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RISK MATTERS



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Association in conjunction
with JLT Public Sector (part of
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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.



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CEO's Message



JAMES SHERIDAN

CEO LGIS

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Welcome to our last edition of Risk Matters for 2023. We always enjoy an opportunity to catch up with members, and in the last quarter of 2023 there's been plenty. Whether it was at the WA Local Government Convention, LG Professionals Annual Conference, CEO Connections or the new elected members' induction, we've had some great conversations with members. Your positivity, frankness and openness has highlighted things we do well and where we can improve.

This was highlighted in the results of our recent Corporate Reputation Survey. Thank you to all of the CEOs, directors and elected members who provided their feedback. Members continued to rate us highly across corporate reputation, service quality, success achieved, trust and favourability. Respondents also highlighted areas for improvement particularly in our systems for renewal and staff turnover.

We've been working hard on both these fronts; the renewal process should be more streamlined this year with an option to pre-populate fields with last year's data. Our WorkCare, Member Services and People Risk teams are nearly back at full complement – like many of you we've been impacted by the tight labour market and staff turnover. Members will see an improvement in timeliness of service as our new people are brought up-to-speed and take over portfolios.

The LGIS annual reports are now available on the website, lgisw.com.au. Account managers are also out on the road visiting members to discuss the yearly results, and start preparing for 2023/24 membership renewal.

In this edition, our feature explores the liability risks members face when managing tourists spots and associated events. Every year, members work hard to make their events a success, preparing their tourist spots to ensure visitors have a fun and safe experience.

Congratulations to the City of Rockingham on hosting their first Work, Health and Safety Awards in October 2023. LGIS was proud to be on the judging panel for such a great initiative.

We look at our newly released resource – Healthy Intel Lunches – designed to improve the eating habits of local government workers, by providing valuable nutrition tips and advice, along with a variety of easy and healthy recipes.

We have also rolled out two new risk management guides on electric vehicle charging areas and, footpaths and shared paths to protect your assets.

The spotlight is on the major changes in the *Workers' Compensation & Injury Management Bill (WA) 2023*. Our experts list the top five changes in the bill that members need to take a note of.

In our Ask an Expert column, we discuss the importance of following policies and procedures in a worker's compensation claim. There are lessons for members from stress claims and serious injury related case studies.

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

As this is the last edition for the year we wish you all a safe and happy holiday season, and look forward to working with all our members in 2024.

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 8886.



Holiday season is here! Are you ready to provide safer outdoor spaces to your community?

From caravan parks and watering holes to music festivals and kids fairs, get ready to manage liability risks during holiday season.

It's summer! That time of the year when everyone is ready to celebrate and go on holidays. Tourists all across the country and within Western Australia flock to popular spots to relax and enjoy our beautiful state. Unlike locals, visitors don't always know the things to look out for – the beautiful watering hole that hides rocks and isn't suitable for diving, the gorge that is a favourite of crocodiles or the walking trails where tiger snakes often sun themselves.

And it's not just tourist spots like walking trails and watering holes that pose potential risk, but also events such as music festivals, cultural evenings and kids' fetes that come with a fair share of associated liability concerns. Getting injured by fireworks or trips and falls at a fair are just a few examples.

Every year, members work hard to make their events a success, preparing their tourist spots, and ensuring visitors have a fun and safe experience.

In doing so, members must create a balance between community amenity and the liability exposures that facilities carry. Local governments can safeguard their assets, maintain legal compliance, and manage risks effectively by ensuring that roles, processes, and obligations are clearly defined and executed. The importance of this proper transfer cannot be overstated as this forms part of the foundation of resilient business processes.

Event organisation also requires a substantial allocation of resources and involves multiple stakeholders, contractors, and interactions with the public. Due to the interconnected nature of these parties, it is essential for local governments to carefully assess and manage the transfer of risk associated with events.

Risk transfer plays a vital role in effective risk management by defining the responsibilities for different aspects of an activity and potential losses. Local governments should establish their own procedures for addressing complaints, identifying hazards, implementing mitigation measures, and clearly communicating interdependencies. This ensures a comprehensive approach to risk management and facilitates effective coordination among stakeholders.

In relation to government assets where local communities are involved, risk management is paramount to ensure safety. Local government statistics from the last 10 years show the number of liability claims LGIS has received and how this has impacted the Scheme in terms of the cost incurred.

Number of claims at public facilities in last 10 years (2013-2023)

Local government asset	No. of claims	Claim cost
Caravan park	51	2.4 million
Aquatic centre/ swimming pool	150	1.6 million
Beach/foreshore	86	1.4 million



Imagine a scenario where a local government is organising an event. It hires equipment and engages security firms for crowd control and protection of the hired equipment. Unfortunately, the hired equipment is stolen, leading to a question of liability for the loss of the equipment.

It is essential for local governments to ensure that insurance provisions are included in their contracts for hiring, leasing, and event arrangements with third parties. These provisions should cover public liability and protection for their own property. In cases where a contractor is held responsible for injuries, property damage, or other claims, their insurance policy should provide coverage for the associated costs. However, without a clear delineation of responsibilities, disputes may arise between the local government authority and the contractor involved, leading to unexpected legal expenses and financial burdens that they believed they were protected against.

It is crucial for contracts and agreements to clearly outline the entity that bears responsibility under specific circumstances. Additionally, local government authorities should establish easily accessible processes to effectively manage situations following a loss. These processes should include promptly notifying all relevant parties about the loss and taking necessary measures to safeguard any remaining asset.

As part of event planning, local governments should create operational plans that include a crucial step known as a risk and contract matrix. This matrix serves to outline the main areas of risk and determine which party is best suited to assume control and manage each specific risk.

Below is a simplified example of a risk and contract matrix:

Event Phase	Risk	Context	Contract/ Agreement	Insurance
Event setup	Damage to property in transit	All equipment is the responsibility of the equipment provider	Ensure responsibility is articulated	If critical to your event you would want to ensure that insurance is available to the equipment provider to replace the equipment quickly Transit cover
	Damage to equipment provider's property whilst on your premises	The local government has agreed to provide security for the event. Security company has been provided with clear instructions on areas of responsibility	The local government agrees to provide security for the event but does not agree to insure the equipment provider's property Also requires equipment provider to take reasonable steps to safeguard the equipment Security company fails to provide adequate staff for the event	Equipment provider – property insurance (including items in open air) Security company – liability insurance
	Property is damaged by a patron	Member of public damages the equipment	The local government is only responsible where it was negligent not purely for damage Security contractor needs to be held responsible	Equipment owner - property insurance Security company – liability insurance

While liability insurance is important, it may not always provide sufficient coverage. Liability insurance operates based on the principle of negligence rather than solely focusing on damage. If the security company has taken all reasonable precautions to protect the equipment, it is unlikely that they would be held liable. In some cases, unfortunate circumstances may occur that are beyond anyone's control. The avenues for recovery may lie in the contract.

