of how experienced panel advisers, insurers and insureds can use alternate approaches during these uncertain times to minimise financial exposure and improve reputational and relationship outcomes.

Daiken New Zealand Limited was upgrading pump systems at its facility. A mechanical failure occurred overnight, resulting in a discharge to an adjacent creek. It impacted ecology, recreation and customary food gathering for a temporary but notable period, having occurred the night before the first day of white-baiting season. Daiken self-reported the incident. We worked with it on a remediation-focused approach, driven at improving water quality over time, and improving its reputation and community relationships. Through alternate approaches, Daiken entered agreements to improve water quality in the wider catchment and contributed NZ$50,000 towards those aims.

The Court viewed Daiken's proactive approach positively. It considered its proactive and tikanga-informed approach showed personal accountability and meaningful remorse. After capturing the agreements made in an enforcement order, the Court determined that a NZ$12,000 fine was appropriate (despite the Council having sought a NZ$160,000 starting point).[3]

By remaining open to exploring alternate approaches, and relying on experienced panel advisors, good outcomes can be achieved irrespective of the hefty increases in uninsurable RMA fines.



1. In *Stumpmaster v WorkSafe New Zealand* [2018] NZHC 2020 the Court was considering a six-fold increase in the size of the available fines.
2. See Hansard for the debate of the third reading of the Natural and Built Environments Bill, noting the provisions carried over to the new legislation.
3. *Canterbury Regional Council v Daiken New Zealand Limited* [2025] NZDC 12378.

Statutory Liability – Environmental Protection Authority

Environmental Protection Authority v Ham Chem Hamilton Chemicals Limited [2025] NZDC 19865

In August 2025, an Environmental Protection Authority (EPA) investigation came to a head with a sentencing of a chemical supplier for breach of the Hazardous Substances and New Organisms Act 1996 (HSNO). The prosecution related to 30 supplies of chemicals over a two-month period. The defendant attempted compliance but had to seek expert advice and, in the meantime, made supplies that the Court accepted were technical infringements. The amount and volume of other supplies were modest.

While charges have been laid under HSNO in the past, this was the first of its kind for these provisions. The Court applied a starting point of NZ$50,000 for the fine which it discounted, for mitigating factors, to NZ$35,000. The EPA had sought a starting point of up to NZ$160,000. The case highlights the importance for specialist businesses in complying with technical legislation and the regulator's intention to hold those businesses to account. The Court made it clear that these fines were appropriate on these facts for offending in 2022, but the decision is not a precedent or guide as to what future fines would be imposed in similar circumstances.

The regulator generally

Despite existing as a regulator since 2011, the above case is surprisingly only one of a handful the EPA has taken to sentencing. It is an understatement to say the EPA has been inactive as a prosecuting regulator to date.

Our observation is the EPA has ramped up its activity as a prosecutor in recent years. In late 2022, EPA wrapped up a sentencing for RMA and HSNO breaches.[1] The *Ham Chem* case concluded in 2025, and there is at least one other case currently making its way through the criminal process right now.[2]

While the number of prosecutions is tiny compared to those brought by other regulators, it is still a notable increase in activity compared to the first decade of the EPA's existence when no sentencings occurred.

Much of that shift may boil down to resourcing. Historically the EPA has frequently operated at a deficit, but in 2023 it received a sizeable increase in annual funding.[3]

With increased funding we expect the EPA to be a more active regulator in the coming years. In our limited interactions with the EPA, we have found it to be a determined regulator through both investigations and prosecutions. Whether that approach will continue with increased volume in activity is yet to be seen.

1. *Environmental Protection Authority v Channel Infrastructure NZ Ltd* [2022] NZDC 22206
2. *Environmental Protection Authority v Ventia NZ Operations Ltd* [2025] NZDC 7205 (media access application on current EPA prosecution).
3. MartinJenkins-functional-and-funding-review.pdf

Statutory Liability – Fair Trading Act 1986 Reforms

Fair Trading Act 1986 reforms

The Government's planned overhaul of the Fair Trading Act 1986 (the FTA), expected to take effect by late 2026, represents a major shift in compliance risk. Maximum penalties are set to rise drastically – from NZ$600,000 to the greater of NZ$5 million, three times the commercial gain, and the value of the transactions involved. These changes are designed to eliminate any financial incentive for businesses to breach the law, noting that in some cases breaches are seen merely as 'the cost of doing business'.

The drive for higher penalties may be no surprise given the recent shifts in other regulatory areas, and calls for stronger accountability of offenders in general. Nicola Wilis notes that consumer complaints under the FTA have surged by nearly 23% over the past five years, with recent prosecutions against major supermarket chains highlighting the Regulator's appetite for enforcement.

Along with increased penalties, the Commerce Commission also gains new powers due to shifting the regime from the high criminal standard (beyond reasonable doubt) to the lesser civil standard of 'on the balance of probabilities'. This shift is aimed at providing a stronger deterrent to large corporate offenders, while also making enforcement faster and more accessible. Although serious or deliberate misconduct will remain a criminal offence (i.e. serious product safety breaches, operating a pyramid scheme or obstructing the Commerce Commission), the lower threshold for civil action means more businesses could face penalties. Lower evidentiary thresholds may lead to more enforcement actions and, consequently, more claims.

Penalties linked to commercial gain mean potential liabilities could reach tens of millions for large corporates. The relevant statutory liability and D&O policies should be reviewed to ensure coverage remains adequate and reflects these new harsher realities.

The introduction of civil penalties raises questions about coverage triggers, with many policies historically distinguishing between criminal and civil liability. Accordingly, insurers may need to confirm whether these civil penalties fall within the scope of the relevant wording or if endorsements are required.

New Zealand is aligning itself closer with comparable jurisdictions, such as Australia's regime, which imposes penalties up to AU$50 million. For insurers, this signals a compliance-driven market where clients will expect robust protection against regulatory risk.

However, exactly how these changes will be enforced remains to be seen. The Courts and the Commerce Commission will continue to have discretion to consider a range of factors, including the nature of the conduct, prior breaches, and the size and scale of the business. This means outcomes may vary, and insurers should monitor early cases closely to understand how the new regime is applied in practice.

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Property & Energy

Proving property damage

Body Corporate 423090 v QBE – one of the last of the Canterbury Earthquake decisions

The High Court's 492-paragraph decision in *Body Corporate 423090 v QBE Insurance (International) Ltd* [2025] NZHC 3015 (Pacific Tower) relating to alleged unrepaired damage from the Canterbury Earthquake sequence has important implications for material damage and inadequate repair claims.

Insurers will be comforted by the Court's adherence to the burden of proof but should remain concerned about their residual liability for further work following a repair project. The decision is interesting for the way that the Court considered a structure's purpose when considering whether 'damage' had occurred, and the finding that not all deformity or reduction in capacity of building elements is sufficient to constitute damage.

A brief background

The Pacific Tower in Christchurch is a 22-storey, mixed-use building which suffered significant damage during the Canterbury Earthquake Sequence (CES). It had been built as a 'ductile' structure which used steel frames with 'active links'. The active links are key structural steel components designed to act as fuses, absorbing seismic energy and deforming to protect the building's integrity during earthquakes. The building also utilised relatively small and uncommon lifts to service its 22 floors.

