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RISK MATTERS



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LGIS is the mutual indemnity
Scheme, which provides a
dedicated suite of risk financing
and management services for WA
local governments, established
by the WA Local Government
Association in conjunction
with JLT Public Sector (part of
the Marsh group of companies).

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.



CEO's Message



JONATHAN SETH

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We're coming to the end of the financial year, and it's always a rush to the finish line to complete budgets and close off the year. This year has been particularly challenging as members have juggled the impact of COVID, natural disasters and continued to deliver services to their community.

For LGIS it's also a busy time as we discuss renewal terms with all of our members. We've been working hard to contain contributions against a tough environment. 2021/22 will close out as one of the hardest years in the Scheme's recent history. We're anticipating a \$4 million deficit for this financial year; and because of this there will be no surplus distribution or contribution credits for 2022/23.

I know this will be disappointing to some members, but I hope you understand that it's financially responsible; ensuring that the Scheme remains strong and ready to respond when our members need us most.

Looking forward we're excited to announce a rejuvenated Scheme Risk Program which includes new targeted services such as a psychological safety program, a wider range of liability assessments and high risk asset audits. Read the full details of this important Scheme benefit on page 8.

This summer we had some terrible bushfires and our volunteer bushfire fighters once again stepped up to protect their communities. Our feature this edition looks at the protections available for these valued volunteers alongside some new resources to assist in managing the risks that they're exposed to (page 3).

Plus our 'Ask an Expert' column explores the definitions of a 'worker' and a 'volunteer' in the new work, health and safety legislation.

We also take a deep dive into cyber resilience on page 12. Globally cyber-attacks have grown exponentially and it's a top concern for business and local government leaders alike. The increased number of claims and risk exposure has seen commercial cyber-insurance prices skyrocket. This edition we explore the issue from a local government perspective.

With winter well and truly upon us we're also looking at the issue of storm drain management (page 10). Concerningly, stormwater drainage and flooding claims have increased in recent months.

Many of these claims have the potential to be expensive and unfortunately we've seen a number that could have been avoided with a proactive risk management approach.

Lastly our legal expert, Mark Civetella from Mills Oakley looks at whether or not long COVID is compensable for workers' compensation.

I do hope you enjoy this edition, and if you have any suggestions or a question for our Ask an Expert column please send it through to me or our editorial team at pia.duxbury@lgiswa.com.au

As always, if you have any questions about the magazine, or if you'd like to discuss any matter regarding your membership, cover, claims, or risk management services with LGIS, please contact me directly on 9483 8855.

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High risk volunteering, protecting those on the fire-front

2022 has already been a significant bushfire year in Western Australia.

LGIS members across the state, particularly in the south and Wheatbelt, faced fires which destroyed property and razed the land. Changing environmental conditions will continue to pose significant challenges.

In the front line, battling all of these fires were our bushfire volunteers. Without the tireless dedication of these volunteers the destruction of bushfires would be so much worse.

Local governments step in to protect their own.

Personal injury protection for volunteer bushfire fighters (VBF) is one area that demonstrates the strength and value of a mutual protection approach. The commercial insurance market has no appetite to provide this protection (which is a legislative requirement) so local governments through their mutual indemnity scheme have stepped up to protect their own.

LGIS is able to do this because we're a mutual, owned and run for the benefits of our local government members, we're committed to providing the sector with all of the protection it requires –and bushfire volunteer personal injury protection is a legislative requirement.

LGIS Protection for volunteer bushfire fighters



Volunteer bushfire fighter injury protection



Personal property protection



Motor vehicle protection

The commercial insurance market's response is telling, indicating that after assessing the risk profile and mitigation practices in place, they believe that the possibility of significant losses (that is injury to bushfire volunteers) is too high to be commercially viable.

Although local governments through their mutual, LGIS, are able to access protection because there is a genuine (and legislative) need, members must actively manage the risks associated with volunteer bushfire brigades.



Bushfire volunteer defined

The *Bush Fires Act (WA) 1954* defines a bushfire volunteer eligible for compensation as:

- A. A bushfire control officer appointed under the *Bush Fires Act (WA) 1954***
- B. A registered member of a bush fire brigade established under the *Bush Fires Act (WA) 1954***

Western Australia is the only state in Australia where local governments have responsibility for managing, equipping, coordinating and protecting their bushfire volunteers. We rely heavily on dedicated volunteers.

When these responsibilities are combined with the types of activities that volunteers carry out and their demographic profile it's clear that WA local governments' have some unique considerations when looking at their risk management and financing options.



A proactive approach is vital to managing risks and ultimately reducing claims – ensuring the long-term, sustainable protection of our highly valued bushfire volunteers

In addition to personal injury protection LGIS provides volunteer bushfire fighters with personal property and motor vehicle protection.

It's important to remember that VBFs are protected from liability for anything they do in good faith in carrying out any fire brigade activities or normal brigade activities under the *Bush Fires Act 1954 (WA)*.

Good, mutual members are the secret to LGIS' strength



LGIS is WA local governments' working together – supporting each other, sharing knowledge and each doing their part to manage risks and reduce claims.

It's important that every member remember that they can impact the ability of the Scheme to ensure sustainable, appropriate and long-term protection for the sector.

Good members of the Scheme are committed to proactive risk management. They work closely with LGISWA and access the Scheme risk programs. Typically, they make sure that they:

- ▶ Provide accurate information in relation to their protection or claims.
- ▶ Cooperate with all reasonable requests in the course of processing their claim.
- ▶ They lodge claims which are the result of a valid loss event.
- ▶ Act on recommendations from risk assessments.
- ▶ Address problems as soon as they become aware of them, where reasonably possible.
- ▶ Actively try to minimise their risks and chance of loss.

When all members adopt a mindful, proactive approach to risk management it benefits all members and ensures sustainable protection.

