

Real Estate Round-Up

December 2025



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Introduction

Welcome to the final edition of the Real Estate Round-Up for 2025.

As the year comes to a close, a clear pattern is emerging across Australia's real estate sector: rapid technological change and shifting regulatory expectations are exposing structural, safety and compliance pressures that cut across the entire property lifecycle.

Recent critical incidents involving uncontrolled industrial safety gates have reinforced the devastating consequences that can occur when they fail due to poor design, installation and maintenance. Prosecutions by safety regulators have shone a light on the work health and safety duties of care owed by multiple duty holders including owners, occupiers, contractors, and strata managers, who have all been charged and penalised for industrial gate failures. The message is clear: if you have an industrial gate at your property, you have a proactive duty to ensure it is safe.

Can a party rely on its own breach to terminate an agreement? While it might seem like a simple question, the devil (as always) is in the detail. The Supreme Court of NSW has recently decided on this very issue in the context of a lease, resulting in the tenant being found to have improperly terminated and being ordered to pay millions.

This heightened accountability is mirrored in the regulatory environment, with private credit funds which lend to real estate facing additional scrutiny

from ASIC as the regulator targets private credit fund compliance as an enforcement priority in 2026. This focus on regulatory enforcement comes as no surprise given ASIC has released a series of reports and papers detailing common compliance deficiencies for private credit funds which lend to real estate.

At the same time, AI-driven growth is intensifying demand for industrial land, data centres and energy-hungry infrastructure. AI is fundamentally changing industries in Australia and abroad with its use continuing to grow at both an individual and organisational level. But this begs the question – where are we getting the power to fuel this new tech? Currently, AI innovation is outpacing both infrastructural capacity and current regulatory frameworks. Without proper investment and reform across these two key sectors, the AI revolution may quickly turn into the AI energy crisis.

Together, these trends illustrate how real estate now sits at the intersection of safety, regulation and technological disruption. Owners, investors and operators who proactively strengthen governance, compliance and infrastructure planning will be best positioned to navigate a market where operational, regulatory and energy pressures are rapidly converging.

We hope you enjoy this edition. We wish you and your families a joyful and restful holiday season and look forward to bringing you further insights in 2026!

John + Sarah

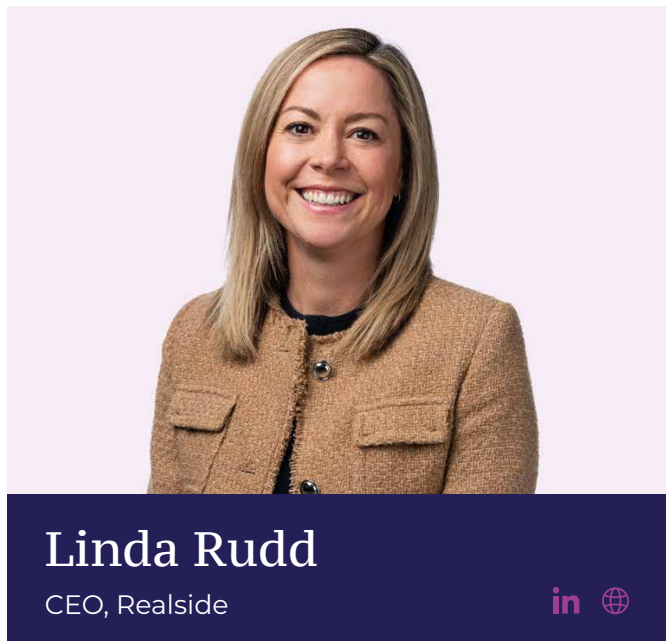


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Industry Spotlight



1. Please provide an overview of your career to date.

I have built my career in commercial real estate over 20 + years. I started at CBRE, moved to London for five years and when I returned, I joined Knight Frank where, I was Head of Asset Management and Executive Director. In that role I oversaw the asset management business across Australia and led a team of over 400 operators. I left Knight Frank to join Realside in 2020.

2. Please tell us a bit about your current role at Realside.

As Chief Executive Officer at Realside, I oversee our investment and funds management platform which means working with our asset and funds management teams to deliver performance across our portfolio.

From there, I divide my time equally with transactions, sitting on our investment committee and working with our transactions team in finding new opportunities and leading our capital strategy, liaising both investors that are new to Realside and existing investors who support us across our funds.

3. What do you like most about working in the Real Estate sector?

The property industry is fundamentally about people — and I've always enjoyed that aspect. The relationships and networks you build can help uncover new opportunities and provide valuable support when solving challenges that arise across projects or portfolios.

4. How and why did you decide to work in the Real Estate sector?

I wasn't sure what I wanted to do after finishing Year 12, so I started working to explore different industries and understand what might interest me. I was fortunate to secure a role at an architectural practice that also had a tenant representation arm. That role introduced me to commercial real estate professionals who helped me see the potential in the sector. That same year, I enrolled in a Property Economics degree at Western Sydney University — and the rest is history!

