



IN THIS ISSUE

- *City of Fremantle proactive on ergonomics*
- *Be prepared – climate change risks*
- *Avoid liability risks in your next redevelopment*
- *Mandurah PERforM-ing safely*

RISK MATTERS



Lvl 3, 170 Railway Parade,
West Leederville WA 6007

(08) 9483 8888

admin@lgisw.com.au

Visit our website and
members section –
lgisw.com.au

Don't have an LGIS members
section login or forgotten
your password?

No problem, simply contact
us via the details above
for assistance.

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.



LGIS e-newsletter

Sign up today...

At LGIS we are committed to bringing you relevant information on local, national and global risk-related matters and issues impacting local governments in Western Australia.

Register now: lgisw.com.au

CEO's Message



JONATHAN SETH

CEO LGIS WA

jonathan.seth@lgisw.com.au

2022 has started with a bang – managing and living with COVID is becoming a reality, the sectors' vulnerability to cyber risks has become apparent, and we've been at the mercy of mother nature with sweltering days and terrible bushfires. Unfortunately we've not had the reprieve many of us hoped for.

This quarter, LGIS members have been battling terrible bushfires across the Great Southern, South West, and Wheatbelt regions. Thousands of hectares have already been destroyed. LGIS has been quick to assist where we can. Our Regional Risk Coordinators have been on the ground providing advice and support while loss adjusters are quantifying the damage so we can start rebuilding as soon as possible. The LGIS claims team have spoken to all of our affected members.

Our members' bushfire volunteers, protected by LGIS, have been vital – working with emergency services to save lives and properties. The LGIS counselling service has been made available to all bushfire volunteers to support them during this stressful time.

We've also been watching the devastation of the floods in Queensland and New South Wales. The extreme weather events keep coming. This edition, our feature article covers the latest Intergovernmental Panel on Climate Change (IPCC) report, and we look at climate risks for local government and how to best prepare and mitigate those risks.

Local governments who are proactive in managing risks continue to see excellent results. The City of Mandurah are reaping the benefits of engaging LGIS to facilitate the PErforM program for their Mandurah Aquatic Recreation Centre (page xx). The City of Fremantle's new agile workplace sets the standard on putting employee wellbeing – and

ergonomics – first (page xx), and the City of Stirling's redevelopment of Bina Parkland in Balga is a great example of successful redevelopment. LGIS can assist in providing liability risk management advice into a wide range of local government developments (page xx).

Our Ask an Expert columns this addition are extremely relevant to the times in which we are living. With the new Work Health and Safety laws and regulations commencing on 31 March, it's important you know your reporting obligations under the new Act. We also have Mark Civitella (Partner at legal firm Mills Oakley) looking at whether contracting COVID-19 is an 'injury' under the Workers' Compensation & Injury Management Act 1981.

Renewals

Many of you have been working hard to complete the member renewal surveys – thank you.

We know the surveys have caused frustrations for some members and the website can be difficult to access. We acknowledge that the OKTA verify process, while keeping your confidential organisation data secure and meeting new legislated standards for data protection, has added a fresh set of challenges. We appreciate the time you have spent completing the renewal surveys.

The more detailed and accurate the data provided, the better equipped we are to maintain the stability and sustainability of your Scheme – that's why it's important to provide information as accurately as possible, and why the surveys are lengthy.

We are working to create a more user-friendly online survey experience for 2023. As always, please reach out to your LGIS account manager with any questions.

I 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 olivia.lawley@lgisw.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.



City of Fremantle proactive on ergonomics

The City of Fremantle's new agile workplace sets the standard on putting employee wellbeing – and ergonomics – first.

Local government workers are spending more time sitting at work. Without an ergonomic workstation set up this can lead to pain, discomfort and injury.

Ergonomics can roughly be defined as the study of people in their working environment. Particularly successful ergonomic designs modify the work to fit the worker, not the other way around. The goal is to eliminate discomfort and reduce the risk of injury due to work.

The City of Fremantle have been proactive in putting the safety of their office staff first. The City has recently designed a new head office at Walyalup Civic Centre, and engaged the LGIS injury prevention team in the planning and design process. LGIS provided guidance on suitable equipment, workstation layout and desk dimensions, to ensure the new office meets AS/NZS 4442:2018 ergonomic standards.

They have also proactively arranged for our injury prevention consultant to be onsite during staff relocation, providing introduction sessions on the adjustment of chair and desks and completing floor walks, enabling staff to ask questions as they arise.



What's an 'agile' workplace?