Case study 1: Tourist holds Shire liable for her injury at their caravan park

A woman in her 50s lost her balance and fell while stepping up over a concrete mound within a popular caravan park. She fractured her ankle and held one of our regional members liable for the injury and loss suffered, alleged to have been \$190k.

The claimant and her partner were at the caravan park to attend a cultural festival, and planned to stay one night after the event. The event took place about several hundred metres away from park.

Between 5:30pm and 6:00pm, the plaintiff and her husband left their caravan and walked towards the festival. It was still daylight and visibility was good. They each carried a fold-up chair and torch.

They followed other patrons of the park by walking along a well-worn path across a grassed area and through a garden bed under some trees, then stepping up over a concrete mound within the caravan park to access a public footpath that led to the festival. The concrete mound was 30cm high.

When the festival finished, the two walked back to the caravan park, following the same route - after stepping onto and then back down from the concrete mound, the woman lost her balance and fell over.

LGIS findings

The matter was taken to court and LGIS' solicitors were instructed to defend the matter. The Shire gave evidence that there were five other access points that the plaintiff could have utilised to enter or exit the caravan park.

The woman stated she consumed between one and three glasses of wine at the festival. Whilst returning from the event after about four hours, she walked the same route, although utilising a torch because it was dark.

During the court trial, she gave differing accounts as to the mechanism of her accident. Although the judge found that when walking from the public footpath back into the caravan park, the plaintiff held onto a post and stepped onto the concrete mound before attempting to step down into the garden bed, the court was unable to identify how the plaintiff lost her balance and fell.

The evidence produced at the trial stated that the concrete mound had no defects which caused or contributed to the incident. Although it was less than ideal as a step because it was domed shaped.

The outcome

The judge determined that 'the location and physical presentation of the concrete ridge was obvious to any person taking reasonable care for their own safety' according to the *Civil Liability Act 2002*, as the concrete mound was an obvious risk and the Shire was not required to erect warnings about it.

As the claimant had stepped over the concrete mound earlier the same day and was using a torch at the time of the incident, she should have been able to safely navigate the incident location without sustaining an injury.

The Shire gave evidence that it was unaware of any prior incidents at this location; however, the judge determined that the Shire's record keeping was 'very loose and undefined'.



She also commented that the Shire's process for recording incidents at the caravan park was flawed, inconvenient, unclear and unusable, shedding doubt on its accuracy. Whilst this did not affect the outcome of the judgment, the judge was unable to rely on the Shire's records as evidence regarding previous incidents at the park.

The claimant did not allege that the level of lighting at the park was a contributing factor to the incident, so the judge did not contemplate that issue.

The judge's summary of her decision was:

- ▶ "That the risk of harm posed by the concrete ridge was an obvious risk within the meaning of s 5F of the *Civil Liability Act 2002*.
- ▶ That the operation of s 5O of the *Civil Liability Act 2002* means that the defendant did not owe a duty of care to the plaintiff to warn her of that obvious risk.
- ▶ That the risk of harm posed by the concrete ridge was foreseeable.
- ▶ That the risk of harm posed by the concrete ridge was insignificant (as pedestrians taking care for their own safety could easily safely navigate their way around or over the mound).
- ▶ That discharging its duty of care to the plaintiff, the defendant was not required to warn, discourage, cordon off or remove the concrete ridge."

Lessons learned

Whilst LGIS' solicitors were successful in defending the Shire in this claim, there are lessons from the judgment to better protect local governments from similar situations.

Obvious risks – Members do not have to warn the public about 'obvious risks' but risks that are not obvious to members of the public (including at night time), need to be managed adequately to warn or protect the public against injury or damage.

Record keeping – Local governments should ensure that all works, including inspections and maintenance, are adequately recorded. Records should be easily accessible, and relevant employees should be trained on all work processes and how to record incidents.

Lighting – Member owned and/or controlled premises, particularly where the public is being asked to pay for using them, should be assessed to determine if adequate lighting is installed to ensure reasonably safe access at night, where applicable. Lighting should be inspected periodically to ensure continued operation.



Case study 2: Fireworks celebration injured five, City not held responsible for the accident

A local government held a fireworks event on Australia Day in 2018. Unfortunately, during the event, a firework landed amongst spectators and injured five people (with various burns to their bodies). Paramedics and other emergency personnel attended the scene of the accident. The spectators sought compensation for their injuries.

LGIS findings

Initially, it was unclear whether the spectators injured were within or outside the exclusion zone for the firework event.

Until the Department of Mines, Industry Regulation and Safety (DMIRS), who were the regulatory body for firework events, finalised their investigation into the incident, the local government was potentially liable for the injuries sustained by the accident as it was responsible for:

- ▶ identifying and enforcing the exclusion zone; and
- ▶ the performance by the fireworks operator of its services.

As to the performance of the operator, when dealing with dangerous activities, the courts can impose a non-delegable duty of care, which means the City's selection process (or due diligence) and engagement of the operator will not insulate it from its duty owed to the injured spectators.

Non-delegable duty defined



A non-delegable duty is a legal obligation or duty which cannot legally be delegated or, if delegated, the principal is still liable for said obligation.

A non-delegable duty of care imposes a stringent duty on an owner or occupier who authorises or allows a dangerous use of land.

The outcome

After a considerable investigation period, DMIRS finalised their investigation into the incident, and released their report which found that:

- ▶ The fireworks contractor had correctly calculated the exclusion zone having regard to the type of firework and forecasted wind conditions.
- ▶ The fireworks contractor held the appropriate license and employed skilled employees to carry out the works.
- ▶ The fireworks exploded at a location approximately 160 metres from the firing point and outside the exclusion zone.
- ▶ The fireworks malfunctioned in that it did not detonate at, or near, the apex of its trajectory.
- ▶ There was a possibility of a fault with the internal fusing of the relevant firework.
- ▶ Any fault with the internal fusing of a firework cannot be detected via visual inspection, and is not within the control of a fireworks contractor or operator.
- ▶ The City did not cause or contribute to the incident or the subsequent injuries suffered by the relevant claimants.

Lessons from the case:

The above claim illustrates how important and critical it is for members to ensure they implement and comply with stringent due diligence or selection process when engaging independent contractors, even more so when dealing with a dangerous activity (such as fireworks).

Additionally, this case highlights the risk local governments are exposed to when dealing with dangerous use activities. Even if members establish that they undertook a stringent selection process and the firework contractor was negligent (which in this case it wasn't), the local government would still be (proportionately) liable for the injuries caused to the spectators.

For more information on how to implement risk mitigation strategies to organise successful events, please get in touch with your account manager. ▼



Small wins for your Scheme in 2022/23

Annual reports are now available!

The LGISWA Scheme protects \$19.2 billion worth of assets; 15,000 motor vehicles; 19,820 local government workers; and 17,107 volunteer bushfire fighters. In 2022/23 we received 3,720 claims and made payments totalling over \$43.8 million. The mutual indemnity scheme is as diverse and varied in our operations as any of our members across Western Australia.

