



**Swinging on the verge  
Is someone a 'worker'  
when on a work trial?  
Early intervention is  
key to injury management**

# CEO's Message – Jonathan Seth



Recently, we have seen the media focussed again on the “challenges” within local government - as with all industries - in the retention of quality candidates in key positions. Of course, high turnover increases staff costs, but perhaps more importantly also results in a loss of expertise and skill. People are at the heart of successful organisations; retaining motivated and proactive individuals who are empowered in their role is key to any happy and successful workplace.

As we know, local government is a niche sector, with unique challenges to that of other industries. While there have been many changes recently, as a member based mutual, we choose to look for opportunities to support our members and to provide relevant services.

The opportunity lies in building your business resilience through continuity and succession planning. Disruptive incidents come in varying types, sizes and impacts. Business continuity planning is a key component in ensuring an adequate response to those incidents, and enables you to continue the delivery of critical activities and services at acceptable predefined levels following a disruptive incident. Another plus is that strategic thinking and planning for contingencies can be very attractive to high quality executive candidates. LGIS can work with you to customise your business continuity plan to reflect your priorities.

Once you build a star workforce, you need to keep them, and attraction and retention strategies are essential to this. Health and wellbeing programs regularly place highly in worker satisfaction questionnaires, and assist in your local government being an employer of choice.

As a member of LGIS, you receive an annual allocation to access a wide range of health and wellbeing services through a dedicated panel of proven allied health service providers.

The services available include, but are not limited to:

- ▶ Health assessments and seminars
- ▶ Hearing tests
- ▶ Skin cancer screening
- ▶ Flu vaccinations
- ▶ Mindfulness and resilience tools

LGIS can also assist in your succession planning, with a wide range of advice and coaching opportunities available to build your workers' expertise and confidence, such as an operational leadership program, coaching and mentoring. You can read more about our human resources coaching service in this edition.

As many of you know, LGIS is entirely owned and controlled by its members and is focused on ensuring the long term protection of your local government through an industry based self-insurance Scheme.


Therefore, in that vein, we are pleased to present June's edition of Risk Matters magazine. As well as the benefits of HR coaching, this edition features the recent District Court decision on when someone is a 'worker' on a work trial, the timely issue of what your local government needs to consider around verge gardens and swings, as well as your role in vetting home indemnity insurance protection. We also cover the importance of early intervention within injury management, and the risks you need to consider for your 24-hour fitness facilities.

I wish you all the best as we near the end of the 17/18 financial year, and move into the 18/19 year. As always, if you have any comments or questions regarding the content of this Risk Matters magazine, please contact me directly on 9483 8855 or 0408 925 072.

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LGIS is the unifying name for  
the dedicated suite of risk  
financing and management  
services for WA Local  
Governments, established  
by the WA Local Government  
Association in conjunction  
with JLT Australia.

Risk Matters is an LGIS journal  
to keep members, their staff  
and elected members informed  
on topical risk management  
and insurance issues and LGIS  
programs and services.

## Golf tournament nominations open!

The LGIS WA 2018 Inter Municipal Golf Tournament will be held on 13 – 14 September, hosted by the Shire of Denmark. Nominations need to be completed and returned to the Shire of Denmark by Friday, 29 June 2018.

For more information, visit [www.lgiswa.com.au/events](http://www.lgiswa.com.au/events)



# Trialling work: is someone a 'worker' when on a work trial?



In a recent decision out of the District Court in the case of *Huynh v Minh Truong and Thi Thu Hoang Pham t/as Le Bon Bakehouse* [2018] WADC 39, the Judge found that a person who was injured whilst on a 'work trial' was a 'worker' within the meaning of the *Workers' Compensation and Injury Management Act 1981* (the Act).

## Background

Ms Kim Huynh, who had considerable experience in the food services industry, found out that a local bakery might be looking to hire a customer services worker. At the time, Ms Huynh was not working and was on a Newstart Allowance.

Ms Huynh went to the bakery on Saturday, 4 June 2016 and met Mr Minh Truong, one of the owners, to express interest in a customer services job. He asked about her work experience and how long she had been in Australia (she had emigrated from Vietnam in 1985), and then asked Ms Huynh to complete a work trial from 9:00am to 1:00pm on Saturday and Sunday, to which she agreed.