An agile workplace is a type of work environment designed around complete flexibility. An agile workplace encourages workers to move freely around the office, making use of whichever space suits their objectives at that time. Agile office design is about providing workers with a variety of useful spaces where they can feel at their most productive.



Fremantle's process

- ▶ Workstation ergonomics are discussed on day 1 of induction and all new joiners are briefed on the support available to them.
- ▶ Each department has a “Digital Champion” who has been trained in correct ergonomic setup. These Champions run them through:
 - How to operate the task chair and electric height adjustable desk
 - Correct body positioning, heights of chair, desk and monitors as well as where other peripherals should be located.
 - How to structure their work day to ensure that maximum movement is achieved.
- ▶ Online information is available via videos and brochures
- ▶ An e-form is used to request an ergonomic review from the WHS team
- ▶ If after all of this there are still issues we can't solve, we bring in the LGIS ergo experts.

“As one of the first LGAs in Western Australia to fully embrace activity base working (ABW), we had some unique challenges in setting up our new office spaces. Multiple times each day, our staff are moving from one office zone to another, depending on what fits best to the activity they are performing. This means that they need a much more detailed knowledge of how to adjust their chair, desk and peripherals to achieve an ergonomically sound setup. The LGIS injury prevention team were able to provide excellent expert advice in the lead up to our move as well as onsite training to our staff.”

Kurt Spanswick - Team Leader OHS, City of Fremantle

LGIS injury prevention services can assist with assessing the workstation and making adjustments and recommendations to ensure it suits the worker, however there are also resources available on the Injury Prevention page of our website, including easy to use checklists on setting up your workstation – both in the office and at home, sitting and standing. There is also a new video which guides viewers through basic chair adjustments and workspace set up.

If you have any questions about ergonomics, or the services available, please contact the LGIS injury prevention team on 9483 8818. ▼

Be prepared – climate change risks

The recent Intergovernmental Panel on Climate Change (IPCC) report stresses the time to act on climate change is now, and there is much work to be done – including by local governments.



Australia is no stranger to unpredictable or extreme weather. In recent years, we've seen more heatwaves, bushfires, coastal erosions, and other extraordinary environmental events like the recent devastating floods in Queensland and NSW.

These events can impact us in more ways than one, presenting risks to health, infrastructure – and your local government's long-term plans.

What's the latest?

The IPCC's report finds the impacts from climate change threaten to overwhelm our ability to adapt in the coming decades, with some impacts requiring rapid and radical transformations in how we live and operate.

Current global policies put the world on course of warming at least 2.1C by 2100, and possibly as much as 3.9C.

Regional and urban areas will face irreversible changes that will impact millions of people's lives, including:

- ▶ Extreme events (heatwaves, droughts, floods, storms, fires) resulting in death and injuries, and placing pressure on emergency and essential services and infrastructure.
- ▶ Sea level rises that will destroy infrastructure
- ▶ Weather patterns that will lower the productivity of both crop farming and livestock in many areas

As climate change intensifies, we see compounding impacts and risks, including where extreme events coincide.

The impacts of these events on cities and towns, roads, supply-chains and services is extreme. Think of the rolling impacts from the Black Summer bushfires, which killed people and wildlife, destroyed property and resulted in major economic losses. This places even greater pressure on the ability to respond. The 2019/20 south-eastern fire impact came to approximately \$2.3b insured losses across Australia.

Climate risks

Risk is determined by the interactions between hazard, exposure, and vulnerability. As history tells us, climate hazards can be acute or chronic. The exposures around climate include people, livelihoods, ecosystems, environmental services, infrastructure, and economic, social, and cultural assets. The vulnerability is the likelihood of being adversely affected and looks at how sensitive or susceptible the exposures are to harm, and the capacity (or lack thereof) to cope and adapt.

Adaption and mitigation go hand in hand for climate – adaption is the life jacket and is necessary for mitigation to be successful, however there cannot be one without the other – they are complementary factors.



Photo courtesy of DFES Incident Photographer, Evan Collis

What are the implications for local government?

As leaders of their communities, local governments bear the social, moral, and official responsibility to ensure their communities are well protected. This includes supporting businesses and residents by proactively considering climate change risks in your current and future developments.

If left unmanaged, climate change can impact local governments in various ways, including:

Damage to infrastructure and built assets

From buildings to drainage, climate change causes continual physical damage to assets above and below ground. This leads to additional maintenance costs, increased risks to health and safety, and even potential liability due to inadequate planning.