At the close of 2022/23 LGIS returned a \$0.9 million operating surplus despite expenditure pressure and a deficit from the previous year. This was a positive result for the mutual Scheme which doesn't operate to make a profit, but rather to serve and protect the local government sector.

Globally and at home conditions were difficult – with inflationary pressure, global uncertainty and natural catastrophes. Against this backdrop LGIS continued to deliver sustainable long term protection to the Western Australian local government sector.

100% of WA local government organisations renewed their membership for 2023/24, recognising the value and benefits that LGISWA delivers to individual organisations and the sector as a whole.

Financial result

The 2022/23 operating surplus was a positive turnaround from the previous year's deficit of \$7.26 million. This was despite expense pressures, particularly from property, motor and workers' compensation claims. Total claims' costs for LGIS escalated substantially and were \$6.29 million over budget at the end of financial year.

Fortunately, despite these pressures, LGIS remains in a good financial position and the new financial year will see continued innovation. Our prudential financial management has ensured that the Scheme remained within our target capital range, so that your LGISWA remains strong and ready to respond when needed.

Delivering to members with Scheme covers and risk services

Scheme contribution increases for 2023/24 were limited, particularly in comparison to the commercial insurance market.

2022/23 marked the second year of LGIS Motor protection; at-fault claims are high across the sector so we launched the motor fleet risk pilot program to investigate.

17 LGIS members participated in the program, they ranged from small regional members to large metropolitan cities. We assessed participants across three key areas - organisational commitment, driver management and vehicle management.

The pilot has allowed us to pinpoint key areas to reduce member accidents and in 2023/24 we'll be developing a tailored fleet risk management program to be rolled out to all members.

Cyber is a challenging area for the sector, so in 2022/23 we launched our cyber pilot program. Working with a sample of 15 members the pilot allowed us to get a better picture of the sector's cyber environment, including capability and capacity to address vulnerabilities.

You can read the findings of the LGIS cyber pilot program on the LGIS website.

Responding to changes in work, health and safety services, we developed and started delivering our psychological safe program in 2022/23. Designed to support our members in meeting their duty of care to provide a psychologically safe workplace the program includes new workshops, resources and services. Since its launch in August 2022, the program has been accessed by 76 members and 492 staff.

Our popular health and wellbeing program was revamped this year to provide members with more options to develop healthy behaviours and learn new skills. This year saw the introduction of financial wellbeing workshops, a timely service given the interest rates hikes and inflationary pressures in the past 12 months. We engaged the Financial Counsellor's Association of WA to deliver the workshops which have been accessed by 1,051 local government employees across the state.

As a mutual, we always strive to offer the best protections, products and services to our members. We put our members first in everything we do.



More transparency with a new format

This year's reports are different from previous years. For the first time LGISWA has provided members with two reports providing an overview of our activity and achievements in 2022/23 financial year. These reports – 2023 The Year in Review and 2023 Annual Financial Report, should be read in conjunction with each other.

This new format provides even greater transparency on our operations and finances. We have moved from using a special purpose report for our financial results and have used general reporting standards this year.

Both reports are available on the LGIS website. If you would like a hard copy, or for more information please speak to your LGIS account manager. 📄

Good news, the Risk Management Advisory Group (RMAG) is being refreshed!

Are you and your colleagues interested in discussing, sharing and learning about all aspects of risk management and governance with your local government peers? LGIS' Local Government Risk Management Advisory Group (RMAG) is the forum for you.

What is the Risk Management Advisory Group?

For members who are not familiar with RMAG, it is a group of local government representatives who get together to network with their peers. They share their sector's knowledge and explore best practice risk management systems, processes and procedures.

The RMAG extends to all local government - officers, managers, directors and CEOs with interests in governance, risk and compliance.

LGIS facilitates these meetings for local government members ensuring it is at no cost and that topics of interest are chosen by the members themselves.

On the agenda

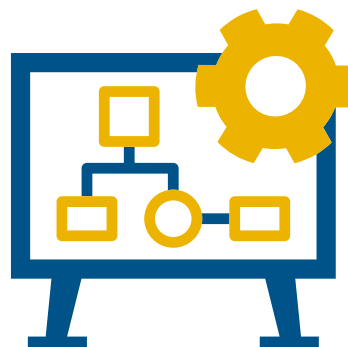
- ▶ Members share their risk journey, highlighting projects and showcasing achievements and key developments.
- ▶ Specialist presentations and case studies on topical issues affecting the sector, including changes to legislation and advances in local government risk management practices.
- ▶ Explore common emerging risk themes and issues.
- ▶ Network with local government peers and subject matter experts.
- ▶ Professional development and support for risk management representatives in local government.

What do you want from RMAG?

We'd love to hear your thoughts. As part of our refreshment of the program, LGIS will be reaching out for your feedback, via email, to gauge your interest in attending and to hear what you would like to see at RMAG. Survey results will shape the agenda to make sure RMAG meets the sector's needs and provides content that is both contemporary and interesting.

If you're concerned that we may no longer have your current email address, or would like to send your preferences in advance, please write directly to michael.sparks@lgiswa.com.au

For more information on RMAG or other information on risk mitigation strategies, please get in touch with the LGIS Risk team. ▼▼



EV charging stations - are you managing the fire risk?

Local governments across WA are installing electric vehicle (EV) charging stations, either investing or partnering with other organisations such as the RAC to improve amenity for EV owners. In recent years, WA motorists have accelerated their adoption of EV and hybrids which use lithium-ion batteries for power. In the wake of increasing carbon emissions and skyrocketing fuel prices, our members have also started investing in electric vehicles as part of their motor fleet.

While this trend is encouraging, it presents new and unidentified risks associated with managing such vehicles. Local governments need to give consideration to these risks in their facilities whether they'll be for staff or community use, and also where EV charging stations are installed whether they'll be at member owned and/or run facilities or planning approval provided for their installation.

LGIS' recently released property conservation guideline 'Electric Vehicle Charging Areas' helps members incorporate good practices when considering the installation of EV charging facilities within their premises and other assets. The guide should also be considered by planning departments in the development of appropriate policies and procedures for planning approval.

According to Electric Vehicle Council, July 2023 report 'State of Electric Vehicles', 8.4% of all new cars sold in 2023 so far have been EVs. This is more than a 120% increase compared to all of 2022.

Lithium-ion batteries, used in these electric vehicles, pose specific challenges when it comes to fighting fires. They can take a long time to control and extinguishment is not always complete. The battery's overall energy density can give rise to re-ignition, well after the initial fire is thought to be extinguished.



Managing the risks of EV charging stations

The guide provides general information regarding fire prevention and protection for electrical vehicle charging areas.