5. What are you most proud of in your career to date?

I'm incredibly proud of what we've built at Realside. Nearly everything in the business has been created from the ground up — by bringing in great people and staying true to our core principle: identifying quality real estate opportunities, adding value, and delivering performance.

We've built a team that's passionate, aligned, and genuinely takes pride in the outcomes we deliver. Seeing their work and the impact they make across our portfolio is something I'm deeply proud of.

6. What are the biggest challenges you have experienced in your career to date?

I believe that you aren't pushing yourself unless you are challenged. When I left Knight Frank to build a funds management business with Mark (business partner), I had previously only held roles in commercial property agencies, concentrated in asset management. I backed myself to learn anything I didn't already know based on my fundamental commercial real estate knowledge. Driven by a passion for property and a passion for building businesses. All of which was within my skillset.

The trade off with me joining, was that I wanted to do everything. Funds management, transactions, investment management and managing relationships with our capital partners so I took on a lot and it was challenging, but also very worthwhile.

7. What are your tips for young professionals aspiring to pursue a career in the Real Estate sector?

Align your strengths and interests to the area of real estate that you operate in. There are so many different pathways within the sector across many different specialities. If you align your interests and passions, it won't feel like work.

Also, be authentic and build genuine relationships. Real estate is a people-driven industry—your reputation and network - matter they can open doors and help you navigate challenges. Authenticity goes a long way.

8. What other industry roles do you currently hold? What led to these positions?

I sit on the PCA National Capital Markets Division Fund Managers Roundtable and the PCA National Industrial Roundtable. I'm also an active member of the Property Funds Association (PFA) and support their initiatives where I can.

I believe in contributing to the industry — both PCA and PFA are strong advocates for the sector, and it's important we support their work to help shape policy and outcomes that benefit the broader industry.

9. Please provide insight into the current sector. What do you think are potential issues and opportunities prevalent in the sector over the next 12 months?

One ongoing issue is the uncertainty caused by frequent changes to tax and regulatory settings, which can make real estate investment less attractive. For long-term capital to flow into the sector, governments — at both state and federal levels — need to work more closely with the private sector.

A prime example is housing. We're falling short of our supply targets, yet red tape, taxes, and regulatory costs continue to hinder project feasibility. Policy should focus on incentivising supply, reducing upfront tax burdens, and streamlining approvals to boost productivity and delivery.

On the opportunity side, we continue to see potential in the living sector, though this is highly dependent on the specific asset and location.

10. Can you share any recent legal trends or developments impacting the Real Estate sector and how your team has adapted to these changes?

Yes! There are a few but what is critical to our investor base is critical to us, taxing unrealised gains in superannuation is detrimental to investment into the property sector. It imposes a tax on gains that may never eventuate and that to me seems unreasonable.

Another example was the proposed tightening of the wholesale investor test, which could have had significant implications for our capital-raising efforts.

There have also been a number of tax changes in Victoria that we're actively assessing as we review new opportunities in the state — some of these changes have made it a less attractive investment environment.

Fortunately, our team works with great legal advisors, like Hamilton Locke, who help us stay ahead of these changes and adapt our strategies accordingly.

11. How do you approach issues related to diversity, equity and inclusion in the Real Estate sector and from a legal perspective?

I believe in leading by example—ensuring diverse voices are heard at the decision-making table. From a legal perspective, we maintain inclusive policies and partner with advisors who share our values. Internally, we support flexible work and career development across all levels of our business.

12. How do you see your role evolving in the future, particularly in light of technological advancements and shifting societal norms?

Technology will continue to reshape how we engage with investors, manage assets, and analyse data. I see my role evolving to embrace digital tools while staying grounded with our connection to people which sets the real estate industry apart.

13. What are your top reading / listening / watching recommendations?

Reading: The Infinite Game by Simon Sinek — I'm currently reading this. It's a great reminder of the value of long-term thinking, which aligns with our approach at Realside.

Listening: Real Estate Capital by Park Madison Partners — A great source of global insights, especially from the US, on how larger real estate players are thinking.

Watching: The Wire — An old series, but I've finally gotten around to watching it. Great storytelling and still very relevant.

Relying on your own breach to terminate – lessons from Alando Holdings Pty Ltd v Reece Australia Pty Ltd

The Supreme Court of New South Wales has recently handed down its decision in the case of *Alando Holdings Pty Ltd v Reece Australia Pty Ltd* [2025] NSWSC 946, confirming the position that a party cannot rely on its own breach to terminate a lease. Importantly, the position adopted by the Court will apply to any form of contract or agreement.



Key facts

Alamdo Holdings Pty Ltd (“Alamdo”) granted a commercial lease to Reece Australia Pty Ltd (“Reece”) which commenced on 23 December 2022. Reece was required to obtain development consent for the purpose of undertaking its proposed fit out works and to use the premises for storage, distribution and sales of hardware, building and landscaping supplies.

Article 29(9) of the lease provided that:

“either party may terminate this lease if an occupation certificate is not obtained within the period ending six months from the Commencement Date”.