The Body Corporate and QBE had already agreed on and completed substantial repairs under a material damage / business interruption policy which covered 'physical loss or damage'. However, a dispute later arose over whether further remedial work was required to meet the policy's standard of reinstatement, specifically regarding the building's 'active links' and the alignment of its lift shafts.

The Body Corporate argued that 22 of the remaining unreplaced active links had suffered plastic deformation in the earthquakes, reducing their capacity to withstand future seismic events and constituting damage under the policy.

As for the lift shafts, the Body Corporate claimed that the CES had caused permanent bowing, reducing the available tolerances and making the lifts more vulnerable to misalignment or inoperability in the future. QBE maintained that all earthquake damage had been repaired to the required standard, that any increased vulnerability to future events did not amount to present 'damage', and that any further issues should be the subject of a new claim.

Another confirmation that claimants bear the burden of proving damage

In another useful finding for insurers on this issue, the Court reiterated that the burden of proof lay with the Body Corporate for every material fact of its case. The Body Corporate had to prove that the CES caused damage to the active links and lift shafts and to establish what was required to remedy that damage. It was not enough to show that damage was possible or that greater damage might have occurred.

The case was heavily reliant on expert evidence, with 18 witnesses (including 10 experts) providing extensive technical analysis. The plaintiff's case for damage to the active links was based largely on expert computer modelling of likely strain to the links. The Court was ultimately unpersuaded by this evidence considering its inherently hypothetical nature, inconsistencies between the modelling and the physical evidence, and revision of the modelling on the eve of trial. There was simply too much uncertainty for the burden of proof to be discharged.

Damage with reference to purpose

The Court adopted the well-established standard that 'damage' means a detrimental physical change that impairs the value, amenity, or usefulness of the property in a way that is material. For structural or functional elements like the active links and lift shafts, damage must affect their functional purpose.

For the active links, the Court accepted that plastic deformation to steel is permanent and reduces the remaining deformation capacity of an active link. However, it found that while some unreplaced active links likely suffered plastic strain, the Body Corporate failed to prove the links were no longer able to perform their functional purpose. The Court's assessment of the role played by the active links was vital to this conclusion.

The Pacific Tower was designed so that the links were intended to deform in a stress event, confining plastic deformation to certain 'hinge regions'. QBE's evidence satisfied the Judge that links with 10% fatigue could still handle another 9 earthquakes, and that handling multiple stress events was the point of the components. His Honour held it was not sensible to conclude that the active links, which were still fully capable of doing the job they were designed to do, were 'damaged' simply by virtue of a reduced deformation capacity.

The Court also considered the purpose of the lift shafts which were bowed by the CES. QBE argued the lift cars were still operational, and so suitable for their designed purpose, so no damage. The Court disagreed and said lift shafts had additional important functions including having sufficient tolerance for adjustment, permitting replacement with equivalent cars, and travelling within manufacturer specifications. The bowing significantly narrowed the clearance between the car and the shaft, negatively impacting all these functions.

The Court had insufficient information to order a specific repair methodology in relation to the lifts. However, it rejected QBE's suggestion that smaller lifts be installed on the basis that re-establishing the lift shafts was unreasonable and disproportionate, as this did not meet the policy's reinstatement standard of 'substantially the same as when new'.

The Court's assessment of arguments relating to impaired capacity is an interesting addition to precedent in this area, following on from the broader test for damage expounded in the *Technology Holdings* decision. Notably, the plaintiff's argument failed for the active links, where impaired capacity was the only alleged damage, but succeeded for the lift shafts, which had other impaired intended functions.

Estoppel and wasted costs

An evident thread throughout the case was QBE's understandable frustration with dealing with these issues years after the CES, having already made substantial payments for earlier repairs.

After the CES, the parties had reached agreement as to how repairs would be conducted. The Body Corporate undertook a robust and extensive defect identification and repair process. QBE advanced more than NZ$16 million.

QBE argued an insured should not be permitted to run its own extensive repair scheme, with expert assistance, receive a substantial pay-out, and then come back for another bite of the cherry.

Justice Eaton held that while QBE may have relied on the Body Corporate's conduct, there was no clear and unequivocal representation that the repairs were complete or that the policy standard had been met.

The evolving nature of damage identification and repair meant it was not unconscionable for the Body Corporate to seek further repairs. In addition, QBE had peer-reviewed the repairs. The Court concluded that the Body Corporate was not estopped from enforcing its contractual rights under the policy for the lift shaft repairs.

The Court also referred to the appellate decision of *Moorhouse Commercial Park v Vero Insurance New Zealand Ltd* [2024] NZCA 415. There, the Court noted that discussions between insurer and insured about repairs planned to satisfy the policy standard might reach a point where the insurer is no longer obliged to meet the policy standard. The Court described that scenario as one of accord and satisfaction. However, the implications of this were not fully explored given that approach had not yet been recognised in New Zealand.

Summary

Pacific Tower serves largely to buttress some fundamental principles relating to material damage claims. The decision confirms the test for physical damage and provides a useful example of where reduced capacity of building elements is not sufficient to constitute damage. However, it also reinforces that in many situations, insurers will remain liable for incomplete and/or defective initial repairs, which can continue to be manifest several years after the relevant event.

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Increase in fire claims (social housing, arson/economic conditions, lithium batteries)

We have recently been seeing an increase in fire claims, driven by difficult economic conditions, expansion of organised crime activity and a wave of new electrical products.

Fraudulent fire claims

Suspicious and fraudulent fire claims have remained relatively consistent in today's challenging economic climate. Wotton Kearney have been acting on a number of such claims including recently successfully defending in the High Court an insurer's decisions to decline cover for deliberately set fires in Canterbury and Wellington. These matters often involve extensive investigations and evidence-gathering to meet the evidential threshold for fraudulent claims, and involves our team working closely with insurers and specialist experts and investigators.

Rental property drug operations

We have also seen a rise in residential fires arising from illegal drug operations, with unsuspecting landlords not complying with their landlord policy obligations which can impact insurance cover from such fires. Tenanted properties (often less than desirable properties) have been transformed into commercial drug houses by organised crime units and tenants who have not been adequately reference-checked. These operations significant increase the risk of fire from dubious electrical recircuiting and power bypassing, as well as gang-related intentional damage. We have been involved in a number of these claims, and they have highlighted the importance to landlords of complying with their policy obligations, including regular property inspections and tenant vetting, which would prevent such drug operations and subsequent fires.

Lithium batteries

Lithium-ion batteries, powering electric vehicles and e-scooters are a growing source of fire claims. In New Zealand, incidents linked to lithium batteries rose 135% between 2020 and 2024, and 93% in the UK over the same period. Poor manufacturing standards, and inadequate safety controls and regulation are some issues responsible for the rise in fires. Wotton Kearney commonly pursues subrogated recoveries for insurers against domestic suppliers and manufacturers of such batteries responsible for fires.