Resident migration

As climate change worsens with frequent flooding or bushfires, poor quality housing in affected areas may not be able to withstand these events.

Coastal erosion is also of increasing concern. In 2019, the WA State Government commissioned a state-wide assessment of the extent and scale of coastal erosion in WA. The assessment identified 55 coastal erosion hotspots (15 in the Perth metropolitan area and 40 regional) spanning 29 local government areas.

An additional 31 locations (8 metropolitan, 23 regional) have been placed on a watch-list for future monitoring and investigation.

Increased temperatures may turn outdoor spaces like local parks into a safety hazard too. And without a long-term solution for these possibilities, people in your local government may start moving away to find better living conditions.

Financial impact

Local governments may have reduced rate revenue as businesses are disrupted or unable to operate during extreme weather conditions. There's also the increasing cost of risk and insurance to consider, as well as large clean-up costs following extreme weather events.

Reduced operations

Your own staff and infrastructure may be affected by extreme weather events. And in these situations, your operations may be disrupted, leading to reduced productivity.

Other areas climate change can impact your local government:

- ▶ Loss of amenity and function of land
- ▶ Increased emergency management responses to events
- ▶ Loss of natural environment
- ▶ Development and planning concerns along coastal and low lying areas
- ▶ Increased demand for health services especially within vulnerable community members
- ▶ Asset management issues for sites vulnerable to exposures

We mentioned that often climate change liability risk to local governments emanates from planning decisions. This is true, but more specifically liability arises because of:

- ▶ a failure to adapt to climate change risk in the development of local planning schemes and policies;
- ▶ adopting adaptation and mitigation strategies that do not take account of the latest scientific knowledge and technical expertise relating to that particular local government environment, and, most importantly;
- ▶ the inadequate, or non-disclosure of hazard information to the local community exacerbated by the effects of climate change.



What can you do?

While no doubt the brunt of change needs to be at a Federal and State government level, it's important for local governments to commit to developing climate policies and strategies to mitigate global warming.

Climate change is a strategic risk with impacts across all areas of your local government's responsibilities. There is also an added expectation that you should already be considering these impacts in your strategic planning, development, infrastructure, and community decisions. This includes practicalities like making sure all strategic planning, land use planning, and infrastructure developments take complex climate change risks into account – in a systematic, rather than siloed way. Place-based planning, especially coastal adaptation, is of huge importance for local governments to direct their energy. Not doing so is a large reputational risk.

Risk management should inform your decision making – to allow you to anticipate, understand, prioritise and adapt to your local conditions. LGIS can assist in this process in several ways, including:

- ▶ Interpreting relevant and credible international, national, state, regional and local scientific climate change data to determine local climate change scenarios
- ▶ Assisting the development and understanding of your strategies, services and functional areas that may be impacted by climate change
- ▶ Providing education and awareness on climate change issues, impacts and expectations
- ▶ Identifying and assessing your risks and vulnerabilities
- ▶ Identifying adaptation options that align to your strategic direction

Climate change risk assessments

When you understand the climate scenarios and what your local government might be exposed to (currently or in the future), you are better placed to make informed decisions and strategies.

Using data relevant to Australia and your specific local government, a climate change risk assessment will help you:

1. Understand and identify the potential risks (whether it affects your people, assets, finances or community as a whole)
2. Categorise the risks according to severity (low, medium, high or extreme)
3. Determine if the risks need to be addressed immediately
4. Develop and implement risk adaptation strategies

It's important for all councils to perform climate change risk assessments – regularly. Depending on when you did your last assessment, we may recommend that you consider reviewing it.

There are several reasons for this:

1. The data used for climate change risk assessments changes every 5-10 years.
2. Your local government may have gone through big changes through the years, whether in management, structure, resources and capabilities.
3. Up-to-date assessments also give you the chance to be aware of what's going on in the market, community and industry – especially useful before you invest in a large development.
4. Having a current risk assessment can open doors to government grants that will help fund your adaptation strategies.

To discuss your climate change risks, please contact the LGIS risk services team on 9483 8868 or your regional risk coordinator, or to discuss your policy protection, please contact your LGIS member services account manager directly. ▼

An example of how climate change risk assessments can benefit your local government:

Your local government is planning to build a playground, but through climate change projections, you find the area has a high risk of increased temperature. This in turn may damage play equipment, or cause heatstroke and injury to children and families using the facilities.

This risk projection allows your council to mitigate the issue by relocating the playground development to another, more suitable area. It also allows you to put in plans to use materials that can withstand high temperatures.