As the occupation certificate was not obtained by 23 June 2023 (the deadline specified in Article 29(9)), Reece purported to terminate the lease on 27 June 2023. Alamdo disputed Reece’s termination, claiming that Reece had breached its obligations under Articles 29(1) and 29(2) of the lease, which required Reece to provide the requisite documents and diligently progress the necessary approvals. In those circumstances, Alamdo argued that Reece could not rely on Article 29(9) as the delay in obtaining the occupation certificate was due to Reece’s own default.

Relevantly, some of the key circumstances surrounding Reece’s compliance (or lack thereof) included:

1. Reece lodged a development application for its proposed fit-out works on 20 December 2022.
2. Council issued a notice to Reece’s consultants on 4 January 2023 stating the fee payable for the development application and requesting payment within 2 business days. Reece’s consultants paid the fee on 12 January 2023.
3. Council issued three separate requests for information, the first being issued on 2 February 2023 in respect of the development application with a request for a response within 30 days. Reece (via its consultants and subcontractor) was slow in responding to this request and missed the deadline. The subsequent two requests for information were also not dealt with expeditiously.
4. Furthermore, the compliance reports provided to the Council by Reece (and its contractors) had repeated deficiencies and failed to address all of Council’s requests.
5. Meanwhile, the Council issued a Fire Safety Order to Alamdo requiring completion of certain fire safety works. The Council did not indicate that development consent would be withheld on the basis that the fire safety works had not been completed and instead advised that these works could be completed by Alamdo as part of the general construction works.

Alamdo contended that the above steps led to delays by Council in processing the development consent application.

Reece counterclaimed, seeking return of its bank guarantee, on the basis that it had validly terminated the lease as Article 29(9) permitted either party to terminate if the occupation certificate had not been obtained within six months, regardless of fault. Reece argued that its own conduct had not caused the delay to the occupation certificate being issued and instead argued that Alamdo’s failure to comply with a fire safety order was also relevant and contributed to the delay.

The decision

The Court held in favour of Alamdo, finding that Article 29(2) should be interpreted on the principle that a party cannot take advantage of its own breach to terminate a lease. The Court found that Reece caused, or materially contributed to, the failure to obtain the occupation certificate due to its poor management (being a breach of its obligations under the lease) and as such, could not rely on Article 29(9).

The Court rejected Reece’s argument that Alamdo had also contributed to the delay in obtaining the occupation certificate as Alamdo’s failure to comply with its fire safety order was a minor issue and was not a requirement for Council to complete its development approval process.

The lease therefore remained on foot and Reece was ordered to pay for the unpaid rent and outgoings owing to Alamdo. Reece’s counterclaim for repayment of its bank guarantee also failed.

Key takeaways

The Court’s decision reinforces the principle that a party cannot rely on its own breach to terminate an agreement, and that strict compliance with procedural obligations in agreements is essential. While this decision involved a lease, the principles are clearly applicable to any form of agreement.

Any party seeking to terminate for failure to satisfy a condition should carefully consider any role its actions (or inactions) have played, and exercise caution before relying on a termination right where it may have been a contributor.

Should you require any advice in relation to these issues, please do not hesitate to contact Emile McPhee or Faye Winterflood.



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ASIC sharpens its focus on private credit real estate funds: an update for licensees

Private credit loans to real estate – including development and infrastructure – are estimated to be the largest sector of Australia’s private credit market. In its Report 814: Private Credit in Australia (**REP 814**), released in September 2025, ASIC identified both strengths and shortcomings in private credit, signalling an opportunity for the industry to raise its standards. This article highlights the key areas for improvement and identifies better compliance practices for funds engaged in real estate lending.

Need to know

- ASIC’s Report 814 identifies common weaknesses in private credit fund practices with a focus on funds engaged in real estate lending.
- Conflicts of interest and insufficient investor disclosure are key areas of concern.
- Funds should review and enhance compliance frameworks to align with ASIC’s expectations.

Background

Private credit has grown rapidly in Australia. Most of the private credit funds are unregistered managed investment schemes with wholesale and institutional investors. These unregistered schemes generally have less oversight than registered managed investment schemes with retail investors.

Within the Australian private credit market, loans to real estate (including development of real estate) forms the largest sector. The underlying real estate assets also have less regulatory oversight with respect to valuation and historical performance in comparison to other assets such as securities. To gain better insight into the growing private credit sector, ASIC commissioned REP 814 to provide an overview of the key issues and identify better practices.

The release of REP 814 fortuitously dovetails with the end of the consultation process for Consultation Paper 385 Proposed update to RG 181 Licensing: Managing conflicts of interest (**CP385**). CP385 proposes updates to Regulatory Guide 181 AFS licensing: Managing conflicts of interest (**RG181**).

The proposed RG181 includes useful guidance for licensees to implement adequate systems to manage conflicts of interest which arise wholly, or partially, in relation to activities undertaken by the licensee (or a representative of the licensee) in the provision of financial services as part of the financial services business of the licensee or the representative.