Bushfire volunteer protection – by the numbers

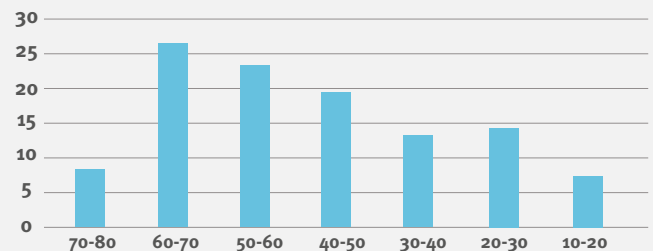
Volunteer bushfire fighters receive property, motor and personal injury protection through LGIS Scheme membership.

From 2018 to 2022 LGIS received 53 property and motor claims and paid \$55,000. The majority of these claims occurred during peak fire season in the summer months.

Over the past 5 years (2017 to 2022) LGIS has paid \$2.14 million for 130 bushfire volunteer personal injury claims; over the course of this time the average cost of a claim has climbed to be nearly \$20,000.

During this period the majority (44%) of personal injury claims are for volunteers in the 60-70 and 50-60 age groups. Claims for these age groups combined account for \$1.88 million paid in claims from 2017 to 2022.

Total claims by age group from 2017-2022



Across the board the top five mechanism (injuries) for bushfire volunteers is:

Mechanism / Injury	Number (2017 – 2022)
1. Muscle/tendon strain (non traumatic)	32
2. Multiple injuries	12
3. Foreign body on external eye, in ear or nose or in respiratory, digestive or reproductive tract	11
4. Burns unspecified	8
5. Laceration or open wound	7

It's clear looking at the claims trends that an aging cohort is impacting claims numbers and their severity. Unfortunately, our older volunteer bushfire fighters are more likely to be injured due to the demands of the role.



What can we do to reduce the risk of injury for our valued volunteers?

A demanding role. What does it take to be a bushfire volunteer?

The LGIS injury prevention team have done the most exhaustive assessment yet of the demands of a volunteer bushfire fighter role.

Upon completion of the job dictionary and manual task assessments LGIS WorkCare Services Manager, James Larkin said “out of the 32 job dictionaries we’ve done for local government roles, this role has potentially the highest levels of physical and psychosocial risk.”

The job dictionary for volunteer bushfire fighters identifies the highest risk body areas, cognitive, emotional and role demands for an individual.

Overall physical demands for the role are rated as ‘very heavy’ (the highest rating available) and 61% of the psychological risk factors also receive the highest rating.

Broadly the dictionary identifies significant considerations as outlined in the table below.

Highest risk body areas	Cognitive demands
<ul style="list-style-type: none"> • Lower back • Knees • Shoulders • Elbows • Hands and fingers 	<ul style="list-style-type: none"> • Oral comprehension/expression • Comprehension/expression • Critical thinking, attention to details • Active listening, decision making • Concentration/problem solving
Emotional demands	Role demands
<ul style="list-style-type: none"> • Stress tolerance • Social perceptiveness • Dealing with customers • Team work 	<ul style="list-style-type: none"> • Ability and flexibility • Coordinate and lead others

The role of volunteer firefighter is varied, they’re tasked with protecting rural and pastoral areas against the threat and damage caused by bushfires. They carry out fire prevention, such as prescribed burning, risk management and active fire suppression. They are trained in personal and team safety, fire suppression methods, vehicle driving (on and off road), first aid, communication and emergency management procedures.

All VBF’s should undergo skills training in bushfire safety awareness and firefighting skills. They typically deploy to their immediate local area but can also assist in neighbouring and far-reaching areas.

LGIS has assessed the risk of some of the most common manual tasks carried out by VBFs. These tasks include:

- ▶ Light tanker operation
- ▶ Tanker operation
- ▶ Rolling and unrolling lay-flat hoses
- ▶ Active fire suppression
- ▶ Drip torch operation
- ▶ Vehicle checks
- ▶ Knapsack spraying
- ▶ Support roles
- ▶ Use of rakehoe
- ▶ Miscellaneous hand tools
- ▶ General equipment lifting



Each assessment describes the task and the environment that the task occurs in. It also covers the critical physical demands of the tasks and the forceful/muscle exertions required alongside repetition of the task. The assessment creates a detailed picture of the task and the risks that individuals and brigade leaders need to be aware of when assigning tasks to the team.



Fit for the job

Considering the demands of the role it's important that when volunteers for the bushfire brigade are allocated roles that their ability – physically, psychologically and emotionally – is a good fit.

Unfortunately, due to the age profile of many brigades, it can be difficult to find individuals who are able to meet all of the requirements, especially physical, of the role. Using the LGIS job dictionary and manual task assessments brigade leaders may be able to identify tasks that individuals should not do or find adjustments that support an individual in completing the task. A proactive approach to identifying and managing an individual's tasks and roles is vital in reducing injury to valued volunteers.

To protect the volunteer, brigade leaders and the local government it's important that an individual is assessed for each task and clearly instructed as to their role and activities.

There's also a significant emotional and psychological component. Volunteering gives individuals a sense of belonging and can become a defining aspect of who they are. Some individuals within the 50 to 70 age group may be unwilling or reluctant to recognise their diminishing physical capacity.

The conversation about fitness for the role and an individual's place within the brigade is a tricky, but necessary discussion for local governments to have with their volunteers.

There is a wide variety of tasks available within and supporting a bushfire brigade and roles should be identified or developed which allow older or less physically able volunteers to continue their involvement and service to the community.

The story of John Stevens a 75-year-old volunteer firefighter for the City of Busselton shows how a role can be found that meets the individuals' abilities, while providing them with continuing connection and meaningful work within the brigade (page 7).

More information

For more information on Scheme protections for volunteer bushfire fighters talk to your LGIS account manager. For assistance with job dictionaries and manual tasks speak to WorkCare Services Manager, James Larkin at james.larkin@lgiswv.com.au . ▼

Property and vehicle protections for bushfire volunteers

Local governments with bushfire brigades are not only responsible for ensuring personal injury protection for volunteers but protection of their property used during the course of their role.