Social housing

Government programmes responding to economic hardship have accelerated the growth of social housing.[1] These schemes introduce properties with layered ownership structures that do not fit clearly or cleanly with insurance policies. We have been seeing a number of fire or other deliberate damage claims by social housing boarders/tenants placed into the insured's property by a social housing provider. In these cases, the 'tenant' for the purposes of an insurance policy is the housing provider.

They are subletting to the occupant from vulnerable socio-economic backgrounds, and this creates difficulties identifying liability. Coverage, double insurance and liability disputes are increasing with the background of an expanding social housing sector.

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1. Delivering better social housing | Beehive.govt.nz, 6,800 new social homes delivered since November 2023.

Resolving the last of the Canterbury Earthquake claims

Limitation in the context of Earthquake Claims

***Pearce v Toka Tu Ake Natural Hazards Commission & Medical Insurance Society Ltd* [2025] NZHC 623**

In 2025, the NZ High Court in *Pearce v NHC* was asked to determine when limitation commenced for bringing a civil claim against a private insurer in the Canterbury earthquake context. The High Court determined, contrary to overseas positions, that time runs from the date the private insurer's obligation to pay is triggered, as opposed to the date of the insured peril. In the specific context of earthquake cover in New Zealand and the policy at issue, the Court found this was the date after which the Natural Hazards Commission (then EQC) advised the private insurer that it had assessed the claim as over its statutory cap. Mr Pearce's claim against his insurer was therefore found to be in time, despite the fact he did not bring the proceedings against MIS until 2023 – 12 years after the earthquakes.

Mr Pearce had a residential property damaged in the Canterbury Earthquakes. He lodged claims with NHC and his private insurer, MIS. NHC initially assessed the cost of remediating the extent of damage as under its statutory cap and paid for such in 2014. Mr Pearce disagreed with NHC's assessment and over the years that followed, challenged NHC's position without bringing proceedings. In 2022, NHC revised its assessment and accepted the claim as over its statutory cap. Pearce then sought the overcap amount from MIS, who argued he was out of time to bring a claim under his policy for this amount and proceedings were issued.

Under the Limitation Act 2010, the relevant limitation period for the claim commenced from 'the date of the act or omission on which the claim is based'. Traversing New Zealand and overseas authorities, the High Court found that the 'act or omission' here was not the insured peril itself but rather when an insurer fails to pay the amount due 'at the proper time'. In the context of policies offering cover in excess of NHC's statutory cap, the proper time was a reasonable period for the private insurer to assess the claim following NHC's advice that such claim was overcap. Here, the Court found that was a reasonable time after 25 November 2022. Time for limitation purposes did not begin to run for a claim against MIS until that time.

The Court's finding in effect left MIS's claim exposure at the mercy of NHC's internal processes and its accompanying delays in assessing the claim as over its statutory cap – a point forcefully submitted on by MIS. Notwithstanding, the Court found that this 'had no significance'.

In practice, *Pearce* has indeed left private insurers at the mercy of NHC with respect to Canterbury earthquake claims. Insurers remain exposed to a long tail of claims that NHC is constantly, and only recently, re-assessing as over its statutory cap and passing onto insurers – more than a decade after the earthquakes. Insurers are then being left to assess and settle these claims with their policyholders under their policies in today's context, leaving them exposed to building law changes, physical changes at the property, and cost escalation, through no fault of their own.

Pearce v NHC was not appealed.

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Health

Artificial Intelligence (AI) in Healthcare

Artificial Intelligence (AI) is reshaping healthcare. It offers opportunities for efficiency and improvement, including in 'precision health' and, importantly, administrative support.

Precision health tailors medical care to individuals' genetic, environmental, and lifestyle factors. AI-driven algorithms can analyse complex data to predict disease risks, optimise treatment plans, and enable earlier intervention. A shift to more personalised preventative care would change how public health care is delivered.

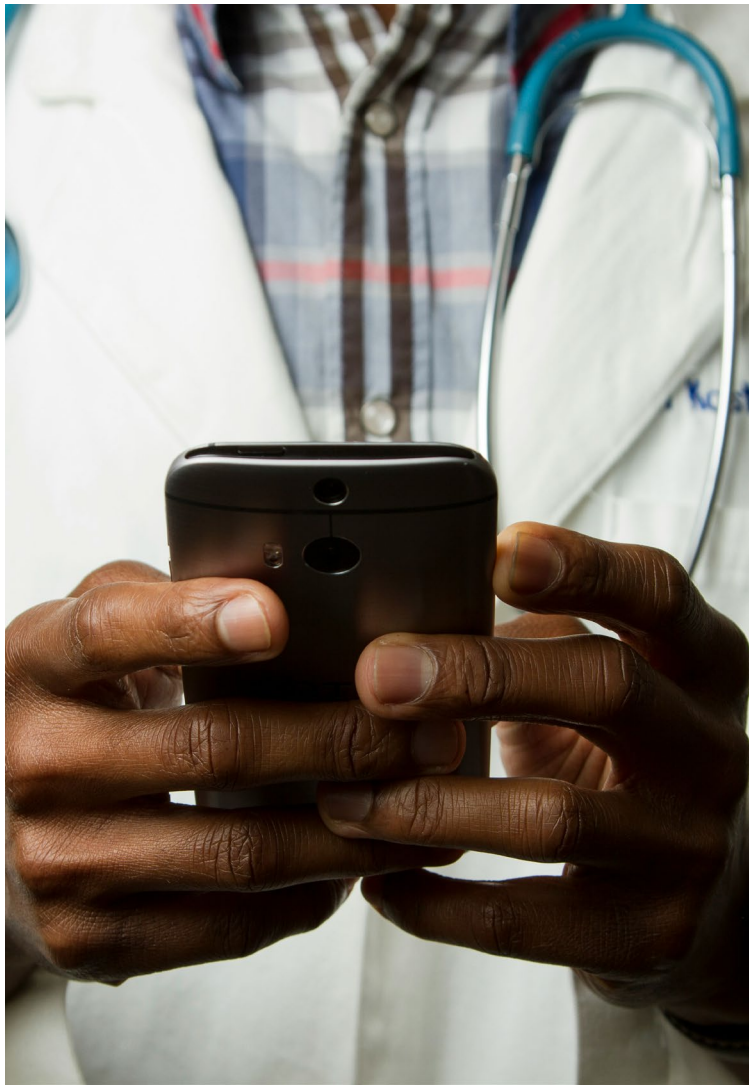
Diagnostic imaging is another area of cautious advancement. Machine learning assists radiologists by improving diagnostic accuracy and enhancing consistency (including by reducing human error). This serves both a specific and general patient benefit, through limiting the time exposed to radiation and promoting effective use of the scanners (reducing wait times in turn).

Beyond clinical care, AI can enhance administrative efficiency. The Royal New Zealand College of General Practitioners' 2024 study "*Your Work Counts*" found that GPs' non-contact clinical work makes up 30.8% of GP time. This heavy burden contributes to the significant rate of GPs (recorded at 70%) who consider themselves as moderately to highly 'burnt out'. AI tools for scribing and note-taking reduce these administrative burdens. They can also enhance risk management. Medico-legal disputes often hinge on conflicting recollections which are not helped where notes are sparse. AI-assisted documentation can create fuller records of consultations, providing greater certainty about what information was imparted and treatment agreed.