Location

- Install chargers in areas that emergency services can easily access, preferably close to garage entrances, and avoid installation in lower levels of garages.
- Spacing between charging points should provide sufficient space for parking and the charging process.
- Outdoor or indoor, the recommended distance from combustible materials is 10 metres.
- Accessibility should always be discussed with the emergency services/fire brigade before implementation.

Electrical installation

- Charging systems should be installed by a certified/ authorised company.
- Electrical circuits should be dedicated to the chargers, separated from the general main, and fitted with circuit breakers and surge protection.

Inspection and maintenance

- Ensure that manufacturer instructions regarding usage and maintenance are followed.
- Complete and record regular inspections on the chargers and supporting equipment.
- On detection of any damaged or malfunctioning chargers, cables, connectors, etc., the chargers should be shut off, locked, and labelled as 'OUT OF SERVICE' until it has been repaired and recertified.

Fire protection

- Ensure a complete fire strategy/pre-fire plan is in place, reviewed by, and agreed to by the emergency services.
- This plan should be practiced and updated at least annually.

Fire prevention

- The site and emergency plans should include the locations of all chargers, any electrical shut-off points, access routes, containment areas, etc.
- The electrical shut-off points should be marked and labelled. They should be remotely located from the charging areas they control.

Case study: Poorly maintained EV charger damages vehicle

It is vital that EV charging stations are appropriately maintained. Issues with charging stations and electric vehicles is an emerging concern, and LGIS is starting to see an increase in claims.

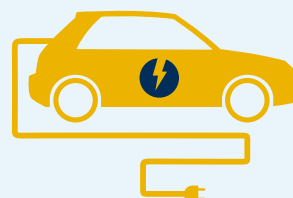
In this case, a member of the public plugged their vehicle into a free charging station provided by the local government. They alleged that the charger registered a phase error and caused damage to the on-board charger. Repairs to the vehicle were just over \$3,000.

Following investigation of the claim, it was discovered that the member was aware that there was a fault with the charging cable. Due to the member having prior knowledge of the issue and failing to take steps to mitigate the risk, the claim was settled.

Lessons learned:

Members should ensure that a risk assessment is done prior to providing new services to the community. Any new service should only be provided once appropriate mitigation policies and procedures are implemented and understood by all staff responsible. The EV charging station guide provides advice on assessment for these high risk assets. In this instance, the loss was only \$3000 but if the loss event extrapolated to a major lithium-ion fire spread, the losses could be catastrophic.

When the local government becomes aware of an issue, it should be addressed as soon as practicable. In this example the charging station could have been marked as 'out of order' to make sure it wasn't used by the public until the issue had been fixed. ▼



City of Rockingham honours innovative solutions at its first WHS awards



The safety realm is full of procedures, policies and regulations telling people what to do; it's great when we see members, like the City of Rockingham, stepping back and celebrating their safety achievements. It's important to focus on success as well as the areas for improvement.

Congratulations to the City of Rockingham on their inaugural Work, Health and Safety Awards. Held on 5 October 2023, the ceremony saw outstanding participation from the City staff. The awards are an important initiative to recognise the people and teams who contribute to safety at the City.

As part of their 2021 Work Health and Safety Strategy – 'Work Safe, Go Home Safe', which aimed to develop a safety-first culture, the City focussed on recognising and celebrating health and safety achievements within the organisation.

Some of the initiatives of the strategy were also recognised by WorkSafe as best practice with the City winning the inaugural best intervention to address a psychological hazard in the workplace in 2022.

The City had a diverse field of 12 finalists for the WHS Awards, with nominations ranging from engineering solutions that prevent injuries when lifting heavy objects, to dealing with difficult customers face-to-face.

A broad range of teams were featured and included entries from the City's libraries, park services, community and leisure facilities, compliance and emergency liaison, youth centre and technical services teams.



The WHS Awards are a fantastic way to acknowledge the efforts of staff who are making the City a safer place to work, and it is intended that the WHS Awards will become an annual event held in conjunction with National Safe Work Month each October. The awards have enabled us to profile some of the great work occurring within the WHS space. Not only do they provide well deserved recognition for the winners, they also inspire colleagues along our safety improvement journey.

– Michael Parker, CEO at City of Rockingham



The judging panel for the awards - Peter Doherty (Director Legal Services and General Counsel), Michael Parker (CEO at City of Rockingham), and Emma Horsefield (People Risk Manager at LGIS).

The awards recognised innovative solutions under three categories –

1. Best solution for a workplace hazard – individual or team award

This award recognised excellence in developing and implementing a solution to an identified health and safety issue. There were two winners under this category.

David Latham, Irrigation Supervisor at the City was one of the joint winners. He proactively identified a safety risk when planting trees. Due to the unavailability of tree pots with handles, the worker identified manual handling issues and concerns while moving large trees.

David identified a solution that enabled staff to grip and carry the weight of the tree pots evenly to reduce the risk of injury. He sketched a design, and worked with a local metal fabricator to produce some prototype handles. Group discussions took place with staff, and a new safe operating procedure was developed. To clearly communicate this change to everyone involved in tree planting, an occupational physiotherapist attended the site to go through the new process with staff doing the work. Since the changes were introduced, many trees have been successfully planted with no new manual handling incidents reported.

Another winner under this category was the City's Library Services team, who developed a program to support staff when exposed to aggressive or abusive behaviour from patrons. The program incorporated proactive strategies to equip staff with knowledge and techniques to de-escalate situations and effectively deal with patrons who demonstrate such behaviour. The initiative has demonstrated positive results with staff feeling confident in dealing with such situations.

2. Best team contribution to improving WHS – team award

This award recognised the establishment, improvement and/or maintenance of WHS practices by an established work team or a working group.

Rockingham Youth Centre (RYC) was recognised for the successful delivery of their Youth Beach Party event at the Rockingham Foreshore. The event included several inflatable components, which meant that it was impacted by recently introduced legislation and safety standards in relation to inflatable amusement devices (what most of us know as 'bouncy castles'). Being an outside event close to the beach meant exposure to risks such as wind speeds and varying weather conditions. The RYC team's efforts to ensure effective and best practice risk assessment meant they were able to provide a safe and successful event for more than 750 young people. They also provided additional safety information to parents of attendees to help alleviate their concerns.

3. CEO's Safety and leadership award – individual award

This award recognised initiatives to establish improve, inspire and maintain best practice in health and safety by an employee, at any level in the organisation.

There were two winners for this award – one member from Park Services while the other from Library Services.

Lindsay Bickley from the City's Park Services demonstrated an ongoing commitment to safety and was not shy about having WHS conversations with all other City employees. He is always willing to listen and learn when something doesn't feel safe to him. His interactions with staff are always respectful and his ultimate goal is to make sure everyone goes home safe at the end of the day.

Alison Oliver from the Library Services was also recognised for consistently being instrumental in incorporating innovative and contemporary approaches to support services for an inclusive community while ensuring safety remains paramount.