This protection is provided on the condition that the volunteer is carrying out 'bushfire firefighting operations/activity' and includes loss or damage to personally owned property, appliances, items, repairs, maintenance, vehicles and equipment (*Bushfire Fire Act 1954 and, Firefighters and Emergency Volunteers Legislation Amendment (Compensation) Act 2016 of the Fire and Emergency Services Act 1998*).

LGIS provides protection for the market value or the reasonable cost of repair, whichever is the lesser, of any such vehicle, appliance, equipment or apparatus lost or damaged that is used under the direction of a bushfire control officer or a member of a bushfire brigade.

Where a bushfire volunteer has a motor vehicle or personal property claim it should be lodged with LGIS as soon as possible.



New brigade role continues to contribute

Bushfire volunteers provide a vital service to our communities, and the work they undertake is often in very high-risk environments.



Sometimes a bushfire volunteer may be injured in the course of their duties.

In April 2021 John Stevens, a volunteer firefighter for the City of Busselton's rural brigade, injured his knee when stepping down from a fire truck onto soft sand. Mr Stevens suffered medial compartment osteoarthritis in the right knee and lodged a claim through the Scheme's Bushfire personal injury protection.

Personal injury protection applies when a volunteer fire fighter suffers from an injury caused by undertaking normal brigade activities. The entitlements mirror the *Workers Compensation and Injury Management Act (1981)* and follow the prescribed amounts as gazetted by WorkCover WA every year.

Mr Stevens' claim was approved, with the Scheme covering his medical costs. The LGIS claim consultant managing the claim liaised directly with Mr Stevens, his medical providers, and the City throughout treatment.

Once largely recovered from pain, the medical provider indicated Mr Stevens could return to modified duties within the volunteer fire brigade to avoid any repetitive ascending or descending of stairs or impact loading of the knee. Mr Stevens was encouraged to speak to the Brigade Captain, to avoid being put in an unsafe situation or duties that could result in an injury to him or other brigade members.

Happily, these discussions resulted in Mr Stevens stepping down from active firefighting duties but continuing to contribute to the Brigade in a treasurer capacity, and assisting in driver and other training, and generally helping out around the brigade and auxiliary section.

“

Moving to an administrative role had been on the cards for a while, as I'm now 75 and don't want to risk my teammates during the long days. I'm glad to be able to still contribute to the brigade in a meaningful way. Liaising with LGIS made my claim process a trouble-free experience.”

Mr Stevens



John Stevens now serves as treasurer for the City of Busselton's rural brigade in Yallingup.

Volunteers, psychological safety and liability risks in focus for Scheme Risk program

Proactive risk management for individual LGIS members and the broader local government sector is at the heart of LGIS' success. Targeted risk services are available to all local governments as a benefit of Scheme membership. When local governments work together to manage risks and reduce claims everyone benefits – workers, community and their protection Scheme.

Every three years LGIS reviews the Scheme Risk plan, and in May this year the Board of Directors endorsed the 2022-2025 plan.

In 2021, WALGA commissioned Mainsheet Capital to do an independent review of the Scheme risk program. The review aimed to answer two questions: one, do risk services provide value for money and two are they effective? Their report answered 'Yes' on both counts – affirming the benefits to members of the program. In their report Mainsheet also provided recommendations and we've incorporated them into the 2022-2025 program.

The risk program is a key benefit of LGIS membership and is structured around three pillars:

1. **Preventative risk programs** designed to build the sector's risk profile, capacity and capability in mitigating scheme risks.
2. **Emerging risk programs** that enable LGIS to respond to risks as they arise, identifying scheme exposures and mitigation, both at a local and sector level.
3. **Claims trend programs** targeted at risk areas that need to be managed to reduce current claims.

In addition to the regular three yearly review, we look at sector wide risks every year; tweaking service delivery to respond to what's happening in the sector.

Scheme risk services are focused around six risk profiles:



Service highlights for 2022-2025

There are a range of new services and projects ear-marked for the next three years. Members have the opportunity to get involved with various pilot programs and research projects.

Cyber-resilience pilot

Local government leaders ranked cyber-security as their number two risk concern in the 2021 JLT Public Sector Risk Report. Globally cyber is recognised as a significant and growing risk exposure. This is reflected in the dramatic price increases for cyber-cover in the commercial insurance market – 110% in the US and 102% in the UK for the first quarter of 2022.

In talking to WA local government leaders, we know it's a concern and cyber-claims to LGIS have increased in the last few years. Although we haven't seen a large claim yet, it's only a matter of time.

We're developing a cyber-resilience program to support members in building their cyber-security capacity. Members will be invited to participate when the pilot program is launched.



More liability risk assessments

We've identified five new areas to deliver risk assessments to members; two new types of assessment will be added each year starting in 2022. Individual members will be able to access the new service and the whole sector will benefit by data gathered on risk maturity and claim frequency. Assessments will be delivered in the areas of:



Tree management



Footpaths



Roads management



Swimming pools



Playgrounds

Property assessments

All LGIS members have significant property portfolios including staffed buildings, leased premises, public facilities, fleet, plant and equipment. The property assessment program provides members with assessments to identify risks and recommends risk management strategies in response.

Every year 20 high risk properties, such as waste facilities, ports or bushfire/emergency facilities, and 15 low to medium risk properties will be audited by the Scheme.

Refreshed people risk services

Western Australia's new work, health and safety (WHS) legislation has seen renewed interest from the local government sector across many aspects of people risk.

LGIS will continue to deliver our popular '3 Steps to Safety' program alongside a range of awareness sessions across roles and responsibilities, due diligence, psychological safety, volunteers, and contractor management.

People management services have been refined and include mediation, short term counselling, conflict resolution and critical incident debriefing – including for elected members and volunteers.