> "Data privacy and consent obligations must be carefully managed."

For all its benefits, adoption of AI also brings challenges. For equitable access, barriers related to digital literacy and access to online platforms must be reduced. Data privacy and consent obligations must be carefully managed. Without express patient consent to the use of AI tools at each point of engagement, practitioners' risk unauthorised data sharing, privacy breaches or regulatory non-compliance. This is particularly contentious when those privacy concerns involve sensitive health information. A recent report from the Prime Minister's Chief Science Advisor stresses the need for robust policies, ongoing evaluation, and practitioner oversight. Clear frameworks for assessing and auditing the use of AI tools are essential.

The Medical Council of New Zealand's recent consultation on its proposed statement, "*Using Artificial Intelligence (AI) in patient care*" indicates the undeniable influence of AI in healthcare.



From a regulatory and risk perspective, the Australian Health Practitioner Regulatory Agency has summarised key considerations for health practitioners when utilising AI in practice — which should likewise be anticipated as factors to consider for New Zealand practitioners. These include:

Accountability – the practitioner remains responsible for ensuring that care is safe and of an acceptable quality. Even where an AI tool is approved by a regulatory body, the practitioner must apply human oversight and judgement, including ensuring the accuracy and relevance of any records generated through an AI scribing tool.

Understanding – practitioners using AI tools must have a good understanding of how the particular tool is trained and tested, and its intended use and limitations. This includes knowledge of a tool's diagnostic accuracy, how data inputs are used to retrain the AI, and where data is located and stored to ameliorate any privacy and ethical considerations. The practitioner must be satisfied that the use of AI tools falls within their professional obligations.

Transparency and informed consent – practitioners should tell patients about AI use and address any concerns raised. They should provide a level of information suitable to how and when AI is being applied; detailed information is required where a patient's personal data/information is implicated. Explicit consent must be obtained before implementing the tool.

Ethical and legal issues – all legislative and regulatory requirements must be complied with. This includes with respect to confidentiality and privacy around the collection, storage, use and disclosure of patient information. Healthcare providers should consider any insurance implications of using AI and clarify with their providers that their policy covers this use.

As the healthcare system navigates rapid AI developments, careful governance and a thorough understanding of obligations and risks will be key to ensuring that AI achieves its potential to deliver equitable, efficient and effective care.

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The corporatisation of primary care

Historically in New Zealand, primary care was generally provided by GP-owned for-profit practices — but this is changing, with patient safety and medico-legal implications.

We are seeing now, the rise of large corporate medical groups, constituted as private companies, with non-GP shareholders and branches across many locations. These corporates have taken advantage of a gap in the market, created by an aging GP workforce and the unattractiveness and/or nonviability of private practice ownership (due to workload expectations, underfunding and cost of living pressures).

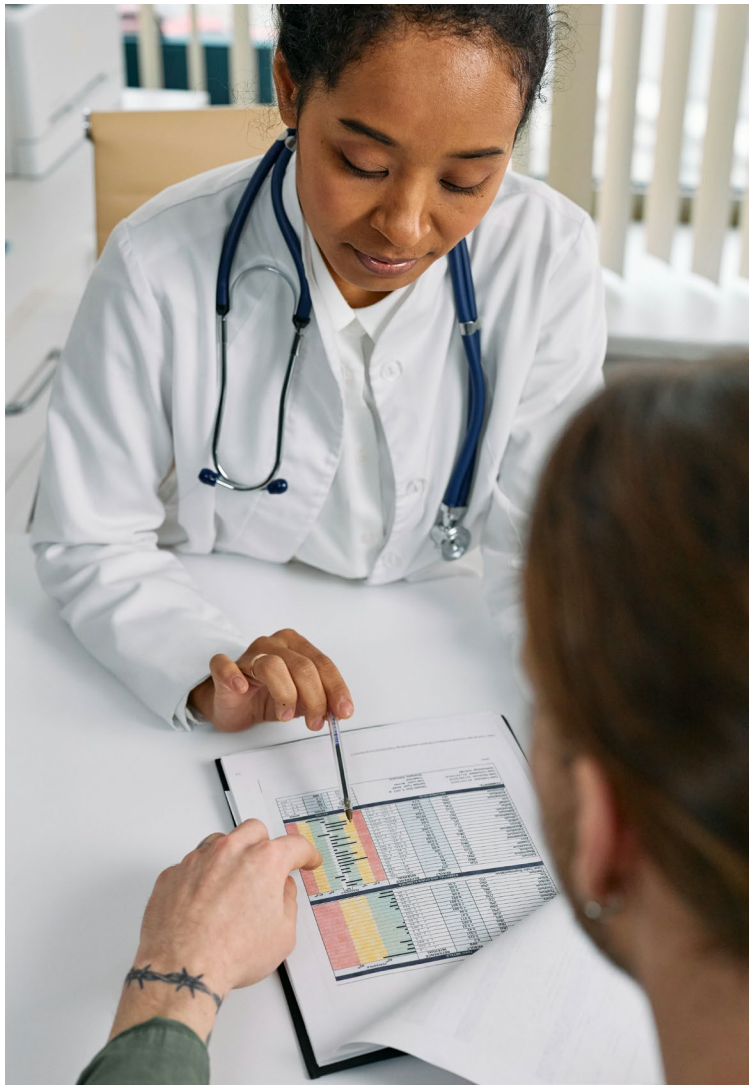
The corporate ownership model comes with advantages. Economies of scale can secure preferential pricing and agreements for essentials (i.e. medical consumables, IT and management systems). Services and quality management processes can be standardised, enhancing efficiency. There is greater capacity to resource HR, financial management and administrative support. Resources can be pooled and redirected where required. Corporate intervention has served a benefit where it enables struggling or otherwise nonviable practices to continue in operation. But there is a case for caution.

Corporate ownership brings with it the potential for higher profit motives. The predominance of such motives can incentivise shorter consultations (more patients seen = more patient fees); greater patient enrolments (capitation funding from Te Whatu Ora | Health New Zealand is based on the number of enrolled patients (more patients = greater funding revenue); a drive to lower costs (and enhance profits) can encourage under-spends and reduced staff resourcing.

All of these put pressure on the GP workforce and consultations, risking the provision of quality and safe patient care. These risks may be less in a GP-owner context, where the GP may be more connected to the community within which they live and work, and where they have 'skin in the game' in the sense that any pressures will be experienced within their own work, thus directly appreciated and understood (and effectively responded to).

As well as workplace pressures arising in a corporate model, individual health providers can be exposed to consequences in the regulatory and consumer oversight structures they are subject to (via registration authorities and the Health and Disability Commissioner). These impose obligations on practitioners to meet professional, ethical standards; and to do this requires a degree of professional autonomy. Issues arise where individual obligations clash with requirements driven by commercial motives or responsibilities to employers and/or shareholders.

Clause three of the Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996 (the Code) proposes that a provider may not be deemed to have breached the Code if it can be established the provider took reasonable actions in the circumstances (which includes the provider's resource constraints). Despite this, in our experience, responsibility for the consequences of external pressures — be it complaints, errors, or missed diagnoses — still primarily fall on individual providers. This may be unfair in a corporate model where clinical decision making is impacted by a practice structure that enhances the risk of patient consequences.

