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# RISK MATTERS





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## CEO's Message



**JAMES SHERIDAN**  
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Welcome to the Winter edition of 2024! As we wrap up the financial year, we'd like to take this opportunity to thank you for your continued support. We're pleased to share that we've had a complete renewal with an outstanding 100% retention of our membership. This unanimous decision to renew for the 2024/25 period underscores the trust and commitment of our members, affirming our mutual approach as the most effective strategy for long-term, sustainable protection for the sector.

In August, we sponsored the WALGA Awards and sponsored the ALGAWA WA (women's association) Awards which were presented at the WALGA event. We were also contributors, having our very own representative judging the two ALGAWA WA awards. Our active involvement underscores our commitment to fostering leadership and excellence across the sector.

We're delighted to continue our support as sponsors of the upcoming WALGA Local Government Convention taking place in October. Renowned as a pivotal event in the local government arena, the convention promises to be a dynamic gathering of members across the sector. This convergence creates a vibrant environment for professional growth, networking, and opportunities that are crucial for boosting our collective impact on the community.

We recently launched our new cyber resources that have been developed in conjunction with you, our members. We were joined by Marsh cyber security experts, and there was a great opportunity for members to network afterwards. Now that the resources are available, we're moving onto phase 3 – our roadshow. This will see our team travelling across the state to deliver in-person workshops to support members in adopting the recommendations within the guidelines.

With the new Workers' Compensation Act coming into effect on 1 July 2024, we also completed our final sessions. Over the last six months, we travelled around Western Australia educating over 250 local government workers on the significant legislative changes.

In keeping with the new Workers' Compensation Act, our feature article highlights the key changes for local government, but also largely focuses on injury management and getting workers back to work after an injury. We provide a variety of resources and support to ensure that members can get workers back to work swiftly and safely.

In our news section, we look at why it's essential for local government to proactively protect themselves from the increasing threats of cyber-attacks, and how the guides that we've developed together with you provide step-by-step, practical advice on how to protect yourself and those around you.

Next, with the increase of high-profile defamation cases in the media, together with the daily use of social media, we turn our focus to defamation and how we're protecting you. We discuss the specific protections available through LGIS, and vital information to prepare members on how to navigate this complex issue confidently and effectively.

In this edition, we have three articles in our 'Ask an Expert' column which address the most frequent questions we've received from our members over the last few months. First, we continue from the key changes highlighted in our feature article and we examine how the new Workers' Compensation Act impacts leave. Then, we delve into WorkSafe notices and what members should do if you receive one. Finally, we explore the Memorandum of Understanding (MOU) and the risks associated with it.

We hope that you enjoy our Winter edition, and if you have any feedback on this edition or questions for Ask an Expert, please send it through to me or our editorial team at [pia.duxbury@lgisw.com.au](mailto:pia.duxbury@lgisw.com.au) or [christina.govender@lgisw.com.au](mailto:christina.govender@lgisw.com.au)

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.



# Injury management focus strengthens in new Workers Compensation Act



## What do the changes mean for local government and LGIS?

1 July 2024 marked the adoption of the new *Workers' Compensation and Injury Management Act (WA) 2023*, bringing with it an emphasis on workers and getting them back to work. This comes at a time when the local government sector faces a number of challenges in managing workers' compensation from an aging workforce, more complex claims, to a heightened awareness of psychological injuries.

### A new Act for workers' compensation

Modernised and rewritten in plain English, the Act offers clarity and certainty for members within the workers compensation system while keeping the essential aspects of the scheme intact.

Workers are the clear focus of this legislation, taking a sympathetic approach and aiming to provide claimants with as much certainty and support as possible. The previous Act also had this focus, but the new one strengthens and enhances this philosophy.

It's an important consideration for local governments and should influence their approach to handling claims and supporting workers.

From February to July LGIS delivered workshops across the State to educate members on the significant legislative changes. We partnered with the regulator, WorkCover WA, and legal partners Mills Oakley and Moray and Agnew to provide members with information tailored to the sectors concerns. Over 250 local government workers attended these in-person and webinar sessions.

Members, as the employer and licensed self-insurer, have a critical role throughout the claims process. It's important that staff and decision makers involved in workers' compensation claims understand the part they play in achieving a good outcome.

Whether it be maintaining contact with a worker while they're on leave or providing reasonable meaningful accommodations and supporting graduated return to work. An employer's behaviours and attitudes can be an instrumental factor in whether all parties have a positive or negative workers' compensation experience.



## What are the key changes for local government?

### 1. Timeframes – only 14 days to decide

One of the most significant changes is the prescribed timeframes to make a liability decision on a claim, so it's crucial that evidence is gathered quickly. In practice this means that as soon as a member receives a claim it needs to be sent to LGIS.

On average state government departments send claims forms to RiskCover WA within two hours of receipt. LGIS encourages all our members to match or better the state government benchmark.

There are two forms that need to be sent to LGIS the day they are received:

1. Signed workers' compensation claim form
2. Workers' compensation first medical certificate of capacity

Time is off the essence. We now have only 14 days to make a liability decision. It is important to note that this time limit begins from the day that you, the member, receives the claim and not LGIS.

### 2. Liability decisions and provisional payments – The three possible outcomes and what they mean for you

Once the claim has been received, LGIS must decide either to accept, defer or not accept the claim. The claims management timeline outlines the responsibilities of members and LGIS working together in managing a claim.

#### There are three possible liability decisions

##### • Accepted

The claim will be assessed, and a letter will be sent to all parties, including the local government and worker, advising of our decision. The outcome of a claim depends on if the workplace has greatly contributed to the injury. To determine this, we'll review the factual information including medical and incident reports.

##### • Not accepted

The claim is assessed and where it is determined, after factual investigation, that the workplace has not greatly contributed to the injury, not accepted. A letter is sent to all parties advising of our decision. An independent party investigates the factual information and provides their findings.