Psychological safety

Although psychological safety has always been included in WA legislation it is now explicitly mentioned in the Act, garnering more attention from employers. LGIS will develop a psychological safe program for members. It will have a strong focus on education around identifying psychosocial hazards, and the prevention of psychological injuries. More information will be available when the program becomes available.

Volunteer management resources

Volunteer management is another area in the spotlight with changes to the definition of a 'worker' in new WHS legislation. LGIS has already developed a wide range of resources to support members in managing volunteers and bushfire volunteers. Over the next few years, we'll continue to develop material and provide targeted support in response to the regulatory environment and the sector's needs.

These services and more are available to all LGIS members. Services can be delivered in-person, virtually or a combination of ways that meets the member's needs.

We are committed to working with all members to build risk management capacity within the sector ensuring safer communities and workplaces.

For more information on LGIS risk services contact your risk consultant or regional risk coordinator. ▼



Don't let liability exposures go down the stormwater drain.



In the last few years, we've had rain events which have delivered a tremendous amount of water within a matter of hours. These events are occurring more regularly – shining a spotlight on storm water drainage, planning and management. Since 1 January 2020, LGIS has received 45 stormwater drainage and flooding claims which, concerningly, have resulted in litigation and defence costs. Unfortunately, we've seen an uptick in these types of claims which needs to be curtailed in the future.

Whose job is it to manage stormwater drains?

In Western Australia local government is responsible for the stormwater drainage within its municipal boundaries. This means that they owe a duty of care with respect to the stormwater drainage systems within their control and are obligated to exercise reasonable care in the development and management of drainage schemes.

Street drainage networks under the control of local government are designed to a certain capacity. They should comply with the *Stormwater Management Manual for Western Australia (Department of Environment, 2004)* considering annual average rainfall for that area; one to 10 year averages; and 10 to 100 year events. The Water Corporation's *Design Standard DS 66, Urban Main Drainage Standard* may also be considered.

The chart Perth Historical rainfall from the Water Corporation shows the range of rain falls across the metropolitan area. Stormwater drainage infrastructure should be designed with this in mind.

Perth Historical Rainfall



Local governments have various powers relating to carrying out works for drainage of land. When a local government chooses to exercise its statutory functions or powers, such as works for drainage, it owes a duty to act with reasonable care.

This duty means a local government is to design, construct and maintain (which includes inspection, assessment and remediation) a drainage system in accordance with the prevailing industry standards or any applicable standards at the time. This does not mean that a local government must ensure its drainage systems are at all times kept in accordance with industry standards. That said, if a local government becomes aware of a change in circumstances or other issues which significantly increases the risk of flooding, then an argument could be made that a local government has been negligent if it failed to rectify a known hazard.

As always with local government infrastructure management, drainage capacity improvements, maintenance and rectification of known issues should be implemented when required and within budgetary restraints. In this regard, when assessing whether a local government has acted reasonably in maintaining its drainage infrastructure, a critical consideration is any financial and other resource limitations a local government may have when any decision is made to carry out any works that is applicable to the local government.

Also critical is the likelihood and severity of damage that will be caused if rectification works are not carried out. For example, it is not uncommon for roadside drainage systems to flood to some extent during heavy rainfall. This often does not cause damage and requiring local governments to prevent this would be unnecessary and unreasonably onerous.

Residents also have a responsibility to maintain drainage systems on their own private property that adequately retain storm water.

Case study

Severe weather conditions in the winter of 2020 saw two neighbouring houses flooded significantly. A claim was made against the local government which was ultimately settled by LGIS.

The situation

This was not the first time flooding had occurred. Every year from 2010 to 2013 these properties had flooded after storm events. Over that period the local government worked with the owners to deliver a solution. Extra maintenance for the gully, at the driveways, was done and a berm was installed at the driveway entrance of the property line to redirect storm water.

Unfortunately, these measures were only partly successful.

Definitions



Berm: a narrow shelf, path, or ledge typically at the top or bottom of a slope also, a mound or wall of earth or sand a landscaped berm.

Local government planners decided that additional work was needed for a permanent solution to the flood issue, and that this could only be done if the property was bought by the local government. In 2014 Council resolved to purchase the property.

Specialist engineering consultants were engaged to design drainage plans. Storm water was being trapped at a low point (the driveways) in the property and a solution had to be found.

The engineer's solution involved work in three stages and drainage would be installed in road pavement. This would disrupt traffic on a major distributor road and increase the project cost.

A second, lower risk option was to provide the flooding area with an overflow soakage in the rear court yard and reinstatement of the driveway. The local government decided to pursue option two.

In July 2014 the local government purchased house A (refer to diagram). Drainage work was completed and five soak wells installed at the rear of the property. Works were monitored during rainy periods and as there was no evidence of flooding to the yard or house, the property was sold.

The claim

A claim was made following a flooding event in winter of 2020. An investigation found that the flood was caused by a drain that was partially blocked by concrete from a footpath constructed by the local government. What's more the five soak wells, installed to prevent further flooding, had not been connected properly.

Considerations

When considering local governments' potential liability in this case it's important to remember that:

- ▶ although local governments are empowered to take action in relation to drainage, the legislation does not go so far as to impose a statutory duty to take action, or
- ▶ to ensure that adequate drainage is provided (but that is not to say a local government does not have any duty to ensure adequate drainage is provided).