LGIS was proud to support the City of Rockingham's inaugural awards and appreciates its efforts towards their commitment to identify workplace hazards and find new solutions to mitigate them. LGIS People Risk Manager, Emma Horsefield was on the judging panel along with City of Rockingham CEO, Michael Parker, and Director Legal Services and General Counsel, Peter Doherty.



Being asked to be a judge for the City's Safety awards was a huge privilege and I jumped at the chance to be involved in such a fabulous initiative. I have worked with the City for a number of years and to watch their transformation has been incredible.

– Emma Horsefield, LGIS People Risk Manager

Talking about the submissions, Emma expressed her joy over the calibre of the submissions. She said "the entries were exceptional, demonstrating many innovative and thought provoking safety initiatives".

"As a safety professional, all we want is to see attributes like communication, consultation, empowerment, and leadership and support. All of these were present and standing proud, showing that when supported by management with a level of commitment, fantastic things can be achieved," Emma said.

The Work Health and Safety Awards 2023 were the first time the City has collectively recognised and celebrated such achievements.

Congratulations to the City of Rockingham for supporting, encouraging and celebrating their people and commitment to safety. ▼



Healthy Intel Lunches – our new resource to promote nutrition among local government workers

At LGIS, we care about the health and wellbeing of local government workers across Western Australia. As the sector's mutual indemnity scheme, we know first-hand the issues that local government workers face and have developed a range of resources to support their wellbeing.



LGIS has launched a new resource as part of its health and wellbeing program. The resource, called 'Healthy Intel Lunches,' is designed to improve the eating habits of local government workers, by providing valuable nutrition tips and advice, along with a variety of easy and healthy recipes. Our main goal is to help employees in the sector maintain high energy levels throughout their busy and demanding workdays, whilst continuing to improve overall wellbeing and lifestyles among the sector via our prevention and wellbeing services.

The LGIS program aims to provide a proactive approach to improve awareness and lower risk factors in the area of health and wellbeing and assist members in creating healthy workplaces.

This in turn can help improve workers' safety performance, general health and wellbeing as well as reduce workers' compensation claims.

The Commonwealth Scientific and Industrial Research Organisation (CSIRO) has recently released a health research – 'Healthy Diet Score report', which talks about the dietary habits of Aussie adults. The research is based on the results of 235,000 participants over an eight-year period between 2015 and 2023. It states that Australian adults scored an average of 55 out of 100.

It is interesting to note that the average discretionary food consumption by Aussies was about 28 serves per week. Alcohol, cakes and biscuits, chocolate and confectionary, and takeaway foods were among the top contributors to this discretionary intake.





“Although Australians are often perceived as fit and healthy, the low collective score shows that we just meet the pass mark when it comes to adopting the national dietary recommendations. The score is a stark reminder of the work that needs to be done to improve our eating habits and reduce the national waistline,” said Dr Gilly Hendrie, CSIRO research scientist and co-author of the report. To eat well, your diet should have a balance of good quality lean proteins, an abundance of fruit and vegetables in a variety of colours, fibre rich wholegrains or grain alternatives and healthy sources of fat.

Research has established that including all macronutrients (protein, carbohydrates, and fat) in the appropriate amount and frequency may have a positive impact on our health, energy, longevity and most importantly our ability to prevent disease.

We have sourced our recipes from our monthly Healthy Intel newsletters, which also include tips and tricks to improve overall health.

James Larkin, WorkCare Services Manager at LGIS is of the view that healthy eating is an essential component when trying to improve or maintain good health and wellbeing, but lunches can be difficult to get right. Whether we are low on time, motivation or healthy food options, sometimes lunch can be the forgotten meal in our day and convenience often takes over, particularly when we get busy during the day. LGIS has been providing members with monthly recipes in our Healthy Intel newsletter for over eight years, and we have now created a new resource which helps local government staff to make healthier food choices and improve eating habits.



Our new recipe guide provides a range of lunch options and tips for getting a balanced diet whilst managing a busy lifestyle, and I encourage all members to utilise this resource for your local government.

– James Larkin, WorkCare Services Manager at LGIS



Credit: www.eatforhealth.gov.au

Along with the recipes, the guide also includes varied pantry solutions (like at-home and at-work pantry ideas) for workers who find it difficult to do meal preps owing to their busy lifestyle. Afterall, it's easier to plan and prepare healthy and tasty lunches when you're organised.

The 'Australian Guide to Healthy eating', is also an excellent tool that shows how much of each food group is recommended. ▽





Building safer outdoor spaces with LGIS' new footpath risk management resource

LGIS' Footpath risk management guide provides members with practical tips to ensure consistent outdoor asset management across the sector.

In the last five financial years (2019-present), we have received over 700 claims relating to footpaths costing in excess of \$ 1.2 million. At times, these claims have also resulted in significant costs associated with running defences for the member or funding compensating on the member's behalf. As with any serious injury, members also have to face risk to their reputation.

Local governments are responsible for constructing and managing hundreds of thousands of kilometres of footpaths and shared paths throughout communities in Western Australia. Paths are a crucial aspect of public amenities as they provide easy and convenient access to community members. However, local governments need to consider their responsibility and exposure in the development and maintenance of these assets.

Our new 'footpaths and shared paths' guide supports members' risk management efforts, providing a practical approach to identifying potential vulnerabilities and demonstrating a systematic approach to managing those risks.

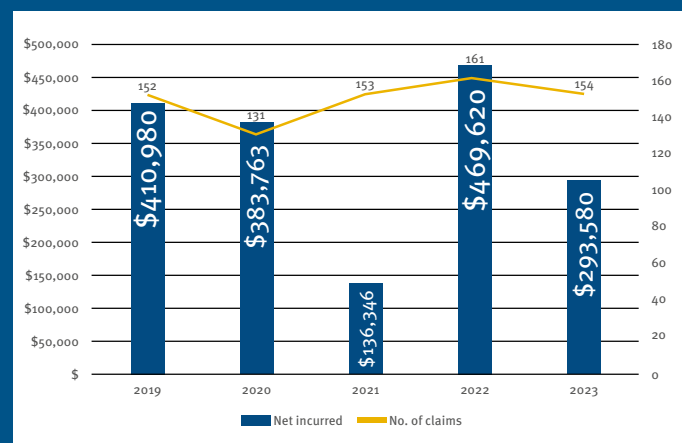
More consistent risk management across the sector

Members owe a duty of care to users of their path networks; make sure that your path networks are designed and managed to be as safe as can be reasonably expected. Where this duty is not met, users may be harmed and you could potentially be liable.

The guide supports members in meeting their duty of care to path users.

By introducing initiatives and resources that target areas of high frequency claims we can work together to mitigate the sector's exposure.

Number of footpath claims and cost incurred in the last five financial years



No of claims

751

Net incurred

\$1.7 million



Safer outdoor spaces and reducing claims

It is interesting to note that almost two-thirds of liability claims are related to footpaths and roads, or trees. Our largest claims have come from a failure to maintain and document the management of these outdoor assets.