Both REP 814 and CP385 provide key insights and guidance into compliance practices that should be adopted by private credit real estate funds.



Key Issues identified by ASIC

REP 814 identifies a range of priority and secondary issues within the private credit space. Of these issues, conflicts of interest and insufficient investor disclosure present key regulatory concerns for licensees.

Conflicts of interest

Conflicts of interest arise when there are competing financial interests, personal interests, business or related party interests (whether direct or indirect) or competing loyalties and obligations. Accordingly, conflicts of interest can arise in a variety of operational areas.

Relevantly for private credit real estate funds, a conflict of interest may arise in circumstances where certain fees retained by the manager of a private credit real estate fund incentivise the manager to undertake actions that continue to generate such fees rather than actions that will result in higher returns for investors in the fund. For example, a manager who receives an origination fee for originating loans (which is not passed on to the fund) may be incentivised to continue to originate loans for the fund. This could result in the assets of the fund consisting of too many loans or low-quality loans. Because these origination fees are not passed on to the fund, the investors are not compensated for any increase in risk as a result of the loan origination by the manager.

Valuations of loans or underlying real estate assets that are performed 'in-house' by a fund manager (or its related party) are likely to result in a conflict of interest, as the remuneration of the manager (or the wider corporate group) may be impacted by the loan performance. As a result, the valuation may take a more optimistic view rather than a true valuation which reflects a lower value.

Related party transactions are also a source of conflicts of interest. Relevantly, private credit real estate funds which lend to related party developers are likely to encounter a conflict of interest with respect to valuation of the underlying property asset, fees, loan interest rates and loan terms. Conflicts arising from related party transactions may also occur in circumstances where a related fund takes an equity interest alongside the fund's debt interest in the same asset.

REP 814 also highlights that some funds treat investors differently (such as different fees, access to certain loans and preferential liquidity). It is well established that a trustee of a fund has a fiduciary obligation to treat investors in the same class equally and investors in a different class fairly. However, 'side letters' and other special offers may result in investors in the same class being treated differently and investors in a different class unfairly. Such side agreements are not uncommon in the industry and are permissible in certain circumstances. For example, where appropriate disclosure of the possibility of such different treatment is made to all investors in the relevant offer document.

Insufficient investor disclosure

Investor disclosure generally occurs through the initial investor offer document (such as an information memorandum or loan memorandum) as well as regular updates provided to investors over the life of the fund.

REP 814 notes that the fees of private credit real estate funds tend to be opaque or difficult to understand. Some funds fail to disclose the total level of manager remuneration, which can make it difficult for investors to adequately compare different funds.

For example, Manager 1 may only receive a management fee from the assets of Fund A, and treat all other fees charged to the underlying borrower as assets of Fund A. Conversely, Manager 2 may have a much smaller management fee from the assets of Fund B, but will retain other fees and charges which are paid by the underlying borrower. Because the total remuneration of Manager 2 is not disclosed, investors are not aware of the total amount of fees which are retained by Manager 2 and not passed on to Fund B. Although it may appear as though Fund B has lower management fees, in reality, Fund A may provide greater value to investors by treating all fees charged to the underlying borrower as assets of Fund A.

Further, private credit real estate funds may use SPV entities to act as the lenders. These SPVs may then retain a portion of interest from the loan which is not passed through to the fund. Accordingly, investors may not be aware that the credit risk is higher than what has been disclosed as the borrower is being charged a higher interest rate than what is being paid (and disclosed) to the fund.

Many private credit real estate funds do not provide regular investor reports to update investors on the performance of the fund. REP 814 outlines that some areas of investor reporting can be unclear or insufficient to inform investors of details they should know about their investment. This is particularly relevant to the valuations provided to investors as part of these updates. For example, valuations in the construction and development sector can lead to confusion and distortion, depending on what measure of LVR is used. Similarly, commercial and office real estate valuations are sometimes valued on a gross rent rather than a net effective rent basis, producing distortions in value.

Best practices for licensees

Both REP 814 and the proposed draft RG181 include useful guidance for private credit real estate funds to improve their management of conflicts of interest and investor disclosure. We consider that the following steps can be implemented by licensees to uplift their compliance standards.

Conflicts of interest should be managed by:

- a detailed conflicts of interest policy, which is regularly reviewed and updated;
- conflict of interest registers and reviews;
- review of remuneration and fee incentives to ensure fair, efficient and compliant remuneration;
- approval requirements for related party transaction, including whether those transactions are on an arm's length basis;
- preventing or limiting the use of 'side letters' or special offers to some investors within the same class of units (and ensuring appropriate disclosures are made in the relevant offer document to all investors of the possibility of such different treatment);
- appropriate disclosure of some conflicts;
- use of independent third parties for loan valuations and asset valuations; and
- independent compliance oversight.

Investor disclosure can be uplifted by:

- ensuring that all fees and remuneration received by the manager of a fund are disclosed to investors, including quantification of such amounts;
- quarterly detailed disclosure of loan and portfolio information to investors; and
- undertaking verification of disclosure documents.