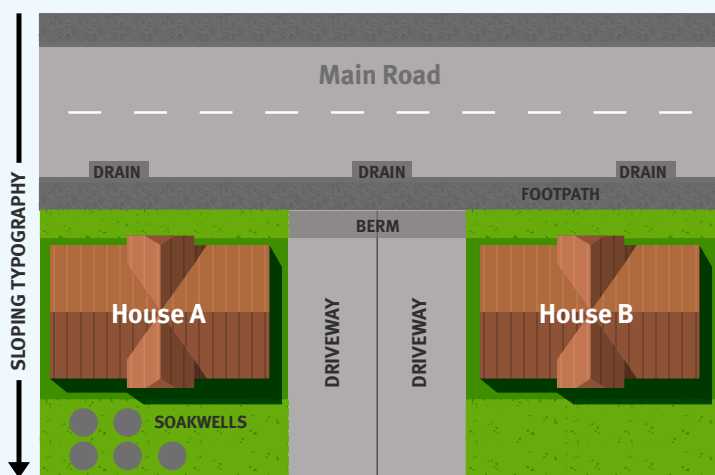
Local government owes a duty to exercise its statutory powers (including in respect to drainage works) in circumstances where property owners generally or specifically are reliant on the local government to exercise those powers for the protection of the community.

Local governments have the care and control of roads and drainage networks within their jurisdictions. Property owners have limited powers to protect themselves from flooding to their properties caused as a result of obviously inadequate drainage or defective drainage.

As set out above, when a local government chooses to exercise its statutory functions, it owes a duty to act with reasonable care. In practice this means that any remediation or maintenance work needs to be supervised by engineers and should meet applicable standards.

Settlement

In this example the local government in the exercise of its statutory functions, negligently affected drainage by building a footpath over an existing drain. This reduced the capacity of the drain. In addition the soak wells were not installed correctly and failed. Given this the local government could be found liable. Given this situation the best outcome for the member and LGIS was to settle the claim. ▼



CYBER SECURITY



Cyber-security failure a risk to local government



At the end of 2021 local government leaders across Australia ranked cyber-security failure as their number two risk, just behind financial sustainability. Local government leaders are not alone in their concern, when Australian business leaders responded to the January 2022 Marsh Executive Opinion Survey cyber-exposure topped their list.

Globally there has been a dramatic surge in cyber-events with the cost of cybercrime estimated at \$US6.9 billion in 2021.

In Australia the Australian Cyber Security Centre (ACSC) received over 67,500 cybercrime reports, an uptick of 13% from the previous financial year. During this period a higher proportion of incidents were categorised as 'substantial' in impact.

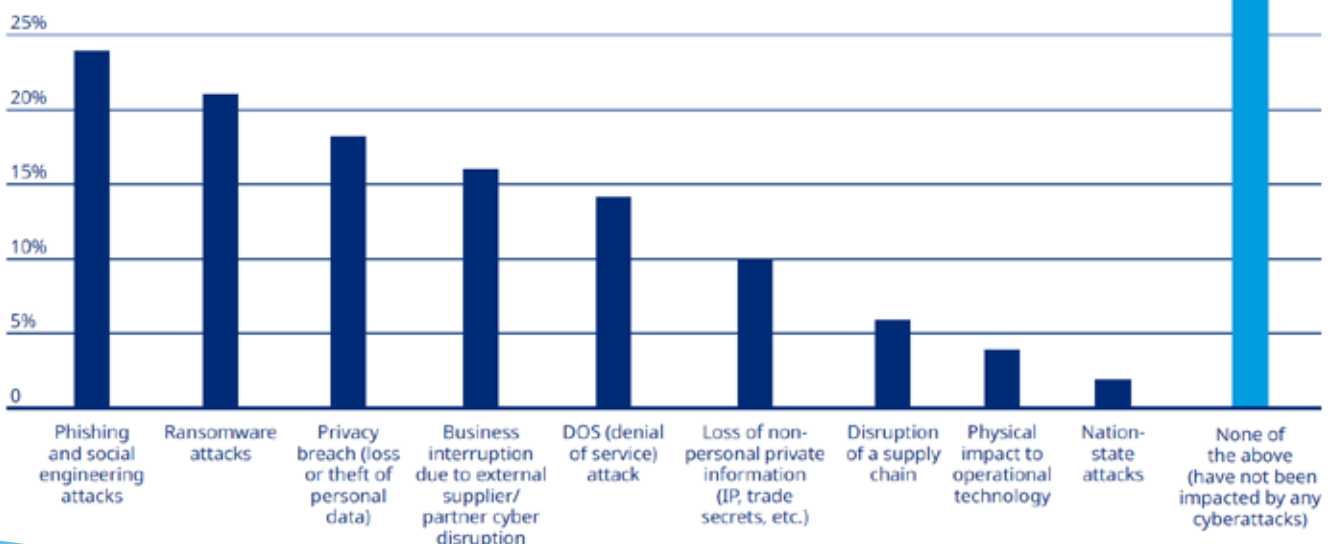
No sector of the Australian economy was immune from the impacts of cybercrime and other malicious cyber-activity. Government agencies at all levels, large organisations, critical infrastructure providers, small to medium enterprises, families and individuals were all targeted over the reporting period – predominantly by criminals or state actors.

Heightened frequency and severity of cyber claims have led to a significant increase in global commercial insurance pricing for cyber-cover for the first quarter of 2022 – 110% in the US and 102% in the UK. According to a new report from Marsh and Microsoft nearly 75% of organisations globally have experienced cyberattacks.

Ransomware attacks have become particularly pervasive, with 71% of global leaders ranking it as their number one cyber-concern according to the latest *State of cyber resilience* report from Marsh and Microsoft.



Types of cyberattacks experienced by organisation





From a WA perspective LGIS has seen a small increase in cyber-events and we know that it's on the mind for the local government sector. Many of the breaches that we've seen have been a result of phishing attempts targeting human imperfection and a tendency to trust.

The WA Office of Auditor General (OAG) conducted an audit of 15 local governments in November 2021. Unfortunately, the OAG found that local governments had not managed their cyber-security risks well. Out-of-date software accounted for a large number of cyber security vulnerabilities and despite staff awareness training, over half of the audited entities did not have controls to prevent their staff falling victim to social engineering attacks (for example phishing emails). Most of the local governments audited also lacked appropriate incident response and recovery plans to respond to cyber security incidents and recover key systems.