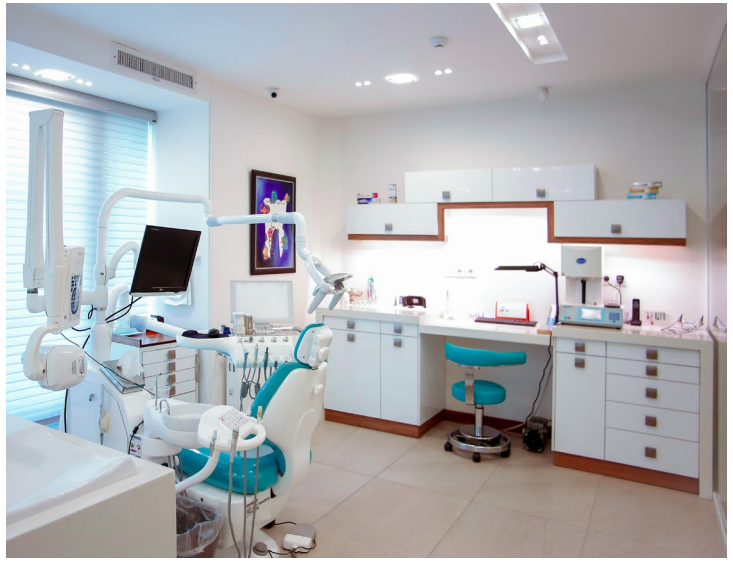


There are limited mechanisms available to hold corporate structures to account. A medical practice can be found liable for breaching the responsibilities and obligations in the Code, but canvassing decisions over the last decade reveal only one case where such a breach has resulted in a successful prosecution by the Director of Proceedings in the Human Rights Review Tribunal *(Director of Proceedings v Tui Medical Limited* [2021] NZHRRT 44). Tui Medical comprised a group of six medical clinics and a significant concern was the fragmented care provided, insufficient consideration of the patient's clinical history, and a lack of policies to facilitate continuity of care within the structure.

There are limited mechanisms available to hold corporate structures to account. A medical practice can be found liable for breaching the responsibilities and obligations in the Code, but canvassing decisions over the last decade reveals only one case where such a breach has resulted in a successful prosecution by the Director of Proceedings in the Human Rights Review Tribunal *(Director of Proceedings v Tui Medical Limited* [2021] NZHRRT 44). Tui Medical comprised a group of six medical clinics and a significant concern was the fragmented care provided, insufficient consideration of the patient's clinical history, and a lack of policies to facilitate continuity of care within the structure.

The provision of primary care as a business is unique, where it is both a commodity and a public necessity/good. Because of its nature, and the potentially competing obligations imposed on those working within it, and because it is resourced in large part by public funds, there is justification for greater government (Te Whatu Ora) oversight of corporate models — for the good of patients, and the sustainability of the workforce.

Intervention at the 'front-end' is preferrable to extending current structures to hold corporates to account for errors or harm. Intervention could involve oversight to ensure standards of care and equity efforts are being appropriately prioritised. Risks could be reduced through the capitation structure being more nuanced, based on broader patient complexity determinants. Resources could be allocated based on patient need, rather than chiefly patient numbers — reducing 'quantity over quality' motivations. There is certainly a place for corporate ownership, but there should be safeguards around it to ensure the ownership structure best achieves public health goals.



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Cyber, Data and Technology

Closing the gap: why New Zealand must act on regulating cyber, data and AI risks

New Zealand's Privacy Act 2020 has needed reform almost from the day it came in force. Based on recommendations from the Law Commission in 2011, the Act represented an improvement on its predecessor but lacked may features of a modern data protection framework. This was highlighted at the then Privacy Bill's second reading, when the then Minister of Justice, Hon Andrew Little, acknowledged a range of important features missing from the bill, but noted that these would have to be added later.

Since 2019, New Zealand's slow pace of regulation in the field of privacy, data protection, cyber security and AI has created a yawning regulatory deficit.

While other jurisdictions strengthen their regimes, New Zealand maintains a light-touch, incremental approach. If unaddressed, these gaps will make New Zealand a prime target for cyber criminals and expose individuals to greater risks of harm.

We anticipate that further regulation may not be far away.

Recent developments

The news is not all bad. 2025 did bring some developments, including:

- The Customer and Product Data Act 2025 receiving royal assent. The CPDA provides a framework to enable greater access to and sharing of customer and product data between businesses in particular sectors, starting first with the banking sector.
- The Office of the Privacy Commissioner issuing the Biometric Processing Privacy Code 2025. The Code imposes stricter rules on the collection and use of processing activities involving biometric information.
- New Zealand becoming a signatory of the Budapest Convention on Cybercrime.
- The OPC also establishing a Māori Reference Panel to bring a te ao Māori perspective to the OPC's work and issued guidance on a range of topics, including children's privacy.

Where to from here?

Despite these developments the need for more fundamental reform is increasingly urgent.

This was highlighted in the regulator's 2025 annual report.

To quote the report, *"The* [Privacy Act 2020] *is increasingly 'long in the tooth' as it is based on Law Commission recommendations from 2011"*. A range of reforms are needed to ensure that New Zealand's privacy and data protection framework remain fit for purpose. In particular the OPC is recommending four specific amendments:

- Inclusion of a 'right to erasure', providing individuals with the right to request that their data be deleted.
- A new and significantly stronger penalty regime.
- An accountability principle, requiring agencies demonstrate how they meet their privacy requirements.
- Stronger protections with regard to automated decision making.

> "...New Zealand's slow pace of regulation in the field of privacy, data protection, cyber security and AI has created a...regulatory deficit."

Further regulation would also seem necessary in related areas. For example, in the area of AI regulation, the Government released its first AI Strategy in July 2025, reaffirming a 'light touch, principles-based' approach, rather than introducing dedicated AI statutes.

The given reason is that regulation of AI may introduce barriers to the adoption of AI. This contrasts sharply with the EU's AI Act, which took effect in August 2024. The AI Act is being implemented in stages. The European Commission has maintained its firm stance on enforcement despite a letter from the CEOs of 46 major technology companies requesting a 2-year pause in the rollout.

Another example is reporting on ransomware incidents. Globally, ransomware reporting is becoming standard practice. Australia's mandatory ransomware payment reporting under the Cyber Security Act 2024 (Cth) came into force on 30 May 2025. The Act applies to companies that is a responsible entity as defined by the Security of Critical Infrastructure Act 2018 and those that 'carry on business' in Australia and have an annual turnover of AU$3 million or more.

The US has required critical infrastructure entities to report cyber incidents and ransom demands since 2022 under the Cyber Incident Reporting for Critical Infrastructure Act. The UK Government is proposing a landmark counter-ransomware legislation that would introduce a ban on ransomware payments for owners and operators of regulated critical national infrastructure and the public sector, establish a ransomware payment prevention regime, and mandate incident reporting.