Although it seems that Mr Truong did not say anything about being paid for the work trial and Ms Huynh did not ask to be paid for it, they each had a commercial motivation for her undertaking the work trial – Ms Huynh wanted work; the bakery had a staff member leaving and they needed a replacement.

Ms Huynh's work trial was short-lived because she fractured her right wrist after she fell at the bakery premises on the morning of 5 June 2016.

Ms Huynh sued the bakery in negligence for its breach of duty to her as an occupier of the premises and/or its breach of statutory duty under the Occupational Safety and Health Act 1984.

An issue came before the Judge as to whether Ms Huynh was actually a 'worker' within the meaning of the workers' compensation legislation.

## The Judge's decision

In short, after hearing evidence (which did vary between the witnesses) Judge Bowden decided that Ms Huynh was a 'worker'.

Outlining his findings and reasoning, Judge Bowden decided that between Ms Huynh and the bakery, the parties had intended to create contractual relations, and that there was a contract of service in place.


He also outlined a useful range of matters which required consideration, including:

- ▶ The duration of the contract
- ▶ The purpose of the contract
- ▶ The reasons for entering the contract
- ▶ Whether there was an obligation for Ms Huynh to be productive whilst performing work essential to the bakery's business
- ▶ Whether Ms Huynh was only expected to undergo training or familiarisation by observing and learning, or to perform a task or demonstrate skills
- ▶ Whether there was any requirement for her to exercise a skill or a qualification
- ▶ The significance to the bakery as to what Ms Huynh was doing
- ▶ The nature and extent of the bakery's control over Ms Huynh
- ▶ Who obtained the most benefit from the work trial

The Judge concluded that it was necessary to consider the totality of the relationship between the parties and not address each of the above matters in a 'piecemeal fashion'. He concluded that the totality of the relationship established the existence of a contract of service and that at the time that she was injured, Ms Huynh was a 'worker' within the meaning of the Act.

## Lessons

The significance of this to members is that when persons are entering into work trials, you need to ensure the precise basis upon which they enter into those work trials. In very broad terms, it is entirely possible that a person on a work trial similar to that of Ms Huynh will actually be a 'worker' within the meaning of the workers' compensation legislation. That person would therefore be entitled to benefits under the Act if they are injured.

**For further information and if you have any queries regarding this issue, please contact your claims consultant at LGIS WorkCare, or if you need assistance with understanding and implementing risk management strategies for persons on work trials, please contact the LGIS risk and governance team on  (08) 9483 8888.**

# On the verge – tree swings and gardens

Across Australia more and more people are getting out and using their verges for recreation, whether it's a vegetable patch, a swing on a tree or a native garden. It's a great way to beautify local streets, encourage neighbourhood interaction and move the community into the front yard. However, from a local government perspective there are risks that need to be considered and managed.

At LGIS, we've been hearing from members who are looking at the changing ways the community want to use their verges.

They recognise the traditional Australian quarter acre block with a massive backyard is now a thing of the past, and residents are seeking more space to grow gardens, create play areas and beautify their front yards.

While verge activation has a number of benefits and is incredibly popular with residents, there are a number of risks which need to be considered and managed from a local government perspective. The level of verge activation will depend on an individual local government's risk appetite balanced against the broader benefit to the local community.

Whatever approach your local government decides to take; LGIS strongly encourages members to develop a policy, which clearly articulates your position and which can be communicated to your community.

## Getting your verge policy started

So you've decided to embrace verge activation - tree swings, play equipment, gardens. How flexible do you want to be and what guidelines do you need to give residents? What do you need to consider in your policy to reduce the potential risk of being sued?

Our number one recommendation is that you assess the risks associated with these activities in accordance with your risk management framework; that is, undertake a risk assessment.