Climate change risk assessments are crucial in enabling you to make better long-term plans and decisions – and ensuring that you spend your funds wisely.





Avoid liability risks in your next redevelopment



Local governments are often planning exciting new places for their communities to gather and play.

Due to the current state of the world, with limited travel and COVID-based incentives fostering economic development and supporting the building of new infrastructure, these developments are likely to increase.

LGIS can assist members by providing liability risk management advice into a wide range of local government developments. This includes:

- ▶ Sporting facilities and precincts (ovals and sporting grounds, skate parks, parkour, multiuse courts, cycle tracks and paths, mountain bike facilities and pump tracks)
- ▶ Recreational facilities (parks, picnic areas, campgrounds, playgrounds, multi-use plazas, foreshore areas - beach and inland waters, boat ramps, jetties)
- ▶ Public open space (reserves, natural bush land areas, walk trails, mountain bike trails and multi-use trails)
- ▶ Waste and waste recycling facilities (such as transfer stations particularly where the public interacts with these services when dropping off domestic waste and containers for change depots)

Primarily we help identify and manage liability risks that may be attributed to the local government as a result of loss, injury or damage sustained by users of that development or facility, and we give unique risk advice from concept through to practical completion of development projects.

Often great designs may focus on aesthetics and providing a challenging or exciting user experience, however it's essential to consider the potential risks to the public when the design is in operation, the long-term use of the development, and not only where the facility is used as intended but where there could be unintentional use and reasonably foreseeable misuse.

LGIS has managed local government liability claims for these types of developments and facilities under the LGIS Scheme for decades, so we are well placed to provide advice on these types of risks.

We also provide advice on existing designs (operating facilities):

- ▶ Where improvements can be made to avoid/manage/minimise risks where there has been a report(s) of an incident or near miss.
- ▶ Where there is a change in standards such as the introduction of the new Australian Standards associated with Skate Parks (*ES EN 14974: 2021 Skate Parks - Safety requirements and test methods*).

Some of the stages we can provide advice and comment on include:

- 1. Concept phase:** review of risks associated in the concept and drawings
- 2. Tender and procurement phase:** advice and assistance with managing risk in the contract, including advice on indemnities, insurances and other risk clauses
- 3. Construction phase:** interim risk advice as construction is underway, based on the local government securing our access to carry out site inspections
- 4. Practical completion phase:** risk advice following handover, and if required a full risk assessment report
- 5. Activation:** risk advice during activation and ongoing management of the development

Some of the risk treatment advice we can provide includes in the areas of:

- ▶ Zones and activities of potential conflict or incompatibility.
- ▶ Managing anti-social behaviour, vandalism and property damage.
- ▶ Provision of appropriate information and warnings (e.g. signage and other information sources).
- ▶ Meeting appropriate and reasonable standards.

Stirling's Bina parkland

The City of Stirling's redevelopment of Bina Parkland in Balga, formerly the Princess Wallington Community Parkland, is a great example of successful redevelopment.

The purpose of the development was to create a culturally diverse area accessible to all ages and to activate the area for youth activities. The development includes a plaza style skate park, junior and advanced BMX tracks, multicourt, informal parkour/hangout area, picnic amenities, event spaces, playground, car park, cultural corridor and two public toilets.

LGIS was originally engaged to provide a review of the concept design drawings and offer preliminary risk advice. Our advice focused on the main areas of exposure, including:

- ▶ Boundaries - how people access the development and how the multiple activity areas interact
- ▶ Proximity of specific areas to risk
- ▶ The use of signage and information
- ▶ Protecting entrants from hazards such as drainage areas
- ▶ Lighting, CCTV, and anti-social behaviour
- ▶ Management of trees and bushland within the development

We also provided advice mid-construction, after assessing the site and in particular the stage involving the then completed playground.

Finally, we inspected the development post completion with the benefit of viewing the development in public use. This enabled us to make further practical observations and suggestions to fine tune previous recommendations, this included reviewing the proposed signage.

Combining nature with play, Bina Parkland is a thriving community park, and stands as a real testament to how local government redevelopments benefit the community.

The LGIS team were engaged to review the Bina Parkland design prior to completion in regards to potential and perceived risk to the City of Stirling. They provided a professional service, a hands-on approach and informative personalised communications.

LGIS were proficient in their approach and provided expert judgement to better ensure the project being handed over to the community was faultless and to the standard that the City of Stirling strives to deliver. The LGIS team were easy to work and communicate with and provided their findings in a professional and timely manner.