Responses to the consultation were published in September 2025. In New Zealand, there is still no formal reporting requirement for ransomware attacks. Reporting obligations arise only when an attack constitutes a notifiable privacy breach under the Privacy Act 2020, and the legality of ransom payments is governed by existing laws, including the Russia Sanctions Act 2022 and the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

Consequences for stakeholders

This regulatory lag creates material risk exposure for insurers. Regulatory gaps create uncertainty. Without clear statutory duties, organisations may underinvest in their security control and undervalue cyber resilience, increasing the likelihood and severity of breaches.

A spate of recent high-profile attacks in New Zealand have highlighted the potentially risks in play, and an increased pace of regulation in comparable jurisdictions is likely apply further pressure for reform.

Whether that happens in 2026 or not remains to be seen. Although, with an election on the horizon, 2026 may be the year we get some insight into the Government's intentions in this space.

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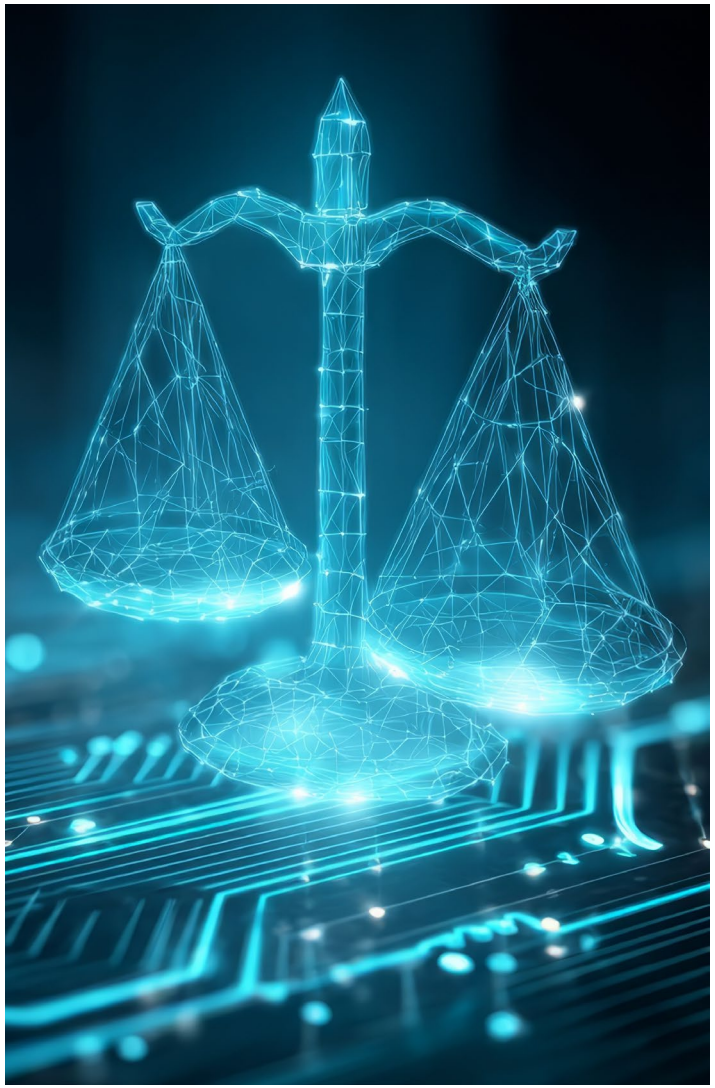
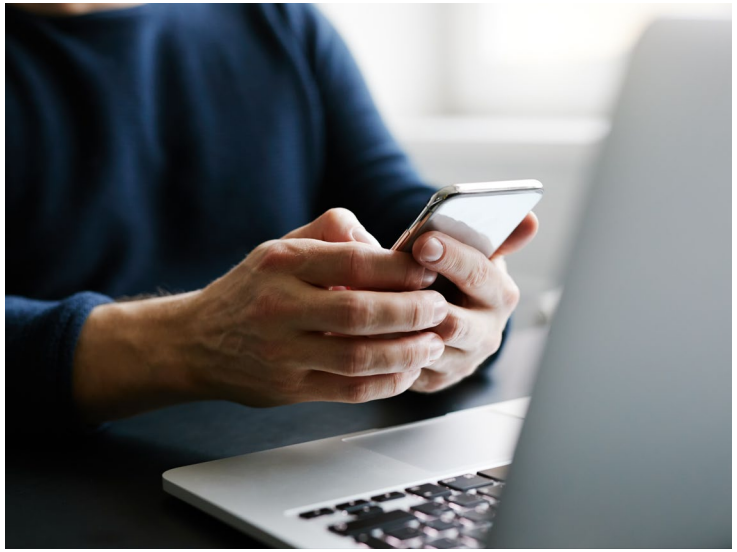


Privacy cases of note in 2025

2025 marked another year of judgments and decisions highlighting the importance of taking privacy, data protection and cyber incidents seriously, and the pitfalls of dealing with them incorrectly.

This year we shine the spotlight on three decisions from the Human Rights Review Tribunal, the Federal Court of Australia and the Public Services Commissioner. Each provides a cautionary tale in the importance of responding appropriately and quickly to cyber and data incidents. In a world where such incidents are a question of 'when' rather than 'if', responding properly is increasingly critical.



BMN v Stonewood Group Ltd [2024] NZHRRT 64

In *BMN v Stonewood Group Ltd* [2024] NZHRRT 64, the Human Rights Review Tribunal awarded an employee NZ$60,000 for significant humiliation, loss of dignity and injury to feelings following collection of personal information by an employer that contravened three information privacy principles.

The defendant, Stonewood Group Limited, had arranged for an employee (BMN) to attend an off-site meeting. During the meeting the defendant seized the employee's work laptop, personal cell phone, and a personal USB stick. All three devices contained the employee's personal information. BMN's employment was terminated one week later. BMN made multiple requests for the return of the personal information, although the defendant repeatedly failed to comply.

The HHRT found that the defendant had breached IPP 1, 2 and 4. In particular, the defendant had no lawful reason to collect the personal information, admitting that they had not "*given any thought to the [Privacy] Act or any privacy obligations at the time the plan was formulated and then actioned*".[1] Furthermore, the collection was not from the individual in question, and was unfair and unreasonably intrusive. The HRRT ultimately awarded BMN over NZ$60,000 in compensation and ordered that the personal information be returned.

The level of harm caused was considered significant, placing the award in the top band of damages as described in *Hammond v Credit Union Baywide* [2015] NZHRRT 6 (over NZ$50,000). Of note is the HRRT's rationale for imposing damages in the top *Hammond* band.

The defendant's breaches of the Act received criticism, but so did its post-incident conduct. When assessing the damages the HRRT noted:

> *[108] The conduct of Stonewood exacerbated the humiliation, loss of dignity and injury to feelings BMN experienced. A prompt return of his personal information wrongly collected would have significantly reduced the humiliation, loss of dignity and injury to feelings he experienced. Instead Stonewood effectively blocked BMN's attempt to obtain the return of his information and through Mr Bennett, engaged in a range of tactics that delayed the return of his wrongly collected information…"*

It is clear following *BMN* that the HRRT is not just concerned with how breaches of the Privacy Act 2020 occur, but also what agencies do in response.