Get ahead

ASIC has called for the private credit sector to lift its standards in order to follow expert observations on better practices and is likely to continue with enforcement action in this area. Hamilton Locke and our allied business Source can provide a range of key services, from compliance audits to legal review and advice to help you to meet the regulatory requirements.

For more information, please contact Erik Setio and Annabelle Muskitta.



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The AI energy crisis: When innovation outpaces infrastructure

The growth of artificial intelligence (AI) is driving profound transformation in global data infrastructure and energy demand. The integration of AI into a range of commercial and industrial products, from refrigerators to virtual assistants, is placing mounting pressure on both domestic and foreign energy networks.

With global data centre demand projected to surge 165% by 2030, concerns around the adequacy of existing legal frameworks, energy access, and environmental sustainability have been raised.¹ This article will explore the significant energy demands of AI, the capacity for the NEM and national transmission infrastructure to adapt, and international responses to this evolving demand-side challenge.

What's the issue with AI's energy demands?

Data centres are already significant energy consumers, and the rapid uptake of artificial intelligence – particularly generative AI – is accelerating this trend. AI requires immense computational power, placing growing demands on both existing and new data centres. As AI products and services become further embedded in the economy, data centre energy consumption will continue to rise.

Globally, the scale of this demand is striking. For example, ChatGPT alone is estimated to use 39.98 GWh of electricity and 148.28 million litres of water daily for cooling.² Meeting the worldwide appetite for AI is projected to require \$5.2 trillion in capital expenditure by 2030.³

In Australia, data centre development is accelerating. AI-intensive sectors such as finance and telecommunications are driving a substantial surge in demand for high-performance data infrastructure.⁴ These facilities require uninterrupted, highly reliable electricity, placing disproportionate pressure on local energy distribution systems. Data centres already consume approximately 4–5% of Australia's electricity,⁵ with projections suggesting this could rise to 8% by 2030.⁶

As the scale and complexity of data centres expand, so too do the regulatory challenges surrounding AI deployment. In response, the Federal Government has introduced the Voluntary AI Safety Standards, encouraging companies to self-regulate across all stages of AI development and implementation.⁷ While a positive step, the voluntary nature of these standards leaves room for inconsistency and non-compliance. Introducing mandatory regulations would likely be more effective in ensuring responsible, industry-wide adoption of AI and its supporting infrastructure.

Meeting AI's growing energy demands will require major investment in both infrastructure and policy reform. Yet AI is evolving rapidly, outpacing the development of domestic and global energy systems. Without timely and consistent investment, energy prices may surge – ultimately leaving consumers to bear the cost of the AI revolution.

International responses

United States of America

The United States has adopted a multi-pronged strategy to manage rising AI-related energy demand, focusing on investment, regulation, and research. Through the Inflation Reduction Act and CHIPS and Science Act, the federal government is directing billions of dollars toward grid modernisation, clean energy expansion, and semiconductor manufacturing critical to AI development.⁸ The Department of Energy is also conducting assessments on improving data centre efficiency and developing performance standards in light of growing AI workloads.⁹ However, the continued viability of these federal programs remains uncertain under the Trump administration, which has expressed a desire to repeal the Biden-era AI and clean energy initiatives.¹⁰ As a global hub for AI, the United States' regulatory volatility will influence the industry's future growth.

China

China's energy generation development and policy has shifted significantly as AI becomes a cornerstone of the digital economy. China has responded to escalating AI energy demand by implementing its "Eastern Data, Western Computing" policy. This policy relocates energy intensive computing centres to western provinces with abundant renewable resources.¹¹ Also, new data centres must meet stringent energy efficiency and carbon intensity benchmarks, with projects failing to comply denied approval. The policy is designed to balance regional development, reduce pressure on eastern urban grids (which trend toward higher residential concentration), and align AI infrastructure with China's broader dual-carbon goals: peak emissions before 2030 and carbon neutrality by 2060.¹²

Ireland

Ireland is a case study on AI regulation and infrastructural lag. The nation is facing an unprecedented surge in energy consumption from AI and data centre operations. In 2024, data centres accounted for 21% of the nation's total electricity use, overtaking all urban residential consumption.¹³ This rapid growth has raised concerns about energy affordability, grid reliability, and compliance with European climate targets. In response, Ireland's energy regulator has proposed a policy requiring data centres to match their energy load with equivalent new power generation.¹⁴ This approach shifts the burden of infrastructure expansion – across generation, transmission, and storage – onto developers, effectively making data centre approval contingent on securing additional supply.¹⁵

Looking Forward

The energy demands of AI are no longer a future challenge but a present and escalating reality. Countries at the forefront of AI adoption are beginning to experiment with policy tools to avoid grid instability, rising costs, and environmental backsliding. Internationally, a clear trend is emerging as governments shift responsibility for infrastructure upgrades onto data centre developers. While the regulatory mechanisms vary, the common goal is to integrate AI into energy systems without compromising grid security or climate targets.