This will assist you to identify any hazards associated with the activity that relate to all stakeholders, determine the impact of

those hazards and identify suitable controls to mitigate any risks. In undertaking a risk assessment, some general areas that should be looked at are:

- ▶ What treatments (eg: swings, gardens, other play equipment) are being proposed, how would this impact on the area and its users; both the immediate and wider area?
- ▶ Will appropriate lines of sight and set back distances be impacted? This could include footpaths, crossovers, roadways and road infrastructure, utilities and services, public transport/bus stops, street trees and lighting. Will all properties be suitable? For example those with minimal frontages or corner verges?
- ▶ What impact will verge activation have on disability access requirements and existing access points?
- ▶ What would be the appropriate materials for construction?
- ▶ Who is responsible for and how will verges be maintained? This could include management of vegetation, structures and appropriate clearances.
- ▶ What guidance will be provided to residents? This could include guidelines that are made available to residents.
- ▶ How will you ensure that structures are compliant? How will complaints be handled? How will structures be reviewed and what enforcement options are available to ensure risks do not eventuate?
- ▶ How will the situation be monitored to ensure adequacy of controls, identification of new risks and mitigation of new and arising risks? Will there be a process to update the policy and guidance material to address new risks?

- ▶ Consider the impact on the local government's reputation if the policy becomes unworkable and requires a decision to reverse or remove it.
- ▶ How will complications between the occupier and local government be handled?
- ▶ Consider the level of resources required to ensure local government meet their obligations to provide a safe environment.

LGIS strongly recommends the decision making process regarding a verge policy and its implementation be driven by the outcome of the risk assessment. A monitoring program to regularly review the effectiveness of controls and changes to the level of risk would also be wise. The monitoring program should also include trigger points for review such as issues with non-compliance, incidents and complaints.

Encouraging your residents to utilise their verges brings many community benefits, but these need to be weighed against the potential risk and liability issues that they bring for the local government. Each local government will take an individual approach to the issue that considers the unique needs of their communities and the local government's appetite for risk.

**For further advice on the development of your verge policy contact LGIS risk and governance team on ☎ (08) 9483 8888 or email [admin@lgiswa.com.au](mailto:admin@lgiswa.com.au).**

*Please note that the advice in this article is of a general nature only. Every effort has been taken by LGIS to ensure that the commentary and recommendations contained in this article are appropriate for consideration and implementation by Western Australian Local Governments. Should Councils require further specific advice on this matter, independent legal advice should be sought.*

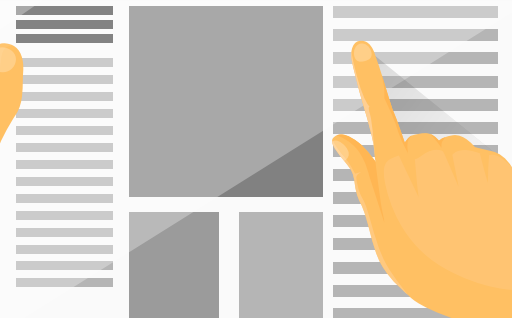


*In the news:*

## **The West Australian**

### **Swings & roundabouts:**

City of Vincent eyes policy change on children's play equipment on verges



# Early intervention is key to injury management

According to the Royal Australian College of Physicians, if a worker is off work after an injury, there is a 70% chance they will return to work. At 45 days off work, that chance is reduced to 50%, and at 70 days off work it falls to just 35%.

You can combat these statistics by using early intervention.

This is the proactive and efficient identification and response to warning signs, and reports of accidents and incidents in the workplace. Outcomes for injured workers can be greatly improved through early identification and coordinated physical and psychological treatment.

Responding early often prevents a worker from becoming ill or injured, taking long-term leave, or submitting a workers' compensation claim. The earlier your local government is made aware of a worker experiencing signs of ill health or an injury, the sooner you can take steps to help and assist them in their return to work.