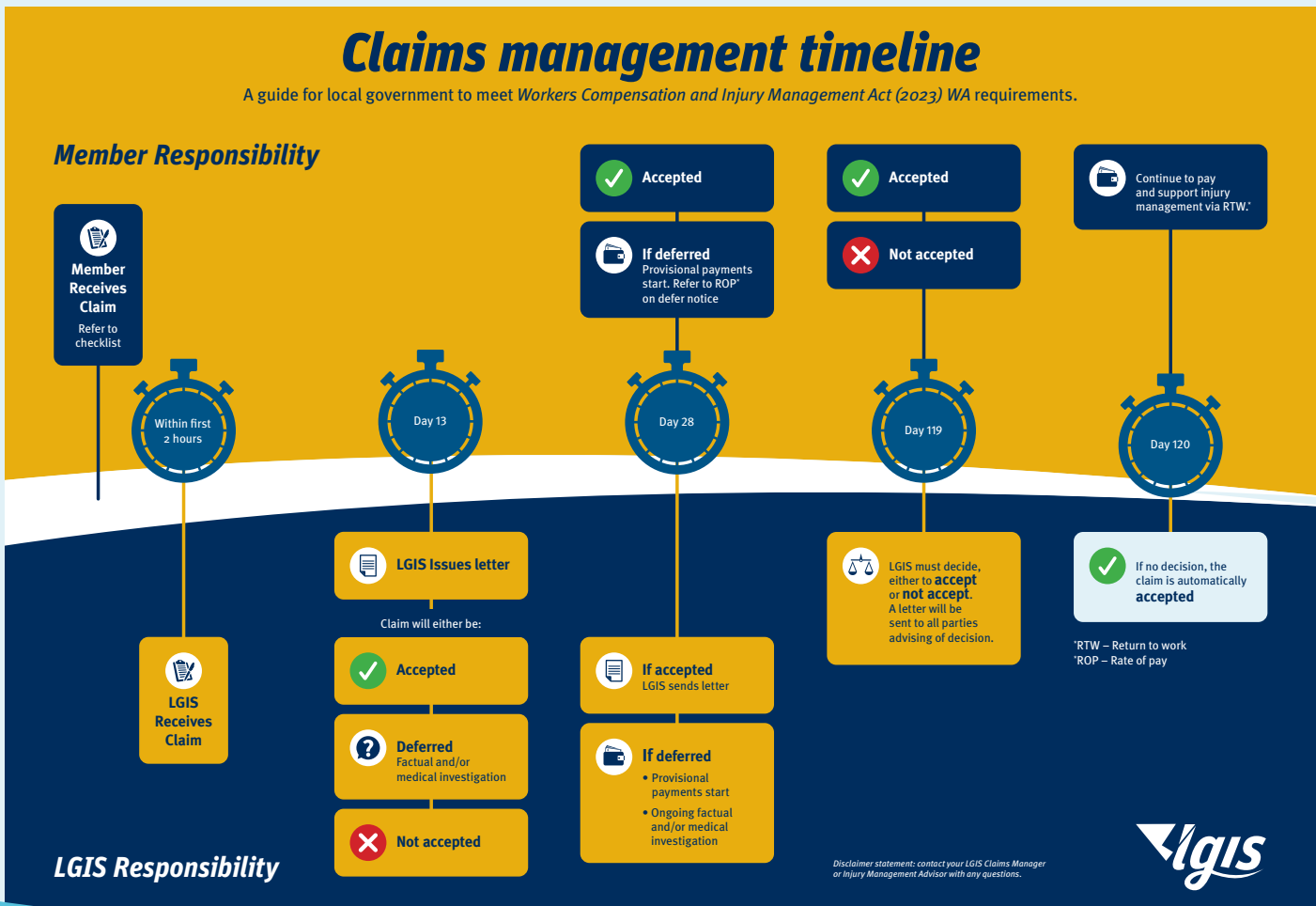
##### • Deferred

▶ Within 14 days, LGIS must issue a liability decision notice or a deferred decision notice. Failure to do so means the claim is automatically accepted. In the case of an incapacity claim, LGIS must accept liability and pay workers' compensation.

▶ If more time is needed to make a decision, a deferred decision notice is required. A decision must be communicated by the 'deemed liability acceptance day' (time frame set by regulations). If not, liability is deemed accepted.

▶ An important factor to note, in the new decision process is that provisional payments apply at day 28 if no decision is made.

▶ If a decision has still not been made by 120 days, the claim is automatically accepted.



### 3. Managing leave

Annual, long service and sick leave **now accrue** while an individual is on workers' compensation leave, aligning WA with most other states. Members will need to make sure that their payroll processes are updated to reflect this.

Refer to page 14 where Donata Ostrowska from WALGA's Employee Relations team explores this change in more detail.

### 4. New definition of a worker, but volunteer bushfire fighters not included

The definition of a worker has been broadened and members should make sure they are aware of the new inclusions. It now includes workers on commission, piece workers, contractors and subcontractors, workers receiving 'payment in kind' as well as the previously included full-time part-time, and casual workers.

Importantly for local government this new definition does not include volunteers (e.g.: elected members) or volunteer bushfire fighters.

The *Workers' Compensation and Injury Management Act (WA) 2023* and the *Worker Health and Safety Act (WA) 2020* are separate pieces of legislation with different definitions of a worker.

### 5. Settlement of compensation payments

Return to work is the desired outcome for a workers' compensation claim. However, in some cases, the worker may be left with a permanent impairment or incapacity for work which entitles them to a lump sum payment to finalise the claim.

From 1 July there are two types of settlement – statutory or permanent impairment. The type of settlement and rules that apply depends on whether the settlement relates to a statutory compensation claim or a common law action.



A permanent impairment settlement is generally assessed six months post-surgery or when a worker has reached their maximum medical improvement (MMI). To determine the percentage of the worker's permanent impairment, this is assessed by an Approved Permanent Impairment Assessor (APIA). The percentage provided by the APIA will determine the workers entitlement as set out by the regulator.

A statutory settlement quantifies the liability of an employer to a lump sum value and discharges that liability. The lump sum payment is made with consideration of income compensation payments, and medical and health expenses. Registration of an agreement with WorkCover WA is the only way to achieve a settlement.

A claimant may have a single settlement that is either a statutory or permanent impairment, or they could have both. However, the paperwork for each type is separate.

It's imperative that the paperwork, for either the settlement agreement or permanent impairment notice, is filled out correctly and lodged with WorkCover WA. It's vital that all documents are dated and completed with the same date. Differing dates on settlement documents will lead to the regulator rejecting the submission and new settlement documents will have to be completed and re-submitted to WorkCover WA for approval.

Where the injury or illness has resulted in a permanent whole person impairment of at least 15%, the worker may be eligible to pursue a common law claim through the court system.