In Australia, a more coherent, enforceable framework is necessary. Current state-federal fragmentation, coupled with voluntary AI guidelines, lacks the clarity and enforceability needed to support long-term planning. Looking ahead, policy reform will likely focus on mandatory emissions reporting, enhanced environmental approval standards, and greater integration of data centre load into national transmission planning. Australia may also consider following international models by linking new data centre approvals to infrastructure contributions or renewable procurement. If the energy transition is to remain viable in an AI-driven economy, legal frameworks will need to evolve just as quickly as the technologies they aim to govern.



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When construction meets capacity: Litigation risks in data-centre builds

Data-centre projects are moving from planning to construction at unprecedented speed, but legal risks often crystallise during the build. Programme pressure meets three stubborn constraints: land, power and water. These challenges are compounded by a strained global supply chain.

That combination produces familiar litigation themes:

- Challenges to evolving planning and consent conditions.
- Disputes when the site is physically complete but network upgrades or capacity releases lag.
- Claims driven by long-lead equipment delays and re-pricing.
- Responsibility gaps where the owner supplies major plant and the contractor must integrate it.
- Late-breaking operational issues that hold up acceptance.

Where construction disputes typically arise

Planning and land-use friction

Land is the first constraint that turns construction risk into legal exposure. Data-centre sites compete with housing, logistics and renewable energy projects, and the most valuable parcels are those that can be feasibly connected to power, water and fibre. That competition means planning settings can shift mid-programme. Rezoning, new strategic plans, or tighter consent conditions on noise, air quality, diesel-generator testing, traffic or water usage may arrive after early works and long-lead orders have started.

The immediate consequence is delay and redesign; the legal consequence is a rise in challenges to consents, appeals about conditions, or, in more contested cases, judicial review of decision-making. Australian proponents face these risks within state-based systems, but the themes mirror overseas markets and policy moves quickly where land is scarce and communities are sensitive to heavy infrastructure.

Disputes typically arise when consents are challenged in the tribunal or the courts, when neighbours contest conditions such as noise from generator testing or water usage, or when a proponent must redesign or stage the facility to satisfy new requirements.

To reduce the potential for litigation, contracts should spell out who carries the risk of redesign, relocation or additional studies if conditions change, and should treat new planning instruments, ministerial directions or utility mandates as events that justify time and cost relief. Issuing limited notices to proceed tied to specific planning and utility milestones helps avoid being stranded if policy pivots.

Keeping a disciplined evidence record, consent packs, policy timelines, consultation notes, regulator correspondence and design-change registers will support any later claim or defence.



Grid connection and utility interface (getting power when you need it)

Power availability and energisation timing remain the single biggest schedule risk in data centre construction projects. A site can be physically complete but remain idle because the network's upgrade or capacity release is late. When that happens, delays compound quickly, and parties argue over who bears the consequence.

Most disputes trace back to slipped network upgrades, changing protection studies or outage windows, ambiguous responsibility for metering and the high-voltage interface, or mid-project shifts in connection or curtailment settings.

Contracts should state in plain terms who bears responsibility for any delay and cost if the network is late or limits supply and should link key completion milestones to named utility deliverables with matching relief where those deliverables move. Staging energisation by data hall or by defined megawatt tranches allows partial operation to begin and keeps any delay exposure proportionate.

Information-sharing duties, covering connection offers, queue positions and outage plans, together with a requirement to pursue joint mitigation, improve both project outcomes and dispute posture. Preserve connection agreements, queue and study reports, outage notices, interface drawings and contemporaneous delay analyses to anchor any later assessment of causation.

Long-lead time for equipment and price volatility

Transformers, switchgear, generators and specialist cooling equipment are globally constrained, and both lead times and pricing can move materially after a contract is awarded. That reality drives claims for additional time or money and prompts arguments about procurement diligence and mitigation. Delivery slippage often leads contractors to seek additional time, while principals push back by pointing to programme commitments and earlier purchasing opportunities.

Re-pricing by suppliers triggers variation claims that collide with fixed-price positions. Substituting alternate equipment can stall progress when parties disagree on technical acceptability or warranty flows.

The most effective approach is targeted rather than blanket: identify a short list of genuinely long-lead items and agree capped, transparent price and time adjustments for those items only; pre-approve workable substitutes at tender with performance and warranty parameters; allow advance purchasing where it makes commercial sense; and require prompt notice of factory or logistics changes accompanied by a concrete recovery plan.

Entitlement should be contingent on demonstrable mitigation such as resequencing, partial commissioning or re-sourcing. Keep supplier quotations and confirmations, purchase orders, production schedules, factory-acceptance test dates, shipping documents and all re-pricing notices, together with a written record of mitigation steps.

Procurement and owner-furnished equipment risks

Where the owner supplies major equipment and the contractor installs and integrates it, responsibility is split across manufacturers, systems integrators and the engineering, procurement and construction contractor. Misaligned scopes become a reliable source of delay, disruption and defect disputes, particularly when design integration, custody and insurance, firmware updates, or pre-commissioning tests fall between the cracks.