1. *BMN v Stonewood Group Limited* at [53]-[54].

***Australian Information Commissioner v Australian Clinical Labs Limited* (No 2) [2025] FCA1224**

In *Australian Information Commissioner v Australian Clinical Labs Limited* (No 2) [2025] FCA1224, the Federal Court of Australia ordered that Australian Clinical Labs (ACL) pay AU$5.8 million in civil penalties for a data breach involving its Medlab Pathology business in February 2022. The penalty is the first of its kind to be issued in Australia.

The breach resulted in the unauthorised access and exfiltration of the personal information for over 223,000 individuals. ACL was at the relevant time one of Australia's largest private hospital pathology businesses with annual revenue well in excess of AU$600 million.

The penalties imposed consisted of:

- AU$4.2 million for failure to take reasonable steps to protect the personal information on Medlab's Pathology's IT systems under Australian Privacy Principle 11.1.
- AU$800,000 for ACL's failure to carry out a reasonable and expeditious forensic investigation of whether an 'eligible data breach' had occurred following the cyberattack on the systems.
- AU$800,000 for ACL's failure to prepare and give to the Australian Information Commissioner requisite information, as soon as practicable.

As with *BWM*, the factors informing the penalty are instructive in the New Zealand context. While assessment of Medlab's compliance with APP 11.1 (the equivalent of IPP5 under the Privacy Act 2020) illustrates how a Court may approach an assessment of the security safeguards an agency has in place, the penalties relating to notification are also informative.

AU$1.6m in penalties for failure to promptly assess the breach and notify the regulator is a significant award, and a reminder of the importance of moving quickly to assess breaches and take advice on notification.

The Public Service Commission findings regarding privacy failures from the Ministry of Health, Te Whatu Ora, and Statistics New Zealand.

At the end of 2024, the Public Service Commission released its inquiry report into Government agencies' use of personal information provided for the 2023 census and COVID 19 vaccination purposes. This report found that Statistics New Zealand had failed to apply standard confidentiality protections and enforce contractual safeguards, creating risks of misuse. Similarly, the Ministry of Health and Health NZ lacked controls over data handling.

As a result, the Public Service Commissioner requested that these agencies temporarily suspend entering into new contracts, renewals and/or extensions of contracts with third-party service providers named in the inquiry until those agencies could show their contracts can adequately deal with information sharing and conflict of interest obligations.

The inquiry has called for further actions in response, including updated guidance and templates for information-sharing agreements, strengthening public service procurement practices, directing agencies to immediately fix gaps in their processes (employing accountability settings for public agencies when contracting with third-parties) and asking the Ministry of Justice to consider if changes are needed to electoral laws regarding financial incentives to switch electoral rolls.

The report is instructive for a range of reasons and illustrates how difficult properly privacy and data protection management can be. A central theme of the report is the failure of various agencies to respond to concerns raised about processes and conflicts, as well as privacy breaches.

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Scattered Spider

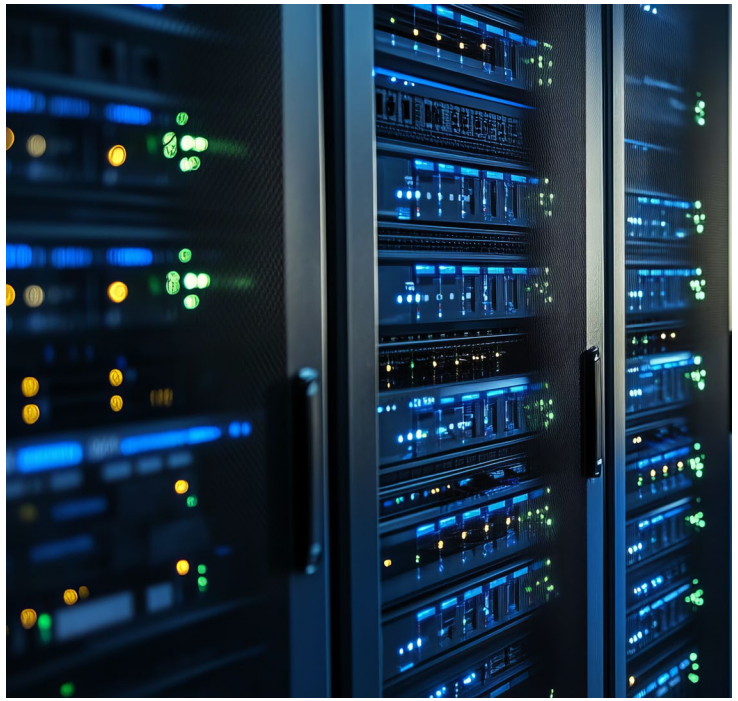
The (re)emergence of the teenage hacker and what it means for the cybercrime environment as we know it

Active since early 2022, the decentralised threat group Scattered Spider has re-emerged with links to several high-profile attacks on major retailers, like Marks & Spencer, and more recently aviation companies, like Qantas. While the size and nature of the attacks was notable, what makes Scattered Spider particularly interesting is the group's makeup – seemingly a larger, loosely associated group of teenagers based in the US and UK. In a cybercrime environment increasingly dominated by professional and sophisticated cybercrime groups the rise of Scattered Spider is notable.

Scattered Spider does not rely on sophisticated malware. While financially motivated, it does not have a data leak site to claim responsibility, or to intensify pressures to pay ransom demands. It is infamous for its sophisticated social engineering techniques to steal credentials, install remote access tools, and bypass multifactor authentication (MFA) to move laterally through networks to reach critical systems. While operating as a decentralised network, it remains highly coordinated and nimble with a structure of specialised senior and junior roles.

The group is mostly made up of young native English speakers from the United States or United Kingdom, which is thought to assist their attacks on western companies when calling their help desks. The perceived familiarity with use of slang and lingo creates a voice of trust to personnel who are likely disconnected from the day-to-day functions of the target organisation.

It is not surprising that human vulnerabilities are out-shining traditional malware and network defences. Dealing with groups such as Scattered Spider requires incident responders adopt a different approach – one which relies less on assumptions based on prior engagements and builds in more uncertainty in threat actor behaviour.