### 6. Psychological injury and reasonable administrative action

Reasonable and just administrative actions, both informal and formal, to improve worker performance are now considered under the new Act. In practice this means that if a worker, engaged in administrative action, makes a psychiatric injury claim then the action may be used to demonstrate that the injury is not primarily work related. This is encouraging for members and supports the use of reasonable and just action to address worker performance issues. It is vital that any actions are well recorded and documented to support not accepting the workers compensation claim.



## Getting workers back to work

A key focus of WorkCover WA with the introduction of the new Act is injury management and getting workers back to work after an injury. This existed in the old Act but it has been enhanced in the new Act.

Many of the changes to the Act have been made with this in mind. For instance, the changes to the liability decision timeframe aim to give the worker certainty, and importantly encourage proactive management of the injury as soon as possible to optimise recovery and return to work.

Fortunately, the sector, through LGIS, is well positioned to meet the new legislative requirements.

The past two years in particular have seen LGIS change the way we deliver injury management services. Our approach adopts contemporary practices and aligns with the new Act.

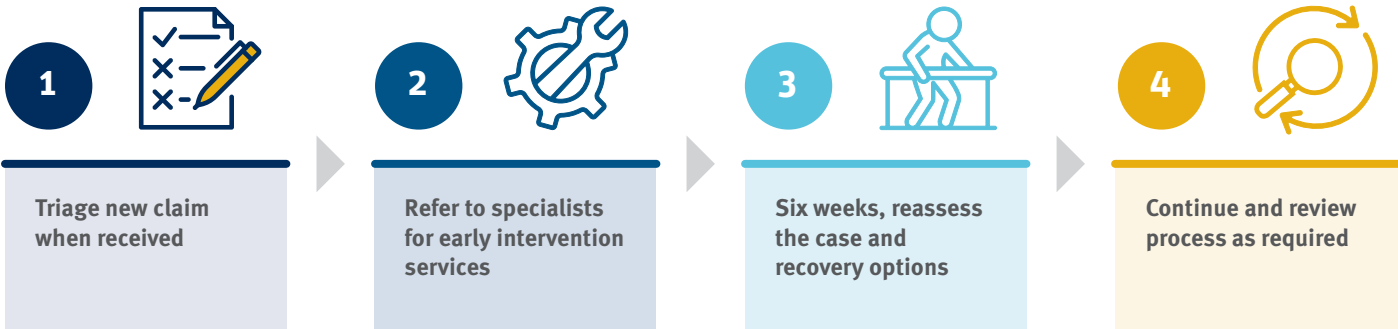
We have a comprehensive approach focusing on providing holistic care with the goal of facilitating a successful return-to-work process. This system recognises that injuries can also impact a worker's mental and emotional health and emphasises the importance of addressing all aspects of an individual's wellbeing.

### Injury management in Western Australia

LGIS members must have a documented injury management system in place. In practice this is a written procedure that describes the steps that should be taken if a worker is injured in the workplace. Employers should also develop a return-to-work (RTW) program for injured workers in consultation with the workers' medical practitioner and/or LGIS. A RTW plan includes medical restrictions and recommendations made in line with the duties and tasks available in the workplace.

When LGIS receives a claim our injury management team takes a triage approach, identifying the best way to treat the injury. This is done for both physical and psychological injuries. In general, we take a conservative approach, avoiding invasive surgery where possible.

#### Injury management process:



### What role do employers have in injury management?

Early notification of a claim by members is vital to the triaging process. The earlier LGIS knows about an injury, the earlier we can apply appropriate treatments improving return to work outcomes.

Employers play a crucial part in the injury management and return-to-work process from maintaining contact with the injured worker to working with specialists to support the workers return.

The National Return to Work Survey from Comcare highlighted the influence that employers can have on good return to work. The research found that 93% of workers took up the opportunity of modified duties to get them back as soon as possible, and a further 64% agreed their employer did what they could to support them.

#### Comcare - National return to work survey 2021



### Workplace stigma



It's vital that workers are supported in returning to work as soon as possible. Research shows that the longer a worker is away, the less likely they are to return.

People managers should be equipped with the tools and knowledge to understand their role and the influence they have on the process.

Mental health is a significant factor in how quickly and well an individual returns from injury. People managers can create a supportive and welcoming environment that fosters positive mental health behaviours.

Where people managers actively engage, identifying meaningful work and reasonable accommodations, the RTW process is more likely to succeed.

Practical actions to support the return of an injured worker include:

- ▶ **Provide workers' compensation information:** give the injured worker information on the workers' compensation process including their responsibilities and duties. The new Act clearly outlines workers obligations including attending medical appointments, making reasonable efforts to cooperate in the return-to-work process and complying with RTW obligations. It's important that claimants are well informed so that they can actively participate in the process.
- ▶ **Maintain contact with the worker:** it seems simple, but surprisingly it's something that many employers don't do well. Talk to the worker and determine a check-in schedule and the type of contact that works for everyone. Early on this might be a phone call every couple of weeks, or informal in-person catch-ups. Review how often and the type of contact every month or so.
- ▶ **Contact with the team and workplace:** depending on the nature of the injury it may be appropriate for the injured worker to join their team for some activities such as morning teas, lunches or training sessions. Employers should actively look for opportunities for the claimant to maintain contact with the workplace. This helps the injured worker feel like they are still connected and valued.
- ▶ **Talk to the team:** the attitudes of colleagues can be a serious inhibitor to successful return to work. Provide the team with an appropriate amount of information so they can support their co-worker. If you feel unsure how much or what information should be disclosed to co-workers, talk to your LGIS injury management consultant who can guide you. Briefing the team, can help to reduce judgement and allegations of malingering which can cause negative team behaviour, making return to work difficult for the injured worker.
- ▶ **Improve mental health awareness:** enhance people leader's skills and the broader team's understanding of mental health in the workplace. Not only does this type of upskilling build understanding and empathy it can also equip staff to better support each other, including those returning from workers' compensation. LGIS offers a range of workshops for leaders and teams as part of the Psychological Safe Program.

### Modified or alternate duties

At some point in the recovery process, it's time to look at how the injured worker can return to the workplace. Providing meaningful modified or alternate duties is key to successful graduated re-entry to the workplace and facilitating recovery. Of course, it all depends on the workers injury, but members can work with their LGIS injury management consultant and panel providers to determine appropriate accommodation.

