



**Practical advice on contract risks**  
**Take 5 and perform the task safely**  
**Unravel the myriad of insurance terms**

# Editorial



Welcome to the last edition of Risk Matters magazine for 2016. The requirements of local government are becoming more complex and sophisticated, extending beyond

traditional areas often into new and unfamiliar service areas and so in this edition, we feature practical advice in relation to the transfer of risk appearing all too frequently in every day contracts.

I have recently had the pleasure of meeting along with my team, many of you, to deliver the details of your share of the Scheme surplus. Put simply, this sizable financial benefit is the result of your hard work and commitment to work together to finance and manage your risk through the group self-insurance approach.

I want to emphasise - LGIS are the managers of the Scheme but it is local government in Western Australia who own the Scheme and with your shared vision and alignment of outlook and loyalty, you control the destiny of the LGIS Scheme and its future potential.

Devoted to supporting you are the LGIS Board who remains responsible for

providing the overall strategic direction of LGIS and meeting the interests of the Scheme and you its members. It will reassure you to know the LGIS Board is made up of independents who are selected based on their expert skill or speciality and members from the LGIS membership along with the President and Chief Executive Officer of WALGA; people who know and understand Western Australian Local Government very well.

We are continually looking to proactively recognise and identify your ever changing needs. We are not an organisation that rests on our achievements and so in September we asked for your feedback. Thank you to everyone who participated in the recent LGIS corporate reputation survey. We were grateful for the volume and detail of responses received, and I am pleased to say LGIS has maintained its strong corporate reputation in 2016. Your feedback will help to ensure that as an organisation we continue to operate efficiently and effectively to provide each and every one of you with the best possible experience when engaging with us.


As we head into 2017, I want to thank you for your continued support. If you have any questions on Risk Matters magazine or if you would like to discuss any matter relating to your membership with LGIS please contact me directly on 9483 8855.

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

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

## 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 to receive a copy of our LGIS updates through the LGIS website [lgisw.com.au](http://lgisw.com.au)



# Practical advice on contract risks



Many of us will be familiar with that old Latin cliché ‘*caveat emptor*’ - ‘*let the buyer beware*’. It is often used to describe a principle of contract law associated with the sale of goods and property.

In modern parlance the phrase is used as a sort of disclaimer of warranties, arising from the fact that buyers typically have less information about the goods or services they are purchasing, while the seller has more information. The effect of *caveat emptor* is that it operates to transfer risk, in that the buyer is responsible for checking the quality and suitability of goods before a purchase is made.

However, this well-known principle is but one mechanism for transferring risk in a contract. Unfortunately, there are many other - what we will call - ‘*less well-known risk transfer mechanisms*’ appearing all too frequently in every day contracts.

Local governments, regardless of size and available resources, are expected to juggle many different contracts, often with a multitude of suppliers and service providers. These contracts come in many shapes and styles: for example, contracts for consulting services, license agreements, leases, purchase orders, government grants. Contracts are used to arrange for the delivery of every day supplies, basic services, and for the performance of specialised services in the areas such as construction/engineering and design, financial and legal advisory, and commonly in IT infrastructure.

Given the wide spectrum such activities entail, it is incumbent on all who are involved with the negotiation and execution of contracts to understand the risks involved and employ prudent control strategies to mitigate them. Almost without exception the typical contract will contain a number of clauses that operate to transfer the risk between the parties. You may recognise some of the more familiar clauses, but perhaps not appreciate their role in transferring risk: for example, indemnity and hold-harmless clauses, insurance clauses, limitation of liability clauses, warranty clauses, to name a few.

LGIS is frequently asked for advice on the effects, consequences and implications arising from these risk transfer clauses and more generally on contract risk as a whole. This advice is especially relevant because quite often these risk clauses will have important insurance and LGIS Scheme implications in terms of protection and cover. The service is offered as a complimentary member benefit through our Professional Risk project team and although it is not intended to substitute the benefits of good legal advice or other commercial considerations, it is available to you as a way of helping you navigate the more common contract risk pitfalls. We have had significant success in assisting members negotiate a more balanced

and fairer spread of risk in their contractual dealings, often by just explaining how the contract allocates risk through the subtle deployment of these elusive risk clauses and sometimes by explaining to contracting parties the basic principles and benefits of your LGIS Scheme and its interrelationship with contract risk.