Against this backdrop, it is imperative that local government leaders develop an organisation wide approach to cyber resilience – all leaders should assume that an attack will come, it's a matter of when and how prepared your organisation is.

Australian cyber-vulnerability trends

1. Digital everything

Businesses and individuals are increasingly dependent on digital systems and this has been further accelerated by COVID-19. In the past 18 months the take up of cloud service providers, data aggregators, and application programming interfaces (API) has been striking; unfortunately, these technologies often result in less protection against cyber-intrusion.

In parallel, the appetite for organisations to operate multiple technologies working in concert – enabled devices, edge computing, block chain, and 5G is growing. While tremendous opportunities for business operation these same capabilities also expose users to more harmful forms of digital and cyber-risk

2. Increasingly sophisticated attacks

According to the latest data from the Australian Cyber Security Centre (ACSC), one cybercrime was reported in Australia every eight minutes in 2021, a 13% increase from the previous year. Digital transition and transformation have increased the cyber-threat landscape for organisations.

Exploiting vulnerabilities in free access coding has also proved fruitful for criminals. For example, in December 2021, just one week, after discovering a critical security flaw in widely used software library Log4j, more than 100 attempts to exploit the vulnerability were detected every minute.

The Log4j vulnerability is now so widespread that it potentially impacts all aspects of the Australian economy, resulting in indemnity providers withdrawing coverage for Log4j link vulnerabilities.

3. Digital hygiene gaps and cyber-worker shortage

95% of cybersecurity issues are traced to human error, and insider threats (be they intentional or accidental) represent 43% of all breaches. All organisations need to improve basic digital hygiene as well as organisational controls and governance.

In addition, there is an undersupply of cyber professionals – a gap of more than 3 million worldwide. This is a critical shortage of people who can provide cyber-leadership, test and secure systems and train people in digital hygiene.

Protect or pay – consequences for local government

Australian governments, at all levels, are seeking to protect against and mitigate their cyber-exposure. The traditional Scheme protections of property, liability and professional indemnity are not intended to respond to the most significant business impacts that may result from a cyber-event. That's why LGIS provides all members with cyber-protection tailored to the needs of the WA local government sector.

Cyber-protection will continue to be an important risk financing tool that LGIS members use to recover financially from a cyber-event. However, as threats continue to grow, there is an expectancy from LGIS (and our indemnity providers) that local governments are also bolstering their cyber-resilience.

As previous incursions (like SolarWinds) have demonstrated, exposure to vendors and supply chain partners must also be assessed and managed. The Scheme recognises the interconnected nature of technology and systems; a local government does not have to be the primary victim of an attack to suffer from the consequences of one. The impact of disruptive cyberattacks could be financially devastating for members that fail to invest in protections across their entire digital infrastructure.

Building local government cyber-resilience

It's clear given the cyber-environment, alongside the climbing costs of cyber insurance commercially, that building resilience will be key for local governments moving forward.

Cyber-risks need to be appropriately managed and rated according to the type and severity of the risk to the organisation – and not a 'tick the box' line item in the risk register. Local governments should consider the essential elements of cyber security from strategy, governance, and enterprise risk management to controls architecture, implementation, and management.

In 2022 LGIS will launch a pilot program to assist our members in understanding their current cyber-security position. This will allow members to prioritise their cyber-strategy across the organisation.

Most importantly cyber will need to become everyone's responsibility – it can no longer be relegated to the IT department as 'their job' to look after.

For more information about cyber-protections and risk management talk to your LGIS account manager. ▾





CASE STUDY 1: Local government caught in a phishing net



The following is a case study of a cyber-event experienced by an Australian local government.

The local government's former facilities officer engaged a local firm to undertake maintenance on their office building. The work was completed and a valid invoice for over \$60,000 was issued via email to the former employee. The former employee forwarded this invoice to the local government's accounts payable team.

Later, the contractor called the local government enquiring as to when they could expect to be paid. The creditor account showed the invoice as being paid. The local government asked the maintenance vendor for confirmation of their bank account details. At this point, it was determined that a fraud event had occurred and payment had been made to a fraudulent account.

Investigations revealed that around the time the legitimate invoice was received, the former employee's Microsoft Office 365 email account was compromised by a threat actor. It appears the threat actor monitored email traffic through the account. The threat actor accessed the Office 365 mailbox and created a series of email rules. These rules allowed the threat actor to impersonate the former employee using his actual mailbox and be undetected.

The threat actor then sent an email from the former employee's mailbox with a fraudulent copy of the invoice requesting bank account details to be changed from what was on the original valid invoice. Payment was subsequently made to the updated and fraudulent account.

The local government has since paid the legitimate invoice and is seeking reimbursement for the funds paid to the fraudulent account.

This incident emphasises the importance of exercising due diligence when processing payments and changes in bank account details. Local governments should consider having a verification process in place when vendors request a change in bank details.

It is important to use existing contact details provided by the vendor rather than rely on contact details provided within the email as these could be fraudulent.

Case study 2: Held to ransom

The following is a case study of a cyber-event experienced by an Australian local government in a remote, regional location.



First Incident

In early 2020, the local government identified a number of suspicious events via its antivirus platform, Webroot, which indicated that there may have been unauthorised access to their network.

Shortly after these suspicious events were identified, the local government conducted a preliminary investigation via their external IT vendor. That vendor also enlisted the assistance of a forensics firm.

The forensics consultant determined that a server on the local government's network located in a depot server room at their premises was accessed by an unknown attacker and encrypted with ransomware along with one workstation and some other machines.

The protection provider was notified that month and for unknown reasons, the local government later withdrew their cyber-notification despite them having a valid claim.

The protection provider was advised that further investigation was required to determine the key elements of the attack, including the initial entry point, the scope of compromised accounts and hosts, the attacker's activities across the network and whether access was still available to the attacker. The local government was advised however, they proceeded to withdraw the claim.