Warranty hand-offs can also become contentious when it is unclear who must pursue the manufacturer and who pays for removal and re-installation. These risks can be contained by building a detailed interface matrix that allocates, item by item, responsibility for design inputs, logistics, storage, insurance, installation, testing and warranty.

Many projects benefit from nominating a single point of coordination, either a prime integrator or a defined coordination role with measurable outputs (so there is one party accountable for making the whole system talk to itself).

Evidence expectations should be explicit:

- the contract should set out commissioning data formats; and
- the necessary telemetry requirements and the acceptance certificates required for practical completion.

An orderly paper trail which includes interface registers, requests for information on scope boundaries, custody and insurance logs, delivery and condition reports, and signed commissioning records, will make or break any dispute on responsibility.

Operations overlays that affect completion

There are numerous variables that may inhibit completion of data centre projects if not addressed. These can include but are not limited to:

- fire risk associated with battery systems;
- uninterruptible power supplies;
- volatility in electricity;
- carbon costs;
- regulatory change relating to security classifications; and
- emissions and water licensing.

If these variables arise at the last minute, commissioning can be complete yet acceptance still stalls while parties renegotiate risk allocation.

Energy-related clauses should include price re-openers or sharing mechanisms within defined bands so that extreme cost movements do not force a stand-off at completion.

A robust change-in-law clause should set out how new regulatory burdens translate into time and cost relief, with clear evidence requirements, and it should be mirrored in the operations and maintenance contract and the customer service-level agreement to avoid misalignment once the facility is live.

Maintain a record of insurer and authority correspondence, fire-safety studies, energy-price files, emissions and water licences, change-control approvals and board-level decisions so that any dispute can be resolved on documents rather than recollection.

Conclusion

Construction disputes on data-centre projects are not outliers. They are the predictable outcome of scarce, policy-sensitive land, constrained grid capacity and complex, disaggregated delivery.

The way to keep those pressures from turning into costly proceedings is to design the legal framework as carefully as the engineering. Allocate network delay and cost expressly, address long-lead equipment with targeted and capped adjustments, close integration gaps with a clear coordination role, and lock objective testing and re-testing at handover. Bring likely operational issues forward (fire safety, energy price movements, change-in-law) so acceptance is not delayed by late renegotiation. Above all, keep a disciplined documentary record. These steps shorten disputes, protect value and keep projects moving.

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The hidden dangers of industrial gates exposed

A spate of recent fatal incidents involving uncontrolled industrial safety gates has highlighted the importance of ensuring industrial gates are properly designed, installed and maintained. Work health and safety (WHS) prosecutions relating to failures of industrial gates have seen designers of the gates, companies with control of the premises, strata managers, and maintenance companies all prosecuted.

Need to know

- Industrial gates have been linked to multiple fatalities and serious injuries across Australia.
- WorkSafe and SafeWork authorities are actively inspecting industrial gates across high-risk industries.
- Duty holders, including owners, occupiers, contractors, and strata managers, share overlapping safety obligations.

Industrial gates: a common but underestimated risk

Industrial gates are a common feature at many Australian workplaces. They generally act as a barrier to control the movement of vehicles, people and mobile plant into or within an industrial space.

Between 2017 and 2025, SafeWork NSW received notification of at least 17 incidents involving industrial gates, two of which resulted in fatalities. It has warned businesses that inspectors will be checking industrial gates in the construction, agricultural, transport, and warehousing industries.¹ WorkSafe Queensland also recorded two incidents in 2023 that resulted from end-stop failures, where the end stop did not prevent the gate from travelling past the upright support, causing it to fall.²

Work health and safety prosecutions against companies following industrial gate failures demonstrate that safety duties are overlapping, and that safety is a proactive responsibility for anyone with a duty.





Ineffective gate stopper results in \$180,000 penalty

In July 2025, 465 Leichhardt Pty Ltd (**the Company**) was convicted of breaching its primary duty as a person with management and control of a workplace in exposing persons to a risk of death or serious injury in contravention of the Work Health and Safety Act 2011 (NSW) (**WHS Act**) and fined \$180,000 after an industrial gate fell on a family walking past the redevelopment site.³ The Company had arranged for the installation of the gate across the driveway entrance to the site in late June 2022 through a specialist contractor. The gate measured 2.4 metres high and 5 metres wide with an approximate weight of 200 kilograms.

Unbeknownst to the Company, the specialist contractor had failed to install an end stop on the gate to prevent the gate from travelling past its resting place. Rather, a small piece of angled iron had been welded to the top of the gate and was intended to prevent the gate from overrunning the track.

In September 2022, a few months after the gate was installed, a scaffolding worker parked his utility truck across the footpath in front of the gate and, upon seeing a mother and her three children walking along the footpath, decided to open the gate and move his truck inside the site. Unfortunately, when the worker opened the gate, it overran its resting place and became unsupported. The gate fell on the mother and her three children, who remained trapped beneath the gate until passers-by lifted it off them. The mother sustained fractures to her left tibia and fibula, which required internal fixation surgery. Post-incident, she experienced ongoing anxiety when walking past the redevelopment site. All three children sustained bruising; one child also sustained a minor head injury, while another suffered a laceration to their lip. The outcome could have been far worse.