**Early intervention practices have proven to be effective in fostering a happy and healthy workplace, as well as offering the following benefits:**

- ▶ Creates a productive and supportive workplace
- ▶ Demonstrates your commitment to your workers
- ▶ Prevents long-term absence from the workplace
- ▶ Improves worker confidence and morale
- ▶ Increases the likelihood of a return to work
- ▶ Increases management involvement in the injury management process
- ▶ Contains and reduces the cost of incapacity and in the long term, your contributions

**Key steps in early intervention include:**

- ▶ Your local government should have clear procedures and policies in place to support workers that show early signs of not coping at work
- ▶ Managers and supervisors should be equipped to identify early warning signs and have undertaken training on how to respond appropriately
- ▶ Make early contact with the injured worker to offer help and assistance
- ▶ Managers and supervisors should be involved in developing and agreeing to a plan, such as identifying suitable duties, to allow the worker to remain at work or return to work in a timely manner,
- ▶ Attend medical reviews with the injured worker to understand the worker's needs and implement recommendations within the work environment where necessary
- ▶ If there is a psychological component, ensure the worker knows about the employee assistance program (EAP) and how to access it, as well as other relevant support services available





LGIS understand the unique space local governments work within, and have developed an early intervention support service to assist you, the member, achieve timely and effective return to work for your injured workers. Early notification of an injury by your local government to LGIS is key to this process.



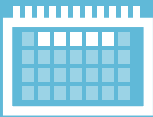
### ***Early notification***

- ▶ Local government to notify LGIS as soon as practicable once an injury occurs, via phone call to your claims consultant, injury management (IM) consultant or regional risk coordinator
- ▶ Forward the claim form and first certificate of capacity to LGIS as soon as practicable (if received)
- ▶ Local government to investigate the incident or injury as soon as practicable in accordance with their policy and procedures



### ***Initial contact***

- ▶ LGIS claims or IM consultant to contact the local government within 48 hours
- ▶ LGIS claims or IM consultant to contact injured worker (as required)



### ***Within 5 days***

- ▶ IM consultant to visit local government to meet with all parties, and attendance initial appointments (if required)
- ▶ Conduct worksite assessments, development of suitable return to work plan and general practitioner case conferences



### ***Ongoing support and follow up***

- ▶ If the claim progresses and further assistance is required, LGIS may arrange referral to a workplace rehabilitation provider
- ▶ Support will continue to be provided by the IM consultant until the worker has returned to work in line with medical certification

A dedicated team of LGIS injury management specialists are on hand to support you achieve positive return to work outcomes for your workers. LGIS is committed to working with you to apply an integrated and holistic approach to workplace injury, starting with early intervention.

For more information on our early intervention support services or assistance in helping return your injured workers back to work please contact the LGIS injury management team on 📞 (08) 9483 8843.

# Local government and home indemnity insurance

Local governments have an important role in implementing home indemnity insurance protection. A local government is precluded from issuing a building permit unless it is satisfied that the requirements for home indemnity insurance have been met.

It mandated that in certain classes of residential construction, the builder was required to take out insurance for the prospective homeowner's benefit. That insurance would respond in the event that the builder could not complete construction works because of death, disappearance or insolvency. The policy applied from the commencement of construction and concluded 6 years after practical completion.

The requirement for this class of insurance became apparent after widespread losses following a residential construction boom in 1988. The State Government of the day noted that the Act's passage would allow the industry:

*"to be secure in the knowledge that public confidence in the building industry cannot be adversely affected by the irresponsible actions of a very small section of that industry."*

We can perhaps take some comfort in the fact that while 30 years have passed since the 1988 building boom, some issues never seem to change.

Home indemnity insurance remains critical to consumer protection. It is still called upon to indemnify consumers on a regular basis following solvency failures in the building industry (which is another feature 2018 continues to share with 1988).

Local governments have an important role in implementing home indemnity insurance protection. A local government is precluded from issuing a building permit unless it is satisfied that the requirements for home indemnity insurance have been met. Unfortunately, this obligation has been imperfectly performed across WA.

Local governments have procedures in place to ensure their compliance with the *Building Act 2011 (WA)*. However, they have been faced with:

- ▶ Fraudulently prepared certificates of cover purporting to evidence the existence of home indemnity insurance
- ▶ Other forms of construction insurance which are passed off as being compliant with the *Home Building Contracts Act 1991 (WA)*
- ▶ Applications for building permits that are simply silent on the question of home indemnity insurance
- ▶ Applications for building permits which falsely assert the project is exempt from the need for home indemnity insurance

There are exceptions to the requirement for home indemnity insurance for residential building work.