Leon Kroep - Service Lead Project Management, City of Stirling

Did you know?

All members of LGIS have access to support and guidance on liability exposures at public places and local government assets.

This includes site assessments and summary reporting.

These services are included as a benefit of Scheme membership.



For more information on how LGIS can provide risk advice to your local government, please contact the LGIS risk management team on 9483 8868, or your regional risk coordinator. ▽



Mandurah PErforM-ing safely

The City of Mandurah is transforming their safety culture through the PErforM program.

The purpose of PErforM (Participative Ergonomics for Manual tasks) is to involve workers in improving their workplaces to reduce injury and increase productivity.

It is:

1. A simplified manual task risk management program
2. Based on participative approach
3. Internationally recommended

Participative ergonomics is an approach which utilises the workers' knowledge of their own tasks by involving them in the process of identifying issues and coming up with solutions – and therefore improving their workplace.



What is a manual task?

Any activity requiring a person to use their musculoskeletal system in performing work, a manual task usually involves:

- ▶ Manual handling (the use of force to lift, lower, push, pull, carry or otherwise move, hold or restrain a person, animal or thing)
- ▶ Performing repetitive actions
- ▶ Adopting awkward or sustained postures
- ▶ Using plant, tools or equipment that expose workers to vibration

Injuries from manual tasks can often result in musculoskeletal disorders - injuries of the muscles, nerves, tendons, ligaments, joints, cartilage, or spinal discs – which result in time away from work and workers' compensation claims.

Worker participation, management commitment and support, and a site champion are critical to the program's long-term success. Depending on the complexity of the task being assessed, you may also include people such as engineers, suppliers, designers, and ergonomists if necessary. It is important other stakeholders are identified and involved at the outset.

Elements of the PErforM program



In 2021, The City of Mandurah engaged LGIS to facilitate the PErforM program for their Mandurah Aquatic Recreation Centre (MARC). Due to the various roles within the MARC, each department created a small champion group who represented their department in the MARC PErforM focus group. The focus group consisted of the MARC coordinator, OSH coordinator, nine supervisors/team leaders and six workers.

The program consisted of:

1. Overview, planning and strategic rollout of the program to MARC focus group.
2. PErforM session #1: Introduce manual task risk assessment and facilitate competency to complete risk assessments. Task focus group with assessing all manual tasks prior to the next session.
3. PErforM session #2: Review and discuss completed manual task risk assessments and start prioritising into highest risk manual tasks.
 - a. Following ranking process, the sources of risk are discussed in a group activity to match these with the high-risk tasks assessed.
 - b. Discussion of suitable controls and implementation processes, with assigned tasks and follow up meetings booked.
4. PErforM session #3: Discussion driven by outcomes, potential control ideas and evaluation. Up to date progress on each of the assessed tasks was provided by the assigned people for each control. At this stage, further controls can be discussed for any introduced risks.

After the initial training the PErforM has been easily imbedded into the MARC Team as a whole.

Some examples of improvements have been

- ✓ Stadium curtain nets adjusted so that they all go to one end of the court
- ✓ New tie backs for the stadium curtains so that they can be stored safely
- ✓ New nappy change table trolley for creche
- ✓ Change in procedure of washing creche toys
- ✓ All trolleys adjusted and trolley wheels changed
- ✓ Show court portable seating change in putting out and packing away procedures
- ✓ Netball posts at Halls Head Recreation Center changed for lighter poles
- ✓ Change in procedure for moving large blue crash mat
- ✓ Various trolleys built for purpose

The best part of the PErforM Program is that it's easy to use, and for the MARC it has opened up the conversation that everyone can have an impact, be listened to, and make changes that improve safety at work for everyone.

The excellent training, support, and assistance we received from James at LGIS made the roll out of the PErforM program to over 170 recreation centre staff easy and ensured their engagement in an important safety initiative.

**Adrian Timms – Coordinator, Recreation Centres,
City of Mandurah**

For more information on how LGIS can provide risk advice to your local government, please contact the LGIS risk management team on 9483 8868, or your regional risk coordinator. ▼



COVID-19 and uncertainty – providing mental health support



The past two years have been tumultuous, with unplanned changes to restrictions, safety measures, and border closures adding to the stress and uncertainty of the COVID-19 pandemic.

While these measures are designed to ensure the safety of the WA community, the rapid timing and ambiguity around how changes affect us as individuals and in the workplace can be stressful. Moreover, WA borders opened on 3 March, with many worried about how rising case numbers will impact life as we know it.