Second Incident

In mid-2020, the local government notified the protection provider of another cyber-incident where it lost access to its systems. Upon inspecting its server infrastructure, the internal IT department found that a number of files were encrypted. The encryption encapsulated all of the local government's major business systems, including its finance and payroll system required to pay its employees. The encrypted files were appended with '.thanos' and '.eruption'.

The local government's backups were also comprehensively encrypted. A ransom payment was requested by the threat actor. The local government appointed a forensic investigator, to look into payment of the ransom in order to obtain decryption keys. The investigator stated the bitcoin ransom amount converted to over \$90,000. The local government ultimately paid two ransom demands in Bitcoin through their forensic investigator to obtain appropriate decryption keys.

An investigation determined the two incidents were related events.

Costs

Total costs for this claim are estimated to be \$140,000.



ASK AN EXPERT



EMMA HORSEFIELD

People Risks Manager

Emma is the People Risk Manager for the LGIS Scheme, setting the direction of the program in response to member, sector, and industry trends. Emma manages a team of consultants focusing on people risk, including workplace health and safety, emergency management, and human resources. Emma's extensive industry experience and knowledge covers the development and implementation of people risk initiatives aimed at improving behaviours and reducing workplace injuries.



ANDREW GREIG

Manager Member Services

Andrew manages the LGIS Member Service team, a group of dedicated account managers and account executives who are member's first point of contact for all things 'LGIS'. Andrew has over 15 years' experience in the insurance and protection industry extending to managing a portfolio of both metro and regional Western Australian local governments, not-for-profit organisations, educational institutes and aged care facilities. He has a thorough understanding of commercial insurance and risk management principles, enabling the provision of advice for a broad range of business activities.

“ What's the definition of a volunteer and are they protected? ”

The new Work, Health and Safety Act WA (2020) (WHS) changed the definition of a worker to now include volunteers. LGIS members have been seeking clarity on how they can meet their obligations, and what types of protections are included with LGIS membership.



Volunteers and WHS

Volunteers play an important role in many local governments in delivering valued services to the community whether it's books on wheels, revegetation work, community transport or the bush fire brigade. Local governments owe a duty of care to these volunteers and they are now formally included in work, health and safety laws.

Under the WHS Act a volunteer is a person who works for an organisation without payment or financial reward (but they may receive out of pocket expenses). The law also recognises volunteers as workers. This means that the Person Conducting a Business or Undertaking (PCBU) must provide the same protections to its volunteers as it does to its paid workers.

WHS laws cover a range of activities when considering 'what is work', these include activities:

- ▶ that involves physical or mental effort or the application of particular skills for the benefit of someone else, whether or not for profit or payment,
- ▶ where someone would ordinarily be paid may be considered work,
- ▶ that are part of an ongoing process or project may be work, and
- ▶ where it may be more likely to be work if someone is managed or controlled by another person when they undertake that activity

What does the local government need to do?

The local government is considered a PCBU and as such has obligations to all workers, including volunteers, under the WHS act. These obligations can be broadly grouped into three areas:

- ▶ Manage work, health and safety risks
- ▶ Provide information and training to workers
- ▶ Ensure consultation with workers.

But what does this mean in practice? Let's look at an example such as a group of volunteers assisting with revegetation of a local wetland. The project is managed and coordinated by the local government.

In this situation there are a number of hazards that need to be considered in regard to volunteers working in a natural area. As the PCBU it is the responsibility of the local government to identify and assess the hazards, and provide volunteers with information on these hazards and how they can take steps to mitigate the risks. This includes providing appropriate training.

The local government should inform volunteers about general or site-specific hazards which may include the following: subsidence, vegetation, wildlife (snakes, bees, spiders), working alone, uneven surfaces and escarpments.

It's important that hazards are discussed with volunteers to ensure they understand the hazards and the controls to mitigate them.

Document potential hazards, controls and responsibility. This is an important record for the local government and should also be provided.



Potential hazard	Controls	Who's responsible
Uneven, slippery surfaces	Assess area before work. Wear appropriate footwear	Local government and volunteer
Escarpments	Do not work within 5 metres of cliff	Local government and volunteer
Vegetation – cuts and scratches	Wear long sleeves and trousers, gloves, boots and safety/sun glasses	Local government and volunteer
Rubbish – disease from rotting waste, cuts from sharp objects	Wear gloves and use a 'pick up stick' when handling rubbish. Dispose of rubbish carefully.	Local government and volunteer

Figure 1: Document potential hazards, controls and responsibilities.

Put a process in place to make sure that volunteers understand the hazards. This would typically include registration, induction, training, provision of personal protective equipment and work procedures.

What should volunteers do?

Volunteers also have personal health and safety responsibility. They have a duty to:

- ▶ take reasonable care for their own health and safety
- ▶ take reasonable care to ensure they do not affect the health and safety of other people, for example, other volunteers, members of the public or clients they may be assisting
- ▶ comply, so far as they are reasonably able, with any reasonable instruction that is given to them by the organisation, and
- ▶ cooperate with any reasonable policy or procedure that the organisation has provided to them.

A key term here is 'reasonable'. Essentially what is reasonable care and what is expected of workers is what a reasonable person would do in the circumstances having regards to things like their knowledge, role, skills, resources, and information.

What protections are available to volunteers?



The West Australian *Volunteers and Food and Other Donors (Protection from Liability) Act 2002* protects certain volunteers from incurring civil liability when doing community work on a voluntary basis. It also provides that community organisations that organise community work to be done by volunteers may incur the civil liability from which the volunteers are protected when doing that work;

The Act defines a **community organisation** as:

- (a) State agency or instrumentality or a department of the public service; or
- (b) an incorporated association under the Associations Incorporation Act 2015, a local government or other body corporate,

that organises the doing of community work by volunteers.

Where there are organisations that do not meet this definition, the volunteers are not protected by the legislation and may be personally liable for their actions.