The requirements of local government is becoming more complex and sophisticated, extending beyond traditional endeavours often into unfamiliar service areas. The imperative of demonstrating good governance, accountability and transparency is now more important than ever, no less so in the management of contract risk.

You can be assured that LGIS will continue to partner with you by offering a customised professional risk service that will have at its core practical advice on the risks associated with local government contracts.

**To find out more, please contact your LGIS risk and governance team on**

 **(08) 9483 8888.**

**The business of local government is becoming more complex and sophisticated, extending beyond traditional endeavours often into unfamiliar service areas.**

# Unravel the myriad of insurance terms

Industries worldwide have managed to develop what can only be perceived as their own language, full of acronyms and jargon and the insurance industry is not immune.



Here are some of the most common insurance terms, phrases and acronyms which you may encounter as we look to demystify the insurance industry:

## **Aggregate –**

total overall limit stated in policy that the scheme/insurer will provide in the event of loss.

## **COC –**

certificate of currency or insurance to confirm a current valid scheme and non-scheme policy.

## **Coinsurance –**

where the member acts as its own insurer for a specified proportion of the value of sums insured.

## **Deductible –**

commonly known as the policy excess. An amount that is deducted from a claim or the amount you are responsible for before the scheme/insurers will pay.

## **Duty of Disclosure –**

the *Insurance Contracts Act 1984* places upon the member (buyer of insurance)

to disclose all known material facts to the scheme/non-scheme insurer that are relevant to the overall risk. Eg, a motor policy where the owner/drivers have motoring convictions and/or past claims.

## **Duty of Utmost Good Faith –**

this is where each party to the insurance contract (member / policyholder and scheme and non-scheme insurer), must act with fairness and honesty. Eg, A members obligation to make full disclosure of all relevant facts when taking out the insurance in-line with their duty of disclosure.

## **Indemnity basis –**

the principle in which a person who has suffered a loss is restored to the same financial position that the person was in immediately prior to the loss.

## **Insurable interest –**

if an insured party wishes to enforce a contract of insurance before the courts,

they must have an insurable / fiduciary interest in the subject matter of the insurance policy.

## **Insured peril –**

a harmful event which is covered under a contract of insurance.

## **Long tail (risk) –**

this refers to a type of insurance where claims may be made or brought to conclusion many years after the period of the insurance has expired. Liability insurance is an example of long tail business.

## **Mitigation –**

being proactive to lessen the impact of something happening to you or your organisation. On a larger scale, governments can help protect entire communities from events such as floods through large-scale mitigation projects. It means taking action before the next natural disaster to reduce the consequences later.



**Mutual –**

is an insurance company owned entirely by its policyholders / members. Any profits earned by a mutual insurance company are rebated to policyholders in the form of dividend distributions or reduced future contributions.

**New for old –**

new for old is a term used in an insurance policy that allows older items to be replaced with new items, without any reduction for the depreciation in value of the old items.

**Proximate cause –**

an insurer will only be liable to pay a claim under an insurance contract if the loss that gives rise to the claim was caused by an insured peril. Meaning that the loss must be directly attributed to an insured peril without any break in the chain of causation.

**Self-insurance –**

choosing not to insure an asset or risk through an insurer, and instead having money set aside or a strategy in place to cover unexpected losses.

**Subrogation –**

the right of an insurer which has paid a claim under a policy to step into the shoes of the insured so as to exercise recovery from a neglectful (negligent) party.

**Risk –**

has a few meanings in insurance, such as:

- The likelihood of something happening that might cause injury or financial loss.
- The exposure to a specific threat, hazard or peril.


- The subject matter of an active insurance policy (risk in force).
- Uncertainty as to the outcome of an event.

**Total Loss –**

total loss occurs when an asset (such as your office building), is so badly damaged that it is beyond economic repair. Depending on the terms of the insurance policy, a total loss will usually attract the maximum sum-insured as a settlement.

**Underwriting –**

underwriting is the way that an insurance company works out how much risk exposure it has and then calculates the contributions it will need to charge to insure that risk.

For more information regarding our services, or to understand more about common insurance terms, please contact LGIS on  (08) 9483 8888.

# Take 5 and perform the task safely

Occupational safety and health legislation clearly identifies you and your workers duty of care when it comes to identify hazards as well as assessing and addressing the risks within your workplace. Taking only five minutes to check for potential safety hazards before every work task, can minimise the chance of injury or property damage.