Unfortunately, it's far too common for members to indicate that they have no alternate or can't modify duties. This is a lost opportunity for both the employer and injured worker.

The sooner an injured worker is able to reengage with the workplace in a positive and meaningful way, the more likely they are to have good outcomes in the workers' compensation process. Importantly this means good outcomes for both the worker and employer.

Practically speaking it can be tricky to work out what exactly an injured worker may or may not be able to do – this is where our job dictionary resource is invaluable. Each job dictionary includes a breakdown of the role outlining the physical demands (such as lifting, pushing, pulling, and walking), the postural demands and the frequency of these demands.

Psychological risk is also identified using an assessment tool outlining cognitive demands, emotional demands, and the organisational demands. The job dictionary report will highlight the exposure to physical and psychological risks inherent to the job role.

For example, if a library officer has injured their shoulder the job dictionary will assist in identifying tasks that may impact the injury. This would include:

- ▶ Floor to waist lifting (light)
- ▶ Waist to eye lifting (medium)
- ▶ Carrying (medium)
- ▶ Holding loads away from body (sedentary)
- ▶ Overhead reaching (sedentary)

The job dictionary can help identify possible modifications and/or alternate tasks which can be made to facilitate the return-to-work process for employees recovering from injuries or illnesses. It also provides a starting point to work out how to gradually increase the employee's workload and responsibilities based on their capabilities and medical restrictions.

Importantly a job dictionary means that everyone understands the demands of the role. It outlines relevant information for the GP, healthcare professionals, rehabilitation providers, and local government WHS / IM / supervisors to ensure a coordinated and effective return to work process.





Case studies – the power of proactive injury management

Over the past few months LGIS has adopted the triaging approach to injury management and it’s already paying dividends – delivering improved outcomes for the injured worker and saving money for the Scheme and members.

Case study 1: Knee surgery avoided

What happened?

The worker injured their left knee with a meniscal tear. Their GP referred them for imaging and surgical review. LGIS intervened and, using a panel provider, did a comprehensive review of recovery options for the injury before the worker saw the surgeon. During this review, the worker received physiotherapy treatment, learned about their injury, and was involved in developing active treatment options. A regular schedule of follow-up appointments was set-up to make sure that recovery was on track.

Following the first session, the claimant reported feeling much better about his recovery and that the knee felt better after the treatment.

When the surgeon saw that the claimant had started conservative treatment (i.e.: physiotherapy, education and active management) he was instructed to continue. Six (6) weeks later at review, the claimant’s lower extremity functional scale had improved from 45% to 97.5%. The worker completed a self-managed exercise program and was upgraded to pre-injury duties.

The outcome

There were significant savings and positive outcomes for the worker and employer. Surgery and associated hospital costs were avoided. The worker was empowered and proactively worked to recover from the injury, regaining the majority of their pre-injury capacity and getting back to meaningful work faster. In addition, because the RTW process was faster, compared to surgical intervention, additional costs such as wages were saved. On average the recovery timeframes for surgery would have been six (6) weeks unfit and six (6) weeks to return to pre-injury duties with physiotherapist and exercise physiologist services. **Saved: \$10,000**

Lessons

This case demonstrates that proactive conservative treatment for musculoskeletal injuries can have an enormous impact on an individual’s health and recovery. Expensive surgery, with long recovery timelines and associated costs can often be avoided by early treatment.

The example in this case study is a serious injury, but the philosophy of conservative treatment first also applies to more minor issues. This is why LGIS, through the injury prevention program provides all members and their staff with access to our Early Intervention Program that connects workers with pains and strains to qualified, experienced physiotherapists for proactive treatment.



Case study 2: Mediation and counselling save on complex claim

What happened?

LGIS received a ‘stress’ claim and immediately triaged, providing access to mediation, counselling, and referral to a workplace rehabilitation provider. This was a complex situation and the legal estimate for claim costs was in the order of \$130, 000.

What was the outcome?

LGIS invested \$7,000 in early intervention services – mediation, counselling and rehabilitation. The claimant returned to the same workplace and the member provided strategies to avoid future psychological injury claims. As is typical in psychiatric injury cases, the member had high risk factors which indicated a potential cluster of stress claims. Total claims cost was \$22,000. Early intervention, and further strategies to address and manage the situation have been successful and no further claims have eventuated. **Saved: \$100,000**

Lessons




This case clearly demonstrates the power of counselling and mediation to address psychosocial hazards in the workplace that can cause psychological injuries. In this situation the issues had become complex and caused injury resulting in a claim. However, even once the claim had been lodged, fast treatment action and proactive initiatives within the workplace avoided a protracted and more expensive claims.

Members don’t have to wait for a claim to occur to proactively identify psychosocial hazards that may lead to an injury. The LGIS psychological safe program includes a range of services from upskilling people leaders, improving individual’s understanding of the role they play plus mediation and counselling services.



Looking to prevent injuries in the workplace?

LGIS has a range of work, health and safety and injury prevention services that members can access to target physical and psychosocial hazards in the workplace. These services include:

Psychological safe program	Injury prevention	Health and wellbeing
<div></div> <div><ul style="list-style-type: none"><li>▶ Workforce upskilling with workshops such as mental health awareness, workplace behaviours and psychosocial hazards in the workplace</li><li>▶ Develop your managers and supervisors’ leaders with our specific people leader program</li><li>▶ Intervene early with mediation or counselling</li></ul></div>	<div></div> <div><ul style="list-style-type: none"><li>▶ Pre-claim early intervention physiotherapy</li><li>▶ Job dictionaries</li><li>▶ Induction resources including ergonomic set-up video and manual task online education</li><li>▶ Operational services including hazardous manual task education and ergonomic assessments and resources.</li></ul></div>	<div></div> <div><p>Services to improve individuals’ health and wellbeing including:</p><ul style="list-style-type: none"><li>▶ Health assessments and health coaching</li><li>▶ Skin cancer screening</li><li>▶ Flu vaccinations</li><li>▶ Health education</li><li>▶ Financial wellbeing workshops</li><li>▶ Diet and exercise services</li><li>▶ Online behavioural change resources</li><li>▶ Mental health resources</li></ul></div>

For more information about the new Workers’ Compensation Act talk to your WorkCare Claims Consultant. To be connected with the range of LGIS services mentioned in this article talk to your Account Manager or Regional Risk Coordinator, email [admin@lgiswa.com.au](mailto:admin@lgiswa.com.au)







# New cyber security solutions for local governments

**LGIS Phase 2 cyber resources launched to support members in improving cyber capacity and capability.**

The CrowdStrike global incident on 19 July brought into sharp focus for many organisations around the world our reliance on a small number of suppliers and the degree of cyber vulnerability. This event served as a wake-up call, emphasising the systemic nature of cyber risk. It wasn't just a technical failure but a reminder of the potential consequences of inadequate consideration of supply chain dependencies. As local governments become more digitised, the risk of cyber-attacks increases, making it more necessary than ever to take a proactive approach to enhance the organisations' cyber security.