Exceptions can be found in the *Home Building Contracts (Home Indemnity Insurance Exemptions) Regulations 2002*. Relevantly, they are for:

- ▶ Multi-storey (more than three or has more than one basement storey), multi-unit (being two or more independent unit) developments
- ▶ Retirement villages intended to be leased

Further exceptions are contained within the *Home Building Contracts Act 1991 (WA)*, being:

- ▶ Building work less than \$20,000
- ▶ Associated works performed alone under separate contracts (such as fencing and landscaping)
- ▶ Owner/builder approvals provided the residence is not sold or otherwise disposed of within seven years of the date the building permit is granted (if sold within seven years from date building permit was granted, home indemnity insurance is required)
- ▶ A builder's principal place of residence (once every six years)

Building permits have been issued without home indemnity insurance being obtained, and have also been issued without proof of home indemnity insurance being provided to local governments.

Local governments should:

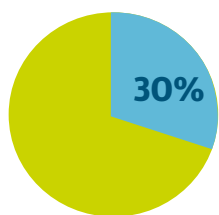
- ▶ Recognise that the absence of home indemnity insurance is a material risk that needs to be considered
- ▶ Review their processes for considering and issuing building permits to reflect that risk
- ▶ Ensure that evidence of home indemnity insurance is submitted and reviewed
- ▶ Closely consider any submission that the application for a building permit is exempt from the home indemnity insurance requirement

A failure by local governments to respond to this risk will lead to consumers ultimately suffering loss and the public confidence in the building industry and local governments being adversely affected.

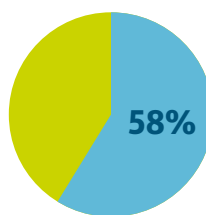
**For more information on the coverage offered by LGIS liability, please contact the LGIS member services team on ☎ (08) 9483 8888.**



The *Home Building Contracts Act 1991 (WA)* (the Act) introduced a well-known piece of consumer protection.



30% of the 2018 professional indemnity claims against local governments are a result of failure to adequately consider the requirement for home indemnity insurance.



As with all types of professional liability risks, the amount involved is significant – 58% of 2018 professional indemnity claims costs.

## The value of HR coaching

The International Coaching Federation's data shows 80% of workers who receive coaching report increased self-confidence, and over 70% benefit from improved work performance, relationships, and more effective communication skills. Likewise, 86% of organisations report that they recouped their investment on coaching and more.

Coaching in the workplace is a great way to improve performance and the development of skills.

LGIS offer one-on-one coaching to workers to help them build valuable skills and knowledge and to support improvements in the way the individual applies themselves to specific workplace challenges.

These challenges include how workers manage themselves, their time, and their work and can focus on how they relate to others in the workplace.

The LGIS coach works together with the worker's sponsor (generally their line manager) to establish the shared expectations of the coaching program to help the worker realise their potential and improve their performance.

"I identified that one of my emerging leaders would benefit from some additional coaching and mentoring in the areas of setting boundaries with staff, setting direction with the broader team and identifying performance targets, and generally building their confidence in their ability to manage their team effectively," shared a recent sponsor.

continued →



*“The coach was there any time I wanted to email her or give her a call, to talk through the sessions and provide valuable feedback.”  
– Worker*

*“Joanne provided a program which was uniquely tailored to the needs of the staff member and the organisation, she communicated frequently on progress, checking in to make sure the program was on track and delivering results, and provided a high level of service. I have no hesitation in recommending the service and Jo as a mentor and coach, to those in the sector seeking such support.” – Sponsor*

*About the coach: Joanne Eggleston has over twenty five years in diverse roles within the public sector, working with individuals, groups and organisations for improved performance and wellbeing. Tailoring her coaching style to the needs of the situation and the individual, she is committed to helping each client set and achieve challenging and realistic goals.*

The LGIS coach is a resource and support to the worker, and is committed to helping the worker establish what is possible and to help them be the best they can be.

Working from an understanding that change can be hard and that people have different learning needs and styles, coaching is highly personalised and tailored to each worker.