Using the guide, local governments will be able to analyse and/or develop a systematic approach to manage paths and create safe outdoor spaces for their community. This, in turn, will also help reduce the exposure to liability claims through this resource.

This guide has been compiled to specifically address the process of determining the types of controls:

- ▶ ***To ensure new path assets are constructed to reduce the risk to users; and***
- ▶ ***Hazards on existing assets are risk managed through identification, assessment, prioritisation and remedial actions.***

Management of path assets should form part of the member's asset management system. All decision-making processes regarding risk management need to be documented and recorded in the corporate record system. If path assets are not addressed under integrated planning and reporting (IP&R), members should adopt a policy stipulating the methodology and commitments to manage path assets.

When local governments develop (and document) their asset management plans and policy they should consider the duty of care requirements of the *Civil Liability Act 2002 (WA)*, and the sections relative to that of a public body such as a local government member, namely:

- ▶ Section 5W: Principles concerning resources, responsibilities etc. of public body or officer;
- ▶ Section 5X: Policy defence;
- ▶ Section 5Y: Proceedings against public body or officer based on breach of statutory duty;
- ▶ Section 5Z: Special protection for road authorities.

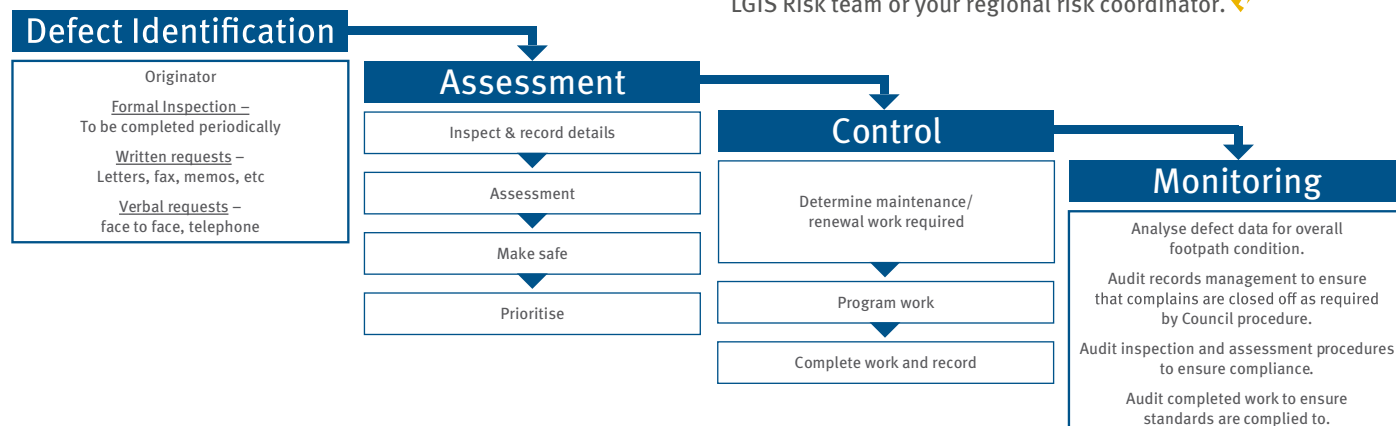
Understanding and correct application of these provisions may afford some protection against public liability claims and assist LGIS in adequately defending members who are the subject of these claims.

Example of a path maintenance and renewal risk management process

LGIS has recently launched a self-assessment tool (CIP) to assist us better defend local government interests. If you need any further information in relation to the management of your footpath assets or completion of the CIP assessment, please contact your account manager.

A copy of the guide is available on the LGIS website under Risk management<Liability risk management.

To discuss assistance that can be provided, please contact the LGIS Risk team or your regional risk coordinator. ▼



ASK AN EXPERT



MARK DIAMOND

Lawyer - CWS Lawyers

Mark is a lawyer with CWS Lawyers who specialises in workers' compensation claims/litigation and has been advising LGIS on workers' compensation matters since 2001 and regularly appears on behalf of local government employers in dispute resolution proceedings at WorkCover WA.

“ Why is it important to follow policies and procedures in a worker's compensation claim?

Lessons from stress claims and serious injury.

The importance of employers following internal policies and procedures and keeping accurate records can't be emphasised enough when effectively managing a worker's compensation claim.

Our first case explores the need to follow one's own internal policies in the context of a worker's compensation work related stress claim. While the second case highlights the importance of keeping and maintaining records in the context of an employee common law negligence claim.

Case 1: Internal policies and procedures and workers' compensation work related stress claims

Like most employing entities, local governments have many internal policies and procedures that are designed to help manage the ongoing employment relationship with their employees.

Although the terminology can vary, policies generally address employment issues such as how to:

- ▶ manage an employee's poor work performance;
- ▶ discipline an employee;
- ▶ determine whether an employee is fit for work; and
- ▶ deal with an employee's grievance.

A relevant example of where an employer's own internal policies/procedures can impact on a potential workers' compensation claim is with regard to workplace stress claims.

It is an undeniable fact that work related stress claims are on the rise. This trend has been evident in recent years, especially during and after the pandemic.

It is also common for an alleged work-related stress claim to have arisen from circumstances which bring into play one or more of the internal policy areas mentioned above.

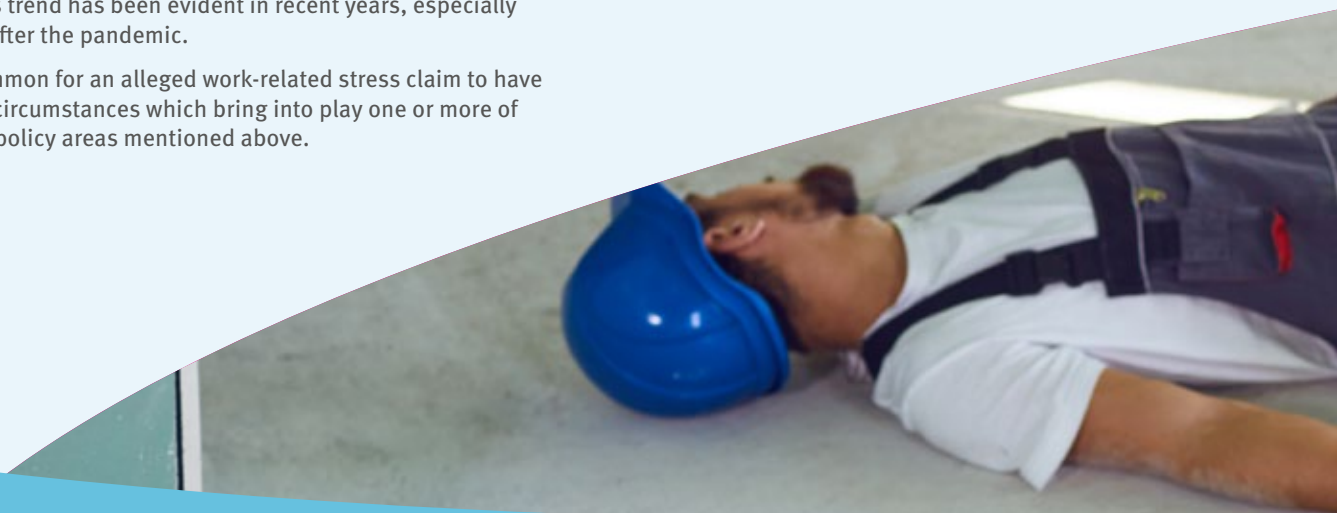
One of the more common claims would be a scenario arising from an employee being placed on a performance improvement program. This is closely followed by an employee being subject to a formal disciplinary process (such as for a breach of his/her employment contract).