## The sector's growing cyber security threat

Local government's reliance on information technology (IT) systems makes it essential to proactively protect themselves from cyber-attacks. With the increasing frequency of cyber threats, it is imperative that members adopt comprehensive cyber security and recovery strategies to protect their infrastructure and data.

The Office of the Auditor General's (OAG) most recent report showed that information and cyber security remains the peak concern for the sector. Annually a high number of weaknesses continue to be identified in the five related categories (namely: access management, endpoint security, human resource security, network security and information security framework). There were 473 issues at 76 entities in comparison to 324 issues at 53 entities last year with the majority of these weaknesses in categories that increase information and cyber security risks. Also of great concern, the OAG revealed that a large proportion (45%) of significant issues were unresolved findings from last year.

## Local governments working together to improve cyber security

Since 2022 LGIS has been working with members to support the sector in addressing cyber security concerns. Members valuable feedback and involvement has been instrumental in designing a cyber program that aims to support local government in improving cyber security practices.

From 2022 – 2023, we initiated phase 1 of our cyber program, conducting cyber risk assessments for 15 identified councils. These assessments reviewed their cyber security posture and guidance processes. The results revealed maturity ratings of each participant and confirmed that key performance areas were significantly lacking highlighting the urgent need for resources to build capacity in these areas to reduce cyber risk to councils.

Findings from phase 1 cyber risk assessments provided a summary of the key areas of concern for the sector. These findings have helped us in phase 2 to prioritise and develop guidance and tools in line with the local government's controls and potential gaps that have been found.

We engaged Marsh's cyber experts to use the phase 1 findings and build resources that were easier for anyone in the local government sector who needs to understand the language and strategies of cyber security. Depending on the size of the organisation, this could include CEOs, directors, procurement, and IT professionals. Using these guides will ensure that you can ask the right questions to evaluate cyber security plans, understand roles and responsibilities, talk to third-party IT providers, understand and clearly explain what your local government needs to do.



## Guide 1: The Essential Eight security controls

This guide recommends a systematic approach to aligning IT processes and mitigation strategies with the requirements of the Essential Eight security controls. It focuses on practical, step-by-step measures that can be implemented with relative ease, providing a solid foundation for any cyber security strategy while also allowing members to choose which maturity level (ie: 1, 2, or 3) they want to work towards.

By adopting this systematic framework, local governments can effectively respond to recent changes and updates based on the Essential Eight security controls and adapt to the changing technological environment.

## Guide 2: Cyber Incident Response Management

This second guide provides a comprehensive approach for members to enhance their cyber incident response capabilities. Cyber incident response management (CIRM) involves the effective and efficient handling and mitigation of security incidents that arise from various cyber threats, including digital attacks, natural events, technical failures, human errors, or third-party actions.

By preparing for a wide range of potential incidents, local governments can ensure they are ready to respond to any threat. Our guide breaks down what's required for the development of an effective CIRM plan into three vital sections, namely:

### Section 1: Who's responsible?

Identifying all stakeholders involved and their roles is the first step in preparing an effective CIRM plan. This includes elected members, senior management and operational staff. Ensuring buy-in across the business is crucial for the plan's success. All parties play a crucial part in the implementation and execution of the plan.

Additionally, governance also plays a vital role in ensuring commitment across the organisation. Aligning the CIRM plan with broader strategic objectives and relevant processes and structures is essential for effective cyber security management.

## Section 2: Develop and implement

This section of the guide provides nine practical steps for developing and implementing the organisation's CIRM plan. It will guide you through assessing assets and current vulnerabilities, containing and removing weaknesses, gathering and handling evidence, and managing remediation and recovery processes. These steps are designed to provide a structured approach to building a resilient cyber security framework.

## Section 3: Important considerations

Local government operates within a unique legislative and regulatory environment. This section offers guidance on the sector and jurisdictional arrangements essential for a CIRM plan. It also addresses notification responsibilities and provides examples to demonstrate these considerations. Understanding the specific legal and regulatory requirements is crucial for effective incident response.

## What's next?

Over the coming months, we'll be implementing phase 3 of our cyber program. This final phase will see LGIS travel across the state to deliver 15 metro and regional workshops in person to further support members in uplighting their cyber security.

## Explore our resources

Using these resources and incorporating suggested strategies can significantly enhance member's cyber security posture, safeguard their operations, and protect their reputation and stakeholder privacy. With the right measures in place, members can ensure they are prepared to face the evolving landscape of cyber-threats, maintaining the trust and confidence of their communities.

We are now turning our efforts into implementation, which will see in-person workshops delivered across the state to support members in adopting the recommendations within the guidelines.

Find these new resources in the member only section of the LGIS website at Risk Management > Cyber risks > Cyber risks resources or have a chat with your account manager. ▽





# Are you fully protected against defamation claims?

*The high-profile defamation case involving Ben Roberts-Smith shows that defamation isn't just a concern for high-profile figures, but also for those serving their communities in less public roles.*



It's vital for local government officers and elected members to be aware of what constitutes defamation to continue navigating their roles effectively. By understanding the essentials, they can engage confidently and avoid any missteps.

Below, we'll explore the essentials of defamation for members of local government. Learn about the legal framework, how to identify and handle defamation, and the specific protections available through LGIS. We'll provide vital information to prepare members on how to navigate this complex issue confidently and effectively.

## What is defamation?

Defamation involves communication that harms someone's reputation, exposing them to ridicule or contempt. Traditionally, classified as slander (spoken word) and libel (written word), however, the digital age has blurred these lines and legally, there's no distinction between the two terms.