To encourage workers to take a moment to assess the situation and the immediate work environment, LGIS has developed the Take 5 booklet. The booklet reminds workers to perform a “pre-start check” prior to undertaking a task to ensure everyone’s safety.

**The take 5 process consists of 5 fundamental steps when approaching a work task:**





***When applying these steps, the LGIS Take 5 booklet causes you to work through a series of yes / no questions before undertaking a task. These questions include:***

- ▶ Am I fit to work today?
- ▶ Do I understand the task I am about to do?
- ▶ Do I have a clear plan in mind?
- ▶ Have I been trained to do this task?
- ▶ Am I allowed to do this task?
- ▶ Do I have all the right equipment?
- ▶ Am I wearing the right PPE?
- ▶ Have I ensured that my surroundings are safe?

- ▶ Are the hazards involved with the task known and controlled?
- ▶ Do I have a clear head with no distractions?
- ▶ Have I warmed up and I am ready?

By answering these questions, your workers can make the right decision on whether or not to proceed with the task.

Also included within the Take 5 booklets is a hazard report form that can be used to record new hazards as they arise onsite. These

can then be uploaded into existing hazard management programs as required.

The booklet has also been designed to fit into your workers pockets to ensure they can be carried and used at all times.

The LGIS Take 5 booklet is complimentary to you as Scheme members.

If you order 100 or more Take 5 booklets, we can organise a customised cover of the booklets for your local government with your own logo.

**Your workers can make the right decision on whether or not to proceed with the task.**

**To find out how the Take 5 booklets can assist your workers, please contact your regional risk coordinator or the LGIS OSH team on  (08) 9483 8888.**

# New LGIS Website

As part of our ongoing commitment to improve communication, we are very excited to present our newly revamped website. An online knowledge hub for all your risk financing and risk management needs.



Save the LGIS website link [lgiswa.com.au](http://lgiswa.com.au) as a favourite in your web browser task bar to enable faster access.

## Member benefits



Secure access to your specific risk financing, risk management and claims data information



Easy to access tools and information for your OSH, HR and injury management professionals



User friendly navigation



Current and regularly updated information relevant to your WA Local Government sector



Features all you need to know about up and coming programs and events



One sign on and one location for all your risk financing and risk management needs

## What are the different types of access the LGIS website offers?



### Member centre

The member centre provides you with access to non-specific member information.



### Member portfolio

Your member portfolio provides you with secure real-time access to your current policy wording, policy schedules, and certificates of currency, claims forms and a current statement of your account. The members portfolio replaces the CIR (old website).

Access to member specific information in regards to coverage will be determined in consultation with LGIS and your manager.



### Claim profile

Your member claim profile enables you to access specific claims data relating to your Scheme protection in particular workers compensation, property and liability.

*Please note: This benefit is currently in pilot and not all users have access to this area. Please contact us if you require access.*





# Are EpiPens and asthma inhalers a must for your first aid kit?



LGIS has consulted with key stakeholders including the Department of Health, LIWA Aquatics and local government representatives regarding aquatic and recreational facilities stocking EpiPens and asthma inhalers for first aid use.

Currently there is no legal requirement for local government aquatic or recreational facilities to stock EpiPens or asthma inhalers. However, in exceptional circumstances and following a robust documented risk assessment process, some local governments may seek to stock this medication for first aid purposes. For example:

- Due to known sensitivities with patrons;
- Environmental risk factors due to location; or
- Limited access to medical assistance.

EpiPens and Salbutamol inhalers are both categorised as Schedule 3 Poisons (S3) as per the Standard for Uniform Scheduling of Medicines and Poisons (*Poisons Standard July 2015*). The Poisons Standard states:

*“A person, other than a pharmacist, or a medical, dental or veterinary practitioner, in the lawful practice of his or her profession, must not sell or supply a Schedule 3 poison”*

Within both the Poisons standard and the *Poisons Act 1964 (WA)*, medicines under the S3 category are referred to as pharmacist only medicines. Whilst S3 Poisons are available from a pharmacist without prescription ‘over the counter’, this method of supply is intended for private individuals under the guidance of the pharmacist, where there is an established therapeutic need.