Even though the WA workers' compensation legislation allows for a defence to a claim for work related stress where the whole or pre-dominant cause is discipline or dismissal, there is still a requirement for the employer to have not acted harshly or unreasonably (in the case of actual discipline or dismissal rather than a worker's expectation of discipline/dismissal).

This is where the employer's own internal policy/procedure becomes critical as any noticeable failure to follow the policy/procedure may impact on the employer's ability to successfully defend a claim.

In the context of an employer instituting a performance management process with an employee, the District Court of WA has said that it *'would normally involve construction of any written contract of employment, any industrial agreement and any internal policies and guidelines or protocol regulating work performance and dealing with discipline would clearly be relevant.'* *Pilbara Iron Company (Services) Pty Ltd v Suleski* [2017] WADC 114.

Although local government employers should not be deterred from following their own internal policies/procedures whenever managing employee work performance and behaviour, they should be prepared to justify any action taken should the internal policy/procedure they have followed come under the microscope in the context of a workers' compensation claim.



Case 2: Employee common law claims against an employer

Recently, I was investigating a serious work accident that had happened a few years before and had resulted in an employee making a common law claim against the employer alleging negligence.

I was speaking with an employer representative, and I was asking them about a safety procedure that had applied at a particular point in time (when the work accident had occurred). The safety procedure was relevant as the employee had alleged that there had been a failure on the part of the employer to follow it, thus exposing that employee to a serious risk of injury.

The response from the employer representative was that the safety procedure in question was reviewed internally 'every so often' to keep up with changing circumstances and that the usual practice was that the procedure that existed before was 'written over' by the new procedure, the effect of which was that given the passage of time, the policy that existed at the time of the work accident might be difficult to find.

The failure to keep and maintain records is fertile ground when it comes to common law claims against employers in negligence. Common law claims against an employer alleging negligence or breach of contract have two things in common.

First, they can take a long time to be finalised from the date of accident/injury - years rather than months. Secondly, like all legal proceedings, common law claims are costly to defend.

The relationship between the keeping of records and common law claims of negligence can be highlighted when one considers some of the more common allegations of workplace negligence that are levied against employers in legal proceedings.

Some common allegations of negligence are that the employer:

- ▶ Failed to adequately maintain or inspect a piece of machinery/equipment and that machinery/equipment failed, resulting in the worker suffering the injury;
- ▶ Failed to ensure compliance with a safety procedure and that failure to ensure compliance with the procedure resulted in the worker suffering the injury; or
- ▶ Did not take all reasonable steps to train the employee properly and that failure to train resulted in the worker suffering the injury;

There are other allegations of negligence that can be levied against an employer (like a lack of supervision) but these three examples illustrate the fact that the keeping of accurate records is still an important tool in defending a common law claim and reducing the employer's risk in any subsequent litigation.

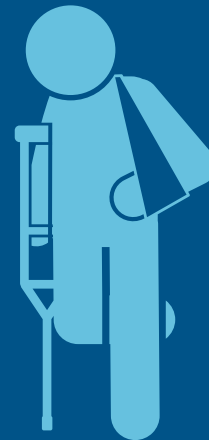
In the first case, keeping accurate records that show whether a piece of machinery/equipment was regularly serviced or there was a schedule of regular inspections would be useful.

Although allegations of mechanical or other failures bring into play expert opinion evidence (like an engineer), keeping of accurate records will assist that expert when it comes to offering up an opinion.

As for the last area, training attendance records and registers should be maintained. Another area to consider is whether the content of a training course can be preserved in some permanent form as that may well offer an insight into exactly what took place at the training course (like the course slides, a copy of the video presentation or photographs of the practical demonstrations).

The downside to a failure to keep and maintain accurate records is that one may have to solely rely on a person's recollection. Given the passage of time between when an accident occurs and when a case comes to trial, memories will often fade. Further, a witness may have left the employer and cannot be found. A person's memory may not be refreshed if there is no document to refer them to.

In the end, and in the case of a conflict in the evidence, the court will have to make findings of fact based on the credibility of witnesses and whose recollection of the events is more accurate. ▼



ASK AN EXPERT



MARK CIVITELLA

Partner, Mills Oakley

Mark practises exclusively in insurance litigation and has special expertise in workers' compensation, attending conferences and hearings at WorkCover WA representing employers and insurers on a regular basis for over twenty years. As a long term service provider to LGIS, Mark has extensive experience in advising local governments in Western Australia on the handling of claims.

“What are the major changes to WA's workers' compensation scheme that local governments need to be aware of?”



The Workers' Compensation & Injury Management Bill 2023, currently before Parliament in Western Australia, will enact major changes to WA's workers' compensation scheme when it comes into effect sometime next year.

Put simply, it is a complete re-write of the current act with all sections re-ordered and re-worded, and better organised within the act.

Whilst the changes to the scheme are numerous, here are the 'top 5' changes that local governments and employers in general should be mindful of.

The target commencement date for the new *Workers' Compensation & Injury Management Act 2023* is 1 July 2024.



1. Provisional payments and deemed acceptance

Procedurally, there will be major changes to the liability decision making process once a claim is made such that greater emphasis will need to be placed on gathering evidence quickly.

An insurer or self-insurer will have to give a worker a liability decision notice or a deferred decision notice within 14 days, failing which they are deemed to have accepted the claim. In the case of an incapacity claim, the insurer or self-insurer will be taken to have accepted that the employer is liable to pay income compensation (the new term for 'weekly payments').

If a deferred decision notice is given indicating more time is needed to make a decision, a decision must be notified to the worker by the 'deemed liability acceptance day' (time frame to be prescribed in regulations), otherwise liability is deemed to be accepted.

If an insurer or self-insurer gives a worker a deferred decision notice, the insurer or self-insurer must begin making 'provisional payments' to the worker if a decision on liability is not made by the day prescribed by regulations to be the 'provisional payments day' (which is expected to be 28 days from receipt of the claim).

2. Stress claim exclusions

The industrial exclusions for workplace psychiatric injuries will be expanded so as to include situations where the condition results wholly or predominantly from 'administrative action' which will include performance appraisal, suspension action, disciplinary action and anything done in connection with such.