Under the *Defamation Act 2005 (WA)*, Western Australia aligns with national efforts and favours non-litigious remedies to resolve such disputes, thereby preserving freedom of expression throughout Australia. Apologies, corrections, or retractions are often effective and can quickly resolve disputes. However, always seek legal advice before issuing an apology.

## Difference between the aggrieved and the publisher

In this context, the 'aggrieved' is the person whose reputation is harmed, while the 'publisher' is the person who made the defamatory statement.

### What's a publication?

Forms of communication which may be defamatory include:

- ▶ Writings (letters, reports, etc.)
- ▶ Printed media
- ▶ Blog posts
- ▶ Social media posts, statuses and updates
- ▶ Drawings

## Social media and the rising risks of defamation

Today, the internet, particularly social media, offers a multitude of opportunities for potentially defamatory statements to be made leading to potential defamation claims.

In WA, individuals can be deemed publishers simply by sharing or linking defamatory content, increasing the need for caution and awareness. Furthermore, individuals and organisations can also be liable for third-party comments on their pages.

## Defamation in WA

In WA, a defamation claim must be made within one year of publication. The WA Act applies to publications made within the state, but publications occurring in other jurisdictions may be subject to the laws of those jurisdictions.

### Making a defamation claim

For a defamation claim to be valid, it must involve:

- ▶ **Publication:** a verbal or written statement
- ▶ **Defamatory content:** false information or implications causing others to believe false information
- ▶ **Third-party exposure:** Made to someone other than the aggrieved.
- ▶ **Identifiable aggrieved:** The person must be identifiable from the statement
- ▶ **Absence of lawful excuse:** No legal reason justifying the publication

## Defences against defamation

Several defences can protect publishers from defamation liability. These include:

- ▶ **Truth** – if the publication is true, there is no defamation.
- ▶ **Contextual truth** – if the publication is substantially true, any imputations are unlikely to harm the aggrieved.
- ▶ **Qualified privilege** – if the publisher had a legal, moral, or social reason to publish and so is excused from liability.
- ▶ **Absolute privilege** – applies to publications made during parliamentary debates, courts, or tribunal judgments.
- ▶ **Public document** – republishing content from public documents (e.g. court judgments) is protected.
- ▶ **Fair report** – reports of public concern are protected if fair.
- ▶ **Honest opinion** – opinions based on true facts are not defamatory if presented as an honest opinion.
- ▶ **Innocent dissemination** – no liability will arise where the publication distributor did not know about the defamatory content, or did not write, create, or control the content or what was said.
- ▶ **Parody** – obvious satire is not defamatory.
- ▶ **Triviality** – insignificant publications causing no harm are not liable.

## Concerns notices and defamation proceedings

The first step in defamation proceedings is issuing a 'concerns notice', which is a formal document that outlines the alleged defamatory statements made and requests amends. **The publisher has 28 days to respond.** Early notification to LGIS is crucial for adequate response time and effective management.

## How we manage defamation claims


LGIS' role in defamation claims is crucial. We brief our specialist law firms to handle these cases. Each case is unique, and we consider various issues, including available defences, before determining the best approach.

### Protection under the Local Government Act 1995 (WA)

Local government councillors and officers have some defamation protections under Section 9.56 of the Act. This section provides immunity for actions taken in good faith within their roles. However, proving good faith is crucial, and a failed qualified privilege defence may undermine this protection.

### LGIS provides protection and support

Defamation cases are notoriously costly and complex, often requiring specialised legal expertise. LGIS is here to provide members with that protection and support for defamation. We adopt a 'firm but fair' approach to managing all claims, supported by legal advice. Remember, early notification of the claim, collaboration with LGIS, and following legal advice are key to managing defamation claims successfully and ensuring the best outcome.

For more information, read our Defamation Guide in the member only section of the LGIS website or have a chat with your account manager. 





## ASK AN EXPERT

**DONATA OSTROWSKA***Employee Relations Consultant, WALGA*

Donata Ostrowska is an Employee Relations Consultant at WALGA. She has been with WALGA since December 2022 and has tertiary qualifications in law and arts. Prior to WALGA, Donata gained experience providing advocacy and advice in the union movement and managing the office operations of a member of parliament.

## “How will the new Workers’ Compensation Act impact your leave? Everything you need to know



**What do the changes to Western Australia’s workers’ compensation legislation mean for local governments’ obligations with respect to leave accruals?**

The Workers Compensation and Injury Management Act 2023 commenced on 1 July 2024. It replaced the 1981 Act, with all provisions rewritten, worded in plain English and renumbered in accordance with modern drafting principles.

Among the changes to Western Australia’s (WA) workers’ compensation scheme, the new Act addresses and clarifies leave accruals during periods of workers’ compensation. It is important that local governments understand these changes and adjust their payroll systems accordingly (if required), to comply with their legal obligations.

### What happens to an employee’s annual leave, sick leave, and long service leave when they are on workers’ compensation?

Under the previous Act, personal leave did not accrue during periods of absence on workers’ compensation, while long service leave only accrued up to three months each calendar year. The question of whether annual leave accrues depends on the terms of the relevant award or agreement which applies to a local government.

### This changes in the new Act

The new Act, however, states that annual leave, long service leave and sick leave will accrue while an employee receives, or is entitled to receive, workers’ compensation. This change ensures that leave accrual obligations for employers are consistent across WA and in line with most other jurisdictions.

The new Act provides at section 61(2)(d):

*“For any period for which a worker is entitled to receive income compensation...the worker accrues entitlements to annual leave, long service leave and sick leave that the worker would have accrued if the worker had not been entitled to receive income compensation for that period.”*

Local governments need to review their payroll processes and make any necessary changes to ensure that from 1 July 2024 annual leave, long service leave and sick (personal) leave continue to accrue with respect to employees on workers’ compensation.

### Can an employee take leave while receiving workers’ compensation payments?

There is no change to an employee’s ability to access leave at the same time as receiving workers’ compensation payments. The new Act clearly outlines, at section 61(2)(a), that an employee will be able to take annual leave or long service leave while entitled to receive income compensation.

The Act specifies that taking annual leave or long service leave during a period of workers’ compensation, does not affect an employee’s entitlement to income compensation payments, or the amount of those payments (see section 61(2)(b)). Therefore, the entitlement to leave, and entitlement to workers’ compensation payments, are separate and concurrent.