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The Biometric Processing Privacy Code 2025

The Biometric Processing Privacy Code 2025 (the Code) came into force on 3 November 2025.[1] We have written in previous bulletins about both the draft Code,[2] and the consultation process.[3]

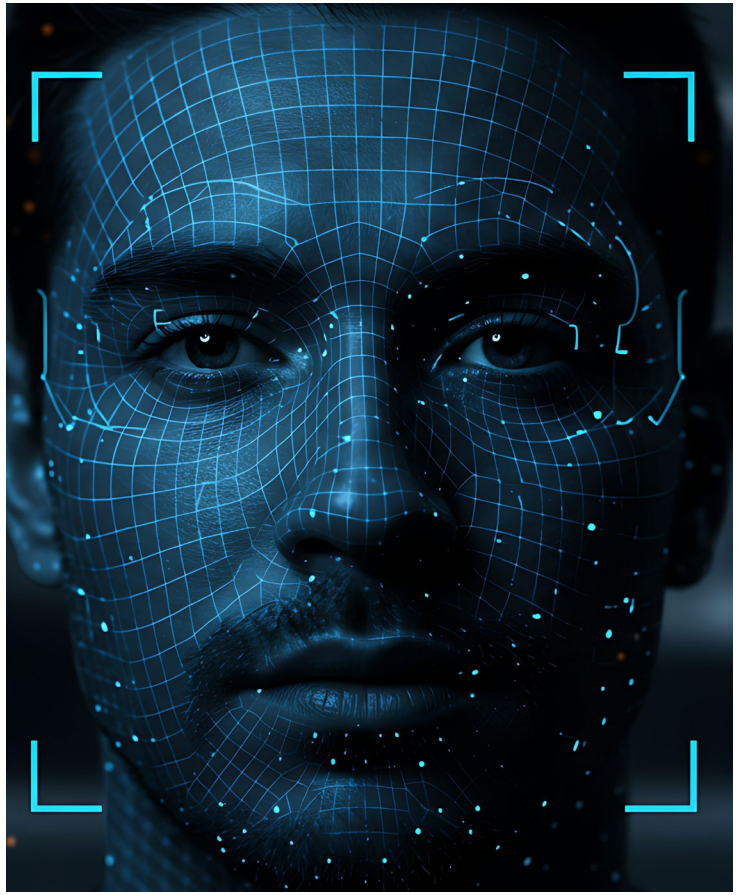
The Code, issued under the Privacy Act, regulates how organisations collect, hold and use biometric information for the purposes of biometric processing. Biometrics include the use of facial recognition, fingerprint scanning or other means of technology to collect and process an individual's biometric information to identify or classify them.

While the subject matter of the Code is an important development, the way the Code is structured is also a significant development for data protection regulation in New Zealand. The Code requires organisations not just to follow the right process and procedures for this kind of processing but also to justify the use of biometrics processing in the particular setting.

The Code

The Code applies to agencies who collect individual's biometric information via an automated process to verify, identify or categorise them. Where an agency uses biometric information in an automated biometric process they must follow the rules in the Code.

Biometric information includes information about how someone looks, moves or behaves. It includes our physical features, such as our face and fingerprints, but also how a person typically acts with their body. For example, how an individual walks, speaks, writes or types.



Biometric processing can take various forms, including verification of an identity (checking someone is who they claim to be), identifying individuals in a group, and categorising or inferring information about individuals.

The code applies various rules over such processing. These include particular rules around safeguards, ensuring individuals are adequately notified, and firm use limitations.

But is it worth it?

One of the rules concerns proportionality – an organisation must not collect biometric information unless it believes on reasonable grounds that the biometric processing is proportionate to the likely impacts on people. While the other rules contained in the Code are largely based on rules contained in the Privacy Act 2020, the proportionality requirements are novel.

Until now, data protection regulation in New Zealand has not been concerned with weighing the value of the processing activity against the impact on individuals. The collection and use of personal information must be lawful and conducted in a manner that is fair, but as long as the correct processes were followed our data protection regime has not been interested in judging the value of the activity in question. Now agencies will need to be prepared to justify the activity in question, and the impact it may have on individual's privacy. This is a different assessment to one usually conducted when assessing compliance of data processing activities.

1. 060825-Biometric-Processing-Privacy-Code-2025-A1102662.pdf
2. Cyber, Tech and Data Risk Report – Issue 8, June 2024 - Wotton Kearney
3. Cyber, Privacy & Technology Report – Issue 11 - Wotton Kearney and Cyber, Privacy and Technology Report – Issue 13 - Wotton Kearney

We already have one good example of this in practice. Between February and September 2024, Foodstuffs conducted a trial of facial recognition technology (FRT) in 25 supermarkets across the North Island. In April 2024, the OPC opened an investigation into the trial.[4] Whilst the trial complied with the Privacy Act and demonstrated value in reducing harmful behaviour, further safeguards were necessary to ensure that the impact on individuals were justified. For example, the OPC was not entirely confident that all technical bias issues had been adequately addressed.

If you want to discuss the Code, what it might mean for your organisation, and how you can safely implement biometric processing, please do reach out to a member of our team.

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4. 20250603-FRT-Inquiry-Report-A1082856.pdf

What are the Asia-Pacific trends to watch?

In May 2025, Wotton Kearney Australia released their Future Proof report for Asia Pacific. Looking across the region there are five trends that are noteworthy. For more in-depth reading, you'll find the report on the WK website. [Future Proof '25: Insurance and risk insights across Asia-Pacific - Wotton Kearney]

5 Key insurance trends to watch

1. Key legislative changes for insurers

The Financial Accountability Regime (FAR), which started in March 2025, will increase personal liability for senior executives in insurance, making governance and risk management a top priority. Failing to meet these standards could mean personal fines and reputational damage. From 1 July 2025, Prudential Standard CPS 230 will require insurers to prove their operational resilience, making third-party risk management a key compliance challenge. Those unprepared may face regulatory penalties and higher operational costs. Meanwhile, new climate disclosure laws will require insurers to provide further transparency on their exposure to climate risks despite the political and regulatory uncertainty prevailing globally.

2. Insurance claims performance under scrutiny

With ASIC cracking down on claims handling fairness in 2025, insurers must prove they are meeting community and regulatory expectations. Failure to comply could mean not just enforcement action but also serious reputational risks, resulting in eroding customer trust and market share. As regulators push for greater responsiveness and transparency, businesses that invest in streamlined processes and heightened regulatory compliance will be in a stronger position to maintain consumer confidence and avoid enforcement issues moving forward.

3. Tech-driven transformation in insurance

The drive for automation, AI, and predictive analytics in insurance isn't just about efficiency – it's about survival. Insurers that fail to integrate these technologies risk losing ground to competitors who create a competitive advantage in product development, underwriting efficiencies and claims management. Service providers, including law firms and third-party administrators, are also under pressure to modernise. Those who fail to adopt digital solutions and AI-driven insights will struggle to meet client expectations in an increasingly data-driven industry.

4. Evolving cyber insurance landscape

With rising cyber threats and stricter regulations, businesses must further prioritise the management of cyber risk through enhanced corporate governance and investment in expertise and robust cybersecurity. For insurers, adapting cyber policies to cover evolving threats like AI-driven attacks will be crucial to maintaining relevance and profitability in this fast-changing market.

5. Climate risk and the future for insurance

Insurers are operating in an increasingly complex political, social and regulatory environment when it comes to climate risk and broader ESG issues. Questions about the affordability and accessibility of insurance in an environment where climate-related losses are expected to increase in severity and frequency poses a major challenge for insurers. Striking a balance between commercial imperatives and broader social considerations, as well as positively contributing to the broader discussion about alternatives and solutions, will be essential.

About us

Wotton Kearney is Asia Pacific's leading insurance and risk legal business. As a full-service litigation firm, we are uniquely positioned as the only risk advisory legal offering in the Asia Pacific. We provide deep expertise and unrivalled talent to help forward thinking corporates thrive.

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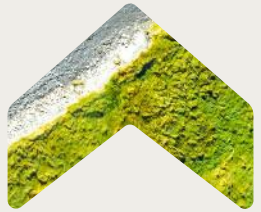

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