Seeking to understand our responses is a proactive step towards adaptability and emotional agility.

How uncertainty affects our mental health

We've been living in a state of hyper-vigilance – along with the inability to plan ahead – for an extended period of time. This uncertainty contributes to anxiety.

Uncertainty is an unavoidable aspect of our daily lives, however the pandemic has disrupted our ability to deal with uncertainty through challenges in mitigating the impact to our lives. Constant feelings of uncertainty can impact how efficiently and effectively we manage adversity, and if not addressed, contributes to unhealthy levels of anxiety that can impact mental health.

With the state borders reopening and the current uncertainty around how we learn to live with a potential endemic, the need for proactive self-management and actively engaging in support resources is crucial to reducing anxiety levels and looking after your mental wellbeing.

Coping strategies

The Australian Bureau of Statistics reported across 2020-21, 61% of Australians used at least one strategy to manage their mental health. Employing multiple strategies can be considered best practice in adopting a holistic response to being the best version of ourselves when in the face of uncertainty.

Consider implementing the below stress management strategies:

Problem-focused coping: Involves managing and dealing with the stressor (problem) directly, in an attempt to reduce or resolve the issue. Best suited when the source of the stress is within your control.

This strategy involves:

- ▶ Seeking trusted advice - asking for support and guidance from a trusted friend or a professional with expertise.
- ▶ Thinking rationally - listing the pros and cons, regulating your emotions.
- ▶ Proactive problem solving - research, establish facts, stay solution focused.
- ▶ Time management - scheduling and prioritising your time more effectively, reducing procrastination, create a 'to do list'.

Emotion-focused coping: Focuses on reducing negative emotional responses associated with feelings of anxiety. Useful when the source of the problem is outside your control. This strategy employs self-management behaviour for proactive self-regulation, including:

- ▶ Mindfulness - meditation, grateful journals, visualisation, going for a walk.
- ▶ Emotional disclosure - talking with a trusted family member, friend or professional and/or journaling to better understand your emotional responses.
- ▶ Optimistic thinking - positive affirmations, self-encouragement and focusing on the present.
- ▶ Reframing - questioning your biases, positive reappraisal and adopting a growth mindset.

What can you do?

If you feel able, stay informed on COVID related facts from viable sources and limit media exposure. LGIS recommends Healthy WA website for general COVID related queries and WALGA for local government specific information. It's also important to take a break from the news cycle if it begins feeling overwhelming.

Other tips include:

- ▶ Self-reflection on past experiences that demonstrate your resilience and ability to cope and deal with adversity.
- ▶ Practice self-care:
 - Healthy eating
 - Regular exercise
 - Consistent and healthy sleep
- ▶ Maintain social connection and interpersonal relationships with family members, friends and community.
- ▶ Focus on smaller steps and what you can control.
- ▶ Familiarise yourself with reliable websites that have a variety of resources for managing COVID related stress and anxiety. LGIS recommends Beyond Blue, Headspace, and Black Dog Institute.
- ▶ Engage with your Employee Assistance Program or contact LGIS health and wellbeing program at health@lgisw.com.au
- ▶ Consult with your GP or health professional.

How can LGIS help?

The LGIS People Risk Services are available to discuss tools and services that are available to members – all services can be tailored to your individual local government.

For more information, please contact Emma Horsefield, LGIS People Risk Manager on emma.horsefield@lgisw.com.au or discuss with your LGIS regional risk coordinator. ▼

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 olivia.lawley@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'.

“ Can contracting COVID-19 be an ‘injury’ under the Workers’ Comp Act? ”

There is no hard and fast rule regarding whether contraction of the COVID-19 virus is compensable under the Workers’ Compensation & Injury Management Act 1981 (the Act) – it will need to be determined on the facts of each case.

There is no doubt that COVID-19 and its symptoms would meet the definition of *disease* in the Act, which is very broad:

disease includes any physical or mental ailment, disorder, defect, or morbid condition whether of sudden or gradual development.