### What about personal leave?

Under the new Act, employees will continue to accrue personal leave while receiving workers’ compensation. However, an employee will not be entitled to take sick leave at the same time as receiving income compensation.

If an injured employee takes sick leave, and subsequently becomes entitled to income compensation for that period of incapacity, the amount paid to them as sick leave is taken to have been paid as (or towards) income compensation, and the period of sick leave must be reinstated.

### WALGA Employee Relations Service

Western Australia Local Government Association (WALGA) Employee Relations provides comprehensive human resource management and industrial relations support to local government members. This includes regularly providing advice on leave entitlements and legislative updates to local governments who subscribe to the service.

**For more information, please visit the WALGA website:**  
<https://walga.asn.au/our-services/subscription-services/employee-relations>.



## ASK AN EXPERT

**PAUL MCBRIDE***Principal Risk Consultant*

Paul is a Principal Risk Consultant at LGIS. He has extensive experience in advising public sector leaders and corporate executives on a suite of professional risks, including legal and liability risk, contract and procurement risk, fraud risk, climate change risk, reputational risk and stakeholder relations, governance, integrity and probity practices, directors’ duties and executive decision-making, and policy and strategy development.

## “What are the risks associated with an MOU?”



**A Memorandum of Understanding (MOU), sometimes understood as a Letter of Intent (LOI) or Letter of Agreement (LOA), is a formal yet non-legally binding agreement between two or more parties. It is not to be confused with a formal, legally binding contract.**

Both MOUs and formal contracts are common instruments within the local government sector in Western Australia. However, it is important that members are familiar with significant and often subtle differences between MOUs and contracts as the risks associated with getting it wrong can be costly.

MOUs outline intentions, roles and responsibilities, and overall goals and objectives. The MOU serves as a guide to mutual aspirations and provides a collective recognition of the potential outcomes and processes desired by the parties. They provide a clear indication that the parties are committed to working together in good faith, often as a precursor to a binding agreement.

However, the distinguishing feature is the lack of legal obligations. Meaning, there is no liability, for either party, resulting from non-compliance.

Contracts are different to MOUs in that they:

- ▶ **Are legally binding:** contracts are legal documents that bind all parties to specified terms, including performance of duties and obligations. In contrast, MOUs, while structured and formal, are not enforceable.
- ▶ **Have financial obligations:** contracts often involve the exchange of goods or services for monetary payments, whereas MOUs lack financial commitments or consideration.
- ▶ **Consider dispute resolution:** Contracts may contain specific legal dispute resolution provisions, indemnities, limits of liability and insurance clauses; while MOUs rely on the parties’ mutual cooperation and good faith.

When local governments draft or respond to an MOU, they should be careful not to include deliverables or specific risk transfer mechanisms (such as indemnity clauses, limits of liability clauses, or insurance obligations terms). There is no opportunity to seek redress where a party fails to honour an MOU and similarly, there is no risk where members fail to comply.

### What’s the purpose of an MOU?

The purpose of an MOU is to clarify the functional aspects and objectives in a collaboration. MOUs are particularly beneficial in the early stages, outlining intentions and shaping the relationship, which can later evolve into a legally binding commitment.

Primary functions of MOUs include:

- ▶ **Clarifying intentions:** MOUs help align both parties’ shared objectives, goals, and areas of collaboration. They ensure the parties are aligned on their purpose and desired outcome.
- ▶ **Establishing a foundational framework:** Before a detailed contract is drafted, an MOU lays the foundation for collaboration or joint effort, particularly where a formal relationship is anticipated but not yet legally defined.
- ▶ **Facilitate transparent communications:** An MOU is instrumental in promoting transparency and understanding between both parties. It sets out clear expectations, minimises potential misunderstandings, and fosters a cooperative atmosphere.
- ▶ **Strategic planning and alignment:** MOUs are useful for strategic planning of projects and helping parties align their efforts and resources towards a common goal. Alignment is important for the successful execution of joint initiatives and collaborative projects.

While MOUs can be suitable in specific situations, contracts are generally favoured in the local government sector due to their binding nature and definitive terms. Contracts provide clear-cut and upfront agreement on details and include formal aspects, the allocation of risks, as well as respective obligations. The preference toward contracts ensures well-defined goals, objectives, obligations, and alignment between parties for their collaboration.

For advice on MOU’s and contracts, it is best to seek the input of a suitably qualified person.

**For more information on liability and contract risks talk to the LGIS Risk Team.**

### MOUs, DFES and volunteer bushfire fighters

For members who have an MOU with the Department of Fire and Emergency Services, please refer to the guidelines available on the LGIS website with regard to this specific relationship and managing volunteer bushfire fighters.





## ASK AN EXPERT



**ALEN SINANOVIC**  
Special Counsel, Kennedys

Alen is a Special Counsel at Kennedys. He has a decade of experience in the local government industry, primarily defending and advising local government employees and elected members. Common matters include employment related claims, regulatory prosecutions particularly by the Department of Water and Environmental Regulation, WorkSafe investigations, inquiries including CCC inquiries, and defamation issues. Alen has also completed a number of secondments with WALGA and works closely with LGIS.

Alen has acted in many high profile and complex disputes and is recognised by clients for his technical expertise and commercial approach when acting in contentious matters. He is admitted as a barrister and solicitor of the Supreme Court of WA and the High Court of Australia. In recent years, Alen was named in Insurance Business Australia's list of Young Guns, in Australasian Lawyer's list of Rising Stars, and by Best Lawyers in the practice area of Insurance Law.

## “Reporting incidents to WorkSafe, and WorkSafe notices – what are they and what should you do if you receive one?”

One of WorkSafe's primary objectives is ensuring compliance with the *Work Health and Safety Act 2020 (WA)* (WHS Act) by carrying out investigations and, where appropriate, taking enforcement action.



The following incidents must be reported to WorkSafe:

1. The death of a person;
2. A serious injury or illness of a person, including amputation, serious head injury, serious eye injury, serious burn, serious laceration, and loss of bodily function; and
3. A dangerous incident, including electric shock, the collapse or partial collapse of a structure, uncontrolled spillage or leakage of a substance, and uncontrolled implosion, explosion, or fire.