Employers should be aware of the critical importance of documenting and keeping records of performance appraisals of a worker, including informal performance counselling, given the potential need to rely upon such evidence in defence of stress claims.

3. Rising medical cost of claims

The 'medical and health expenses' compensation cap will be increased to 60% of the general maximum amount pursuant to a 2021 election commitment of the government.

This means the current 'medical and hospital' prescribed amount is doubled to approximately \$150,000 per claim and such limit becomes exclusive of travel expenses.

In cases where the prescribed amount is exhausted, an application can be made for an extension of such benefits. The current maximum extension amount of \$50,000 is increased to an additional 40% of the prescribed limit (approximately \$101,000).

Beware that these increased entitlements will apply to existing claims under the current scheme unless the prescribed amount for medical and hospital expenses is exhausted prior to the commencement day of the new act, or such liability was otherwise extinguished (e.g. by settlement).



4. Pre-employment screening limitations

The new act will prohibit the disclosure of information about a worker's claim for compensation (or claim history) to another person for the purpose of pre-employment screening and imposes a fine for this of \$10,000. The act will also provide that a worker cannot be required to disclose information about a compensation claim for the purpose of selection for employment. The purpose of this is to minimise discriminatory practices where a person's claims history is taken into account when considering their suitability for employment.

5. Vocational rehabilitation duties and case conferences

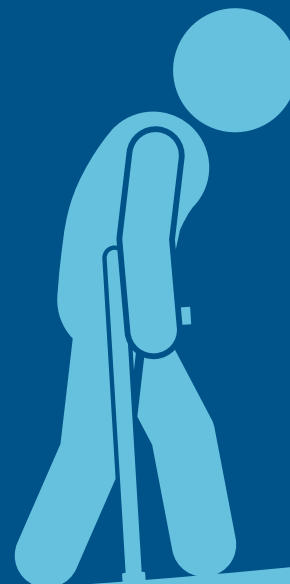
New duties are introduced by the amended act that place an obligation on an injured worker to:

- ▶ make reasonable efforts to return to work;
- ▶ cooperate in the establishment of a return to work program;
- ▶ comply with reasonable obligations under a return to work program;
- ▶ attend, participate in and cooperate in return to work case conferences;
- ▶ give each certificate of capacity to the employer or insurer within seven days of receipt.

In the event of a worker's failure to comply with a duty, an insurer or employer can apply to an arbitrator for an order. Failure to comply with a duty without a reasonable excuse may result in the suspension of income compensation and continued refusal can result in cessation of the entitlement to income compensation.

Unlike the current legislation, the new Act will expressly recognise return to work case conferences - meetings that are aimed at supporting a worker's recovery and exploring opportunities for a return to work. The case conference can be arranged by an employer, insurer, approved workplace rehabilitation provider or a treating medical practitioner. Hopefully this amendment will improve the effectiveness of vocational rehabilitation under the scheme with better levels of cooperation and enforceability, and better outcomes in general.

There are many other notable changes in the bill, the effect of some of which will become clearer once draft Workers' Compensation and Injury Management regulations are released. The regulations will contain critical details that all stakeholders are urged to take an interest in and make submissions to WorkCover about should any concerns arise. ▼



ASK AN EXPERT



KATHERINE KEMPIN

Senior People Risk Consultant at LGIS

Katherine is Senior People Risk Consultant at LGIS and provides a variety of professional health and safety advice and support services to local governments in Western Australia. Her role involves liaising with members on work health and safety matters to identify areas of concern and tailor functional solutions for effective risk management, legislative compliance and ultimately harm prevention.

“What’s the Local Government Safety Advisory Group (LGSAG) all about, and why should members join?”

Safety in numbers.

At its core, LGIS is all about local governments working together to achieve best outcomes for their organisations, people and community. LGSAG is one such initiative where we have collaborated with member representatives to ensure they can create a safe and healthy work environment for their workforce.

The local government industry has a variety of sub-industries in one. To anyone who has not experienced such diversity, this can seem overwhelming when trying to ensure a healthy and safe workplace.

Talking to members, LGIS found there was repetition of health and safety issues across the sector coupled with various levels of experience, so what better way to help resolve health and safety issues than to work collaboratively.

The Local Government Safety Advisory Group (LGSAG pronounced L-SAG) was created to provide local government personnel with a network of industry peers to work together to better address and resolve workplace health and safety impacts, queries and concerns.

The group comprises of personnel, at various levels across WA, who coordinate work, health and safety management activities to ultimately prevent harm within the workplace.

Common issues include, but are not limited to:

- ▶ Legislative changes and impacts on the industry
- ▶ WorkSafe and other industries, key information, changes and projects
- ▶ Policies, procedures and processes – templates and supporting materials
- ▶ Incidents and recommended controls
- ▶ Preventative projects
- ▶ Technology – management systems
- ▶ Assessments and inspections
- ▶ Plant and equipment
- ▶ Training

LGSAG meetings occur periodically, four times throughout the year, both in person and online. The face-to-face meetings are generally held at one of the CBD councils, and predominately attended by local governments from in and around the CBD area.



It’s great to be able to share with other safety professionals, who face the same challenges.

– Michelle Barnfield, City of Kalgoorlie-Boulder

During COVID, LGSAG was significantly important to the sector as health and safety people became more in demand to deal with the risks and issues associated with the pandemic. The group met via Zoom and was very well attended, particularly by regional members. With this in mind, we changed the format of our meetings to be two face-to-face, and two zoom meetings; these changes have seen a significant increase in regional member attendance.

LGIS facilitation of the group improves access across the state for like-minded individuals to come together and navigate health and safety within the sector, on their specific issues.



It’s great to see other safety professionals and have the opportunity to network, as we share common ground.

– Kelly Whitley, City of Melville

Looking at trends within the sector LGIS will facilitate topic discussions, organise guest speakers to provide further information for members to assist them in managing the hazards and risks associated with the activities performed by local governments. This has included traffic management, Main Roads, and WorkSafe.

Health and safety queries and concerns can also be sent at any time at OSHWA@lgiswa.com.au for forwarding to the group for their feedback and support, actively promoting knowledge sharing on common issues. ▼

Where we've been

LG Professionals WA Annual Conference

About 250 local government professionals attended the event on 7-8 November 2023 held at the Crown, Burswood. LGIS team spoke about the sector's claims performance, and how members can proactively improve workplace psychological safety by identifying and addressing psychosocial hazards. ▼



James Larkin, LGIS WorkCare Services Manager performing a grip challenge test



LGIS team at the LG Professionals WA Annual Conference



LGIS CEO, James Sheridan having a chat with a delegate



Shauna McQuade, LGIS Senior People Risk Consultant speaking to the audience on member claims and psychological safety



Emma Horsefield, LGIS People Risk Manager sharing her knowledge on WHS, psychosocial hazards and risk management approach



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