The coach is an observer, not lost in the day to day detail of the worker’s experiences and can therefore see patterns, behaviours, or habits the worker cannot. The process of feeding these back to an individual can be profoundly useful.

One worker, who undertook LGIS HR coaching, said, “The benefits of coaching, for me, were firstly being able to talk through some of the situations, as well as the tangible tools provided. There was a lot of text work which gave me something to reflect back on for the future, and for the time that I was going through it.”

The coach provides a safe place with agreed confidentiality and can be a useful sounding board, helping the worker think through things more clearly whilst supportively challenging and encouraging them to stretch themselves and go for big goals.

## **Benefits of Coaching**

Coaching is an invaluable tool for developing people across a wide range of needs. Managers should not underestimate the impact of coaching on their workers as it frequently creates a fundamental shift in their approach to their work.

The sponsor identified, “As the coaching sessions progressed I saw an increase in confidence in the staff member and a reduction in their second guessing the decisions that they made. I also saw a more goal oriented team emerge and an improvement in the culture of the team – more teamwork, more supportive behaviour of each other and a happier work environment. The benefits of the coaching programme flowed through from the staff member directly receiving the coaching to the whole team, and it was a very beneficial experience all round.”

The worker agreed, “I’d certainly say it has improved my working experience, for the fact that it taught me to take a step back and do breathing and thinking exercises, and evaluate how to approach the situation - how to move forward without getting lost and becoming overwhelmed.”

For more information on coaching, contact the LGIS human resources risk management team on  (08) 9483 8888.

# Unsupervised fitness facilities – is it too much of a risk?

Since 2012, the number of 24-hour gyms has increased exponentially, with an increasing trend of unsupervised facilities on offer whereby patrons are provided access to the gym after hours, when no staff is present.

There are obvious benefits for you as the operator of an unsupervised facility, however you still have a duty of care to your patrons to provide a facility where the risk of injury is mitigated as far as reasonably practicable.

An inherent risk of injury exists in all gym environments. Injury can arise from situations such as the incorrect use of equipment, over exertion, exercising beyond personal capabilities, or exacerbation of pre-existing conditions. Supervision provides a means of mitigating the risk of injury by monitoring exercising patrons and offering easy access to on-site professional guidance. Therefore, in an environment with no supervision, the opportunity for injury is enhanced.

Whilst there is no substitute for supervision, there are measures that can be taken to reduce the risks to your facility's members. Peak fitness body Fitness Australia has published a number of recommendations for unsupervised fitness facilities. Fitness Australia's mitigation measures are in keeping with previous LGIS risk recommendations. Some of the areas for consideration and inclusion are:



## Electronic surveillance

- ▶ CCTV promotes a secure environment and when monitored provides a means of recognising situations where assistance is required



## Panic alarms

- ▶ Having both fixed and wearable devices with monitoring or call forward functions, provides patrons the ability to raise the alarm if in need of emergency assistance



## Signage

- ▶ Promotes conditions of entry, safe equipment use and emergency procedures



## First aid

- ▶ Prominently placed and marked for easy patron identification and use along with a telephone in close proximity for emergency situations



## Change rooms

- ▶ Available with access to a panic alarm and internally excluded from CCTV footage to protect privacy



## Modified equipment

- ▶ Safety mechanisms may be available on weight machines to prevent crush and over-extension injuries
- ▶ Injuries associated with dropping free weights can be reduced by limiting access to specific equipment afterhours
- ▶ Ensure equipment is serviceable through regular and documented inspection and maintenance




## Induction process

- ▶ Pre-exercise screening
- ▶ Emergency response procedures
- ▶ Safe use of equipment and amenities

This list is not exhaustive and you may identify difficulty in implementing some of these measures at your local government facilities, so you should carry out a suitable risk analysis before deciding to establish an unsupervised gym.

It is important to remember no facility is risk free. Expect the level of risk to be higher with an unsupervised facility, and be comfortable with the level of risk you are prepared to accept.

If you have any queries regarding unsupervised fitness facilities or require specific advice for your facility contact the LGIS risk and governance team on  (08) 9483 8888.



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