These notifiable incidents must be reported to WorkSafe immediately by phone or in writing. The guidance from WorkSafe is to report deaths and life-threatening incidents by phone on 1800 678 198 (24-hour line), else the notification must be made in writing online on WorkSafe's website. If in doubt – report it.

The circumstances to notify have changed significantly under the new WHS legislation, so internal policies and procedures should be reviewed to ensure this has been accounted for.



### When a notifiable incident occurs:



#### Do

1. Call 000 if it is an emergency;
2. Provide first aid and care for injured workers;
3. Preserve the site and ensure it is not disturbed until told otherwise by WorkSafe;
4. Triage what has happened (who, what, where, when);
5. Consult any internal policies and take the steps laid out in them;
6. Appoint a contact person and establish a line of communication with external agencies such as the police and WorkSafe;
7. Contact LGIS; and
8. Seek legal advice before conducting any internal or external investigation into the incident.



#### Don't

1. Delay in notifying WorkSafe and LGIS;
2. Disturb the incident site, including any equipment relating to the incident;
3. Issue a media release commenting on the cause or how it occurred;
4. Provide documents or information voluntarily to third parties (including regulatory officials) unless compelled by law to do so;
5. Commence any investigation into the cause of the incident without obtaining legal advice, as these investigations will not attract legal professional privilege, meaning, any documents created in connection with the investigation may have to be disclosed to WorkSafe as part of any investigation or prosecution.

### If a notice to produce documents is issued, the recipient should consider:

1. Whether the documents sought are in the recipient's possession, custody or power;
2. Whether any of the requests within the notice are objectionable on the basis of being too broad, vague, or seeking documents irrelevant to incident being investigated;
3. Whether any documents are subject to legal professional privilege; and
4. Whether the notice can be responded to in the allocated timeframe (usually 7 or 14 days) and, if not, whether requesting an extension is necessary.

A notice to attend an interview compels the recipient to submit to an interview at a specified time and place, and to answer questions asked by WorkSafe. Reasonable efforts must be made by WorkSafe to agree to a time and place with the person being interviewed. Generally, it's best to be compelled to an interview instead of agreeing to be interviewed voluntarily, because evidence given by a person during a compelled interview, as opposed to a voluntary one, cannot be used against that person in future civil or criminal proceedings.

It is prudent to seek legal advice in advance of any interview, and to have a lawyer or support person present. Employees, officers, and elected members should also notify their respective local governments to facilitate assistance and support through the process.

Where an investigation or inspection reveals non-compliance with the legislation, the enforcement options available to WorkSafe include issuing **improvement notices** and **prohibition notices**.

An improvement notice is a written direction requiring a person to remedy a contravention of the legislation, prevent a likely contravention from occurring, or remedy things or operations causing a contravention.

Prohibition notices are less common and are issued where there is a risk of imminent and serious injury or harm to the health of a person. As the name suggests, a prohibition notice is a direction prohibiting the carrying on of an activity, or the carrying on of the activity in a specified way, until the matters giving rise to the risk have been remedied.

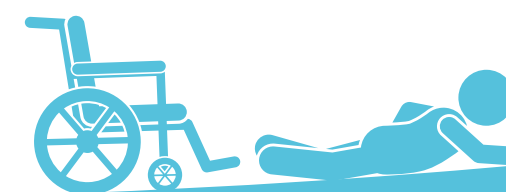
The first step after receiving an improvement notice or prohibition notice is to ensure it's displayed in a prominent place at or near any workplace affected by the notice.

### Consideration should then be given to:

1. The timeframe for compliance with the notice and whether it is achievable (if not, extensions can be sought); and
2. Whether to seek a review of the decision to issue a notice. Applications for a review can be made internally to WorkSafe or externally to the Work Health and Safety Tribunal and could result in the notice being varied or cancelled.

Swift action is necessary as timeframes to comply with notices, or to seek review of notices, are generally short. Significant penalties may apply for any failure to comply with a notice.

Dealing with WorkSafe and navigating the requirements of the WHS Act can be stressful and daunting. Legal assistance can be invaluable to combat the adage “you don't know what you don't know”. LGIS can assist with arranging legal representation and providing other assistance. If a notifiable incident occurs or you are contacted by WorkSafe in relation to any form of notice, you should contact LGIS without delay. Assistance is also available under the Complimentary Legal Helpline which is one of the benefits of the protection policy arranged for local governments by LGIS. Under the Complimentary Legal Helpline, a local government may seek up to two hours of free and confidential legal advice with Kennedys, subject to certain conditions. The complimentary number is contained in your Management Liability Protection policy. A short call for rapid advice may be instrumental when dealing with an evolving incident. ▼





# Where we've been

## New workers compensation act roadshow continues – City of Stirling

LGIS continued with our new workers' compensation act roadshow, this time educating the northern metro members on the significant legislative changes. Together with WorkCover WA and legal partners Moray & Agnew, we delivered another tailored information session on the new *Workers Compensation and Injury Management Act (2023) WA*.

Since the roadshow began in February, over 250 local government workers have attended the in-person and webinar sessions learning about the biggest changes to workers' compensation in decades. This session covered key areas including liability decisions and provisional payments, psychological injury provisions, increased medical expenses/entitlements, tougher settlement process, and a strong focus on return to work.

*Thank you to the City of Stirling for hosting this session.*

## Shire of Collie shares their health and wellbeing initiatives

Using part of their annual health and wellbeing funding allocation, Shire of Collie recently held a health and wellbeing initiative for all staff. On the day, our Health and Wellbeing panel provider, Health by Design, provided a fun and informative demonstration to educate staff on making healthier food choices.

Staff had a great time, asked many questions and learnt a lot about making healthier choices when shopping and cooking meals. Those that attended also received LGIS branded lunchbox kits and recipe booklets filled with delicious, easy-to-cook recipes for all. Start planning your health and wellbeing initiatives today.



Featured speakers (left to right) Alan Lee, Manager Data And Analytics, WorkCover WA; Rebecca Harris, General Manager Regulatory Services, WorkCover WA; Carrisa Chung, Portfolio Manager WorkCare, LGIS; Daniel Costanzo, Partner, Moray & Agnew.



## Save the Date

### Cyber Roadshow – Phase 3

From September 2024, LGIS will be traveling across the state to deliver metro and regional workshops in person to further support members in uplifting their cyber security. Dates will soon be announced.







*[lgiswa.com.au](http://lgiswa.com.au)*

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