Public liability insurance



Considering the Act and definition of a community organisation it's in the interests of both types of groups to maintain public liability insurance to cover the liability of the group, and their volunteers if not incorporated.

Public Liability insurance covers the insured for their legal liability to compensate a third party arising from the negligent act or omission of the insured that causes personal injury or property damage.

The only protection the local government can offer non-incorporated groups is to take over the governance, management, recruitment and organisation of these groups. In effect the local government becomes the community organisation that organises the work done by volunteers. If this occurs then the local government will be liable for the actions of those volunteers, and the LGIS Liability Protection may respond.

This approach increases the local governments risk exposure. You may incur liabilities due to the actions of volunteers that you are not protected for. In addition, there would be work, health and safety responsibilities to consider.

LGIS members need to be aware that the LGIS Liability Protection cannot extend to cover the liability of other parties including these groups.



Personal accident Insurance

Personal accident insurance is not a prescribed cover required under legislation. However, it is seen as best practice for a community group to provide this for their volunteers if they are accidentally injured.

The key benefits of a personal accident policy are to provide:

- ▶ a lump sum payment if the volunteer suffers a permanent disablement, or
- ▶ a weekly income supplement if the volunteer is temporarily disabled, cannot undertake their usual employment and suffer a loss of income

It should be noted that LGIS Personal Accident protection only covers volunteers that the local government is responsible for as per the above.



If you have any queries on volunteers or the protections available to them, please contact your LGIS account manager. ▼

Each month we take your questions to one of our LGIS team members to answer. If you want to submit a question for next issue, email pia.duxbury@lgiswa.com.au

ASK AN EXPERT



MARK CIVITELLA

Partner, Mills Oakley

Mark Civitella is a partner of national law firm Mills Oakley and leads the firm's Perth insurance practice. Mark has over two decades of experience as an insurance litigator. He is a preferred advisor to several Australian and global insurance companies and a number of self-insured companies and groups. Workers' compensation claims are a significant part of Mark's practice and in the past five years he has presented to many employers and industry groups in WA on the prevention and handling of claims. Mark is endorsed by several respected industry directories, including 'Doyle's Guide' and 'Best Lawyers in Australia'. Mark was recently announced as the Lawyer of the Year (Insurance) for the Best Lawyers in Australia Guide 2023 edition.

Long COVID refers to cases where the patient recovers from the acute COVID-19 infection effects but goes on to have longer term symptoms.



Post-acute illness from COVID-19 most commonly includes fatigue (similar to chronic fatigue syndrome), shortness of breath, chest pain, chest tightness, racing heart, loss of taste, loss of smell, difficulty concentrating, and "brain fog".

Studies have shown that COVID-19 can infect multiple organs including the lungs, kidney, heart and the brain and, as such, secondary effects are legitimate and real risks of contracting the disease.

Due to research being ongoing and the limited duration of existing cases, it is still unknown whether long COVID symptoms will be permanent, or whether patients will eventually go on to fully recover.

However, at this stage, employers and insurers should not rule out the possibility of long-term compensation exposure including Schedule 2 lump sum entitlements for permanent impairment where such symptoms persist long term.

Assuming that a 'personal injury by accident' can be established on the medical evidence, such as through damage to a particular bodily organ as a consequence of the disease, it is possible that the impairment will be assessed by an Approved Medical Specialist as being likely to continue for the foreseeable future for Schedule 2 purposes.

Symptoms of long COVID will be treated like any other secondary condition of an injury. If the COVID disease itself is found to be compensable, so too will the symptomatic effects of the disease.

Secondary psychiatric conditions are anticipated to be quite common, based on the experience of other jurisdictions. This is particularly the case among workers in high-risk industries where they may contract and recover from COVID-19 but develop anxiety around returning to work in an environment where a new infection could occur from re-exposure or exposure to different variants of the virus.

It is anticipated that difficult questions of causation may arise in cases of workers with co-morbidities. For instance, if an employee claims to remain unfit to work due to a symptom of fatigue after the acute phase of infection, expert medical opinion may be needed to address the cause of such and whether it is in fact due to contraction of the COVID-19 virus or a symptom of some other health condition.

Risk matters, safer WA communities

Local Government Risk Forum | Tuesday 6 September 2022

Exploring emerging and current risks for WA local governments

Is there any organisation more diverse in its operations than local government? From roads to waste and libraries to aged care, no two local governments are the same - but every LGIS member shares a commonality in risk exposures.

LGIS supports members every day in managing their risks and handling the claims when there's an incident. We have a helicopter view of what's happening in the sector and are in a unique position to see the trends across the sector.

The WA Local Government Risk Forum has been developed using this unique perspective to build capacity within the sector to address current and emerging trends.

Packed with speakers across a range of disciplines the forum will give you an understanding of:

- ▶ Climate change, emergency management and liability implications
- ▶ Strategic and operational cyber-risk management
- ▶ Balancing liability and the public use of local government assets
- ▶ Aquatic risk management
- ▶ Managing high risk assets
- ▶ Contract liability and potential exposures
- ▶ WHS incident investigation – being prepared and getting it right.

LGIS deals with members every day, managing their liability, property and motor claims. This forum has been developed in direct response to our observations and aims to deepen attendees understanding and address the complex issues of risk management and liability.

This event is a must for all local government leaders, risk leaders and professionals and anyone involved in strategic and operational risk management.

Event details

The LGIS Forum is a must for all WA local government leaders, risk managers and professionals. Spaces are limited so bookings are essential.

Date	Tuesday 6 September, 2022
Time	9:00 am to 3:30pm (morning tea and buffet lunch)
Venue	Botanical Rooms, Crown Perth, Burswood.
Cost	Full Day (presentations and workshops) - \$230 (+GST and booking fee) per person Half Day (morning presentations only) - \$190 (+GST and booking fee) per person
Bookings	Book online at: https://www.trybooking.com/events/landing/924832 For any queries please contact Katie Campbell at katie.campbell@lgiswa.com.au





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