The critical question is whether the *disease* (or the effects of the disease) fall within any of the definitions of *injury* in s.5(1) of the Act:

Injury means –

- (a) a personal injury by accident arising out of or in the course of the employment, or whilst the worker is acting under the employer's instructions; or
- (b) a disease because of which an injury occurs under section 32 or 33; or
- (c) a disease contracted by a worker in the course of his employment at or away from his place of employment and to which the employment was a contributing factor and contributed to a significant degree; or
- (d) the recurrence, aggravation, or acceleration of any pre-existing disease where the employment was a contributing factor to that recurrence, aggravation, or acceleration and contributed to a significant degree; or
- (e) a loss of function that occurs in the circumstances mentioned in section 49,

but does not include a disease caused by stress if the stress wholly or predominantly arises from a matter mentioned in subsection (4) unless the matter is mentioned in paragraph (a) or (b) of that subsection and is unreasonable and harsh on the part of the employer

Existing case law strongly suggests that a worker's infection with the disease will be found to have occurred in the course of the employment if there is evidence:

- ▶ to establish the probable time of infection
- ▶ the infection occurred during work hours or at a place or during an activity required for the purpose of the employment, incidental to the employment, or was encouraged by the employer

Precedents

In *Sara v G&S Sara Pty Ltd* [2021] NSWPIIC 286, the Personal Injury Commission of New South Wales determined the widow of a worker who died from COVID-19 while on a business trip to the USA was entitled to a death benefit of \$834,000 plus other expenses.

The Commission determined under NSW legislation that COVID-19 satisfied the definition of disease. The critical issue was whether the deceased was infected in the course of the employment. The Commission applied *Hatzimanolis v ANI Corporation Ltd and Comcare v PVYW* to conclude that while it was possible for the deceased to have been infected while engaged in activities which were not work related, the period of travel to the USA was clearly within the course of his employment as he was directly encouraged and induced by his employer to travel there for business. Further, the Commission found based on the available evidence – including the expert opinion of an Infectious Diseases Specialist as to the disease's normal incubation period – that on the balance of probabilities the deceased became infected while travelling to the United States.

The requirement that the employment contributes to the contraction of the disease be *significant* is not a high threshold to meet. In *Mokta v Metro Meat International Ltd* [2005] WASCA 143 Pullin J held that “*significant*”, for the purposes of the Act, means “*not insignificant*”. This means that the employment need not be the only contributing factor but must be material in its contribution.

The situation in WA

It is likely that when community transmission becomes more prevalent in WA, it will become more problematic for some workers to demonstrate their employment was a significant contributing factor to the contraction of COVID-19. This is because it will become increasingly difficult to establish that contracting COVID-19 was associated with the course of employment, and not just the inevitable result of ordinary day to day public interaction within the community. Valid claims for compensation under the Act will have stronger prospects where individuals can demonstrate prolonged periods of effective isolation before being required to be exposed to the virus because of their employment.

In more seriously infected patients, definition (a) of *injury* may also be applicable. The COVID-19 virus can cause profound respiratory failure and other identifiable pathological changes including strokes and heart attacks which would constitute an internal ‘personal injury by accident’. Based on definition (a) of *injury*, the relevant test for the entitlement to compensation in that situation becomes ‘*arising out of or in the course of the employment*’. The same principles will apply to the ‘course of employment’ under this definition as for type (c) injuries.

ASK AN EXPERT



EMMA HORSEFIELD

People Risk Manager, LGIS

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.

“What do I need to know about new WHS reporting obligations?”



WA's new Work Health and Safety Act 2020 (WHS Act) and regulations will commence on 31 March 2022.

With the new WHS Act, there are expansions and changes. Your reporting requirements, as detailed in *Part 3 - Incident Notification Sect 35-39 Incident Notification*, have expanded to include additional injury classifications, including the introduction of a new “dangerous incidents” category. This category includes incidents that **do not** cause a serious injury, but have the **potential** to do so and also includes the requirements to **preserve** the incident site.

What is a ‘notifiable incident’ and when to report?

Under the WHS Act, a notifiable incident is an incident that results in the following:

- The death of a person, or
- A serious injury or illness of a person, or
- A dangerous incident.

Serious injury or illness

A serious injury or illness is now classified as an injury or illness that requires the worker to have immediate treatment as an in-patient in a hospital, or immediate treatment for any of the following:

- ▶ Any amputation of a body part
- ▶ Serious head injury
- ▶ Serious eye injury
- ▶ Serious burn
- ▶ Separation of skin from underlying tissue (such as a de-gloving or scalping)
- ▶ Spinal injury
- ▶ Loss of bodily function
- ▶ Serious lacerations
- ▶ Treatment by a medical practitioner within 48 hours of exposure to a substance
- ▶ That occurs in a remote location and requires the person to be transferred urgently to a medical facility for treatment
- ▶ That deemed by a medical practitioner, the person is not likely to be able to do the person's normal work for at least 10 days after the day on which the injury or illness occurs