The specialist contractor is also being separately prosecuted.

Multiple duty holders of an industrial complex prosecuted

In July 2024, the owners' corporation of an industrial complex and the strata agent of the complex were separately convicted for breaching their duties as persons with management and control of a workplace in exposing persons to a risk of death or serious injury in contravention of the WHS Act.⁴ The charges arose after an employee of a tenant of the site was fatally crushed while attempting to manually open the industrial gate on the site. The gate, which measured approximately 8.5 metres long and 2 metres high, overran its intended resting place as a result of the gate stopper being ineffective and fell on top of the worker.

It was later discovered that the industrial gate had been damaged some days prior when a van collided with the gate, which had rendered the gate's electric opening and closing mechanism inoperable and displaced the stopper. While NSW Emergency Services had attended the site after the collision to secure the gate, it had not been tagged out, repaired, or made safe. Further, while the occupants of the industrial complex had undertaken makeshift repairs to the gate, the stopper on the gate remained displaced.

The owners' corporation was fined \$300,000, reduced by 25% to \$225,000 to reflect its early guilty plea. In sentencing the owners' corporation, the court found that the "Owners had its own independent safety duty under the WHS Act. As the owner of the common property, which included the gate, it had the power as well as the obligation to make the site safe." The strata agent was separately fined \$200,000, reduced by 25% to \$150,000 to reflect its early guilty plea. Further, the deceased worker's employer was also prosecuted and fined \$500,000, reduced by 25% to \$375,000 to reflect its guilty plea.

Specialist gate repair business convicted in relation to gate fatality

In December 2024, a specialist gate repair company in Victoria was charged with, and pleaded guilty to a breach of its duty as an employer under s 23 of the Occupational Health and Safety Act 2004 (Vic) after a truck driver was fatally crushed by a falling gate that was in the process of being repaired.⁵

An employee of the specialist gate repair company had removed the drive motor from the large industrial gate at a Dandenong depot. A consequence of removing the motor was that, if the gate was operated manually, it could run beyond its support posts and fall. The specialist company had verbally advised the company operating at the depot to lock the gate closed and to put a chain around it so that it could not fall. This did not occur.⁶ Two days after the motor was removed, a truck driver leaving the depot attempted to manually close the gate when it fell on him. The driver suffered fatal injuries.

The Court found that it was reasonably practicable for the specialist gate repair company to provide and maintain a system of work that required its employees to lock out and tag out gates so they could not be manually opened during the repair process. The company was convicted and fined \$350,000, reduced from \$450,000 to reflect its guilty plea.

In view of the safety risks associated with industrial gates, it is incumbent on all duty holders at industrial complexes to ensure that their workplace does not expose their workers and others to health and safety risks. We outline below our top five considerations in relation to industrial gates.

Five key considerations for businesses:

1. Duties under work health and safety legislation are overlapping and not transferable. Businesses cannot take a “set and forget” attitude towards WHS. A consultative approach between duty holders is key in mitigating risks associated with industrial gates.
2. Regularly inspect industrial gates to ensure they are in proper working condition. Report damaged gates as soon as possible and address safety issues immediately.
3. Undertake a risk assessment in relation to industrial gates on site and implement control measures as required to minimise the risk. Review control measures regularly and revise any control measures where required based on any changes to the risk exposure.
4. Implement a regular maintenance schedule for industrial gates to ensure wear and tear is identified and rectified.
5. Ensure contractors engaged to install, maintain or repair industrial gates are suitably qualified and competent.

Get in touch

Industrial gates may seem simple, but their failure can have devastating consequences. Recent prosecutions make clear that all parties, from owners to contractors, have a proactive duty to ensure these systems are safe.

Please get in touch with our Workplace & Safety team if you would like to know more.



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¹ SafeWork NSW, 'Industrial gate safety' (Campaign) <https://www.safework.nsw.gov.au/advice-and-resources/campaigns/industrial-gate-safety>.

² WorkSafe Queensland, 'Worker fatally injured by gate' (Alert) <<https://www.worksafe.qld.gov.au/news-and-events/alerts/incident-alerts/2024/worker-fatally-injured-by-gate>>.

³ SafeWork NSW v 465 Leichhardt Pty Ltd [2025] NSWIC 5 (2 July 2025).

⁴ SafeWork NSW v Chris Darby Strata Pty Ltd [2024] NSWDC 360; SafeWork NSW v Owners – Strata Plan No. 93899 [2024] NSWDC 277.

⁵ DPP v Gate Automation Systems Pty Ltd [2024] VCC 2085 (19 December 2024).

⁶ WorkSafe Victoria, 'Company fined \$350,000 after fatal gate crush' (News) <<https://www.worksafe.vic.gov.au/news/2024-12/company-fined-350000-after-fatal-gate-crush>>.



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