Dangerous incidents

A dangerous incident is one that exposes a worker (or any other person) to a serious risk regarding health or safety stemming from an immediate or imminent exposure to any of the following:

- ▶ The uncontrolled escape, spillage or leakage of a substance
- ▶ An uncontrolled implosion, explosion or fire
- ▶ An uncontrolled escape of gas, steam, or a pressurised substance
- ▶ Electric shock
- ▶ The fall or release from height of any plant, substance, or thing
- ▶ The collapse, overturning, failure or malfunction of, or damage to, plant that is required to be authorised for use in accordance with the regulations
- ▶ The collapse or partial collapse of a structure
- ▶ The collapse or failure of an excavation or of any shoring supporting an excavation
- ▶ The inrush of water, mud or gas in workings in an underground excavation or tunnel
- ▶ The interruption of the main system of ventilation to an underground excavation or tunnel
- ▶ Other events prescribed by the regulations.

It is important to note that a dangerous incident **does not have to result** in an injury to a worker or other persons but **does have the potential** to cause serious injury. It is important to consider the **potential** that may result from an incident and not just the **actual impact** that occurs.

Example 1 of a dangerous incident:

A worker receives a 240-volt electric shock. The worker does not receive an injury from the shock so the actual injury would be classified as minor or report only. However, there is the potential that any electric shock can cause serious injury or death, so although the “actual” injury outcome is minor, the “potential” injury outcome of the electric shock is significant. Therefore, the incident would be a notifiable incident.



Example 2 of a dangerous incident:

A work crew is using an Elevated Work Platform (EWP) at a height of 15m to fit some large (12kg each) flood lights on the side of the administration building. While attempting to place one of the lights onto the wall mounting bolts, the light falls to the ground – narrowly missing another worker who is underneath the bucket of the EWP (as there was no exclusion zone established as part of the job setup). There was no actual injury to the worker on the ground however, the potential impact would result in a serious injury if the light had hit the worker. This event would be a dangerous incident and therefore would be notifiable.

However, if the work crew had set up an exclusion zone around the work area and no workers were within the exclusion zone when the light fell to the ground, then there is no exposure to a serious risk to a person's health or safety and therefore the event would not be a dangerous incident and would not need to be notifiable.

Duty to notify of notifiable incidents

The local government (the PCBU) must notify WorkSafe WA immediately after becoming aware that a notifiable incident has occurred as a result of the work being done by the local government.

Penalty for non-compliance:

- ▶ Individual - a fine of \$12,500
- ▶ PCBU - a fine of \$55,000

Notice of an incident must be given by the fastest possible means, by telephone or in writing (including electronic means, where available). If notice is given by telephone, WorkSafe WA may request follow-up written notice of the incident. This must be provided within 48 hours of the request.

A record of each notifiable incident must be kept by the local government for at least five years.

Penalty for non-compliance:

- ▶ Individual - a fine of \$5,500
- ▶ PCBU - a fine of \$30,000

Duty to preserve incident site

The person with management or control of a workplace (this may be a manager or it could be a worksite supervisor or leading hand) at which a notifiable incident has occurred must ensure, so far as is reasonably practicable, that the site where the incident occurred is not disturbed until an inspector arrives at the site, or as directed otherwise.

Penalty for non-compliance:

- ▶ Individual - a fine of \$12,500
- ▶ PCBU - a fine of \$55,000

It is important to remember that a site can include any plant, substance, structure, or thing that is associated with the notifiable incident.

The site can be disturbed for the purposes of assisting injured persons, removal of a deceased person, to make the site safe or to minimise the risk of a further notifiable incident, any action associated with a police investigation or where the WorkSafe WA inspector has given permission.

If you have any questions, or require further clarification, please reach out to Emma Horsefield, LGIS People Risk Manager on emma.horsefield@lgiswa.com.au or discuss with your LGIS regional risk coordinator.



lgis
lgiswa.com.au

The information in this document is general in nature and is not intended to be relied upon as advice regarding any individual situation and should not be relied upon as such. This information is based on sources we believe to be reliable, but we make no representation or warranty as to its accuracy. No part of this document may be reproduced or transmitted in any form by any means, electronic or mechanical, including photocopying and recording, or by an information storage or retrieval system, except as may be permitted, in writing, by LGIS.

LGIS is managed by JLT Public Sector, a division of JLT Risk Solutions Pty Ltd (ABN 69 009 098 864 AFS Licence No: 226827) ("JLT") and a business of Marsh McLennan.

© 2022 JLT Risk Solutions Pty Ltd. All rights reserved. LCPA 22/148.