An organisation such as a local government, may apply to the Department of Health for a poisons permit to purchase and keep Schedule 3 Poisons for general use in their first aid kits. The permit also comes with the entitlement to purchase the poisons at a wholesale rate. Traditionally, one permit would be required per site; however pursuant to communications with the Department, they have agreed to waive this requirement for local government applicants where there is a need for multiple sites (Eg, more than one facility).


Should a local government member wish to stock EpiPens and Salbutamol inhalers for the purpose of first aid use, we recommend that the appropriate permit be obtained. The permit will provide the local government with a degree of comfort that it is managing the risk with appropriate controls in place, and require compliance to legislative standards. This includes requirements prescribed under Section 35 of the *Poisons Act 1964 (WA)*.

## The permit requires the applicant to provide evidence of:

- Adequate training of emergency management of the related condition (e.g. anaphylaxis, asthma),
- A protocol for administration of the poisons, accessible expert backup (such as by a medical practitioner),
- Appropriate incident reporting and documentation following use, and
- Appropriate storage.

In the event of an adverse outcome associated with the poisons, documented compliance with these requirements will allow the local government to demonstrate, to some extent, that they have made reasonable efforts to discharge their duty of care. This may subsequently assist the LGIS Scheme in defending you should circumstances arise.

To access the permit and further information refer to the Department of Health – Medicines and Poisons Regulation Branch, Public Health: [http://ww2.health.wa.gov.au/Articles/A\\_E/Application-forms-licences-and-permits-for-medicines-and-poisons](http://ww2.health.wa.gov.au/Articles/A_E/Application-forms-licences-and-permits-for-medicines-and-poisons)

For more information regarding Risk Management practices associated with your aquatic and recreational facilities including the use of EpiPens and asthma inhalers, please contact LGIS on  (08) 9483 8888.

# Returning to work after a non-work related illness or injury



An employer may from time to time be faced with returning a worker to work after injury or illness, not related to their work.

Under Section 19 of the *Occupational Safety and Health Act 1984*, an employer has a duty of care to provide and maintain a working environment in which workers are not exposed to hazards.

If a worker is returning to work following an injury or illness, the employer must take reasonable steps to ensure the worker is fit to perform the inherent requirements of their role. If not, appropriate measures must be in

place to ensure the worker is not exposed to further risk of injury or illness.

In most cases, it would be expected that the worker may undergo a 'fitness for work assessment' by a medical practitioner to determine any restrictions. Where it is indicated that the worker will be placed on light duties or permanently restricted, the employer will need to determine if they are able to accommodate the worker on a long term basis.

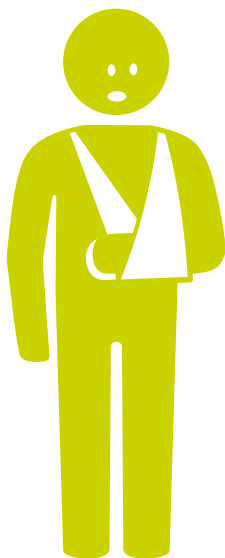
*In most cases it would be expected that the worker may undergo a 'fitness for work assessment' by a medical practitioner to determine any restrictions.*



## *When considering the need for a medical examination, the employer should consider the below factors:*




- ▶ Has the worker had long periods of absence from the workplace, absences without explanation or evidence of illness which relates to their capacity to perform the inherent requirements of their role?
- ▶ Has the worker provided adequate medical information?
- ▶ Will the worker be exposed to further risk of injury/illness by re-entering the workplace?
- ▶ Will the worker's illness or injury impact on others in the workplace?
- ▶ Has the worker agreed to a medical assessment?
- ▶ Has the worker been advised of why an assessment is to be undertaken to determine if they are fit for work?
- ▶ Has the employer considered information required to be provided to the treating medical practitioner?
- ▶ Has the worker been advised of the matters to be raised with the treating medical practitioner for his/her assessment?
- ▶ Is the medical assessment aimed at determining, independently, whether the worker is fit for work?



If the employer is considering termination of employment due to the worker not being able to fulfil the 'inherent requirements of the role' other options such as redeployment within the same employer should be considered, if a suitable role is available. Industrial or legal advice should be sought prior to making this decision.

If the worker is on restrictions for a closed period and is likely to return to their pre-injury or pre-illness duties, a return to work program should be documented and certified by the treating medical practitioner and agreed upon by all parties (employer/worker/medical practitioner).

The program should be monitored and regularly updated until such time as the worker is fit for the inherent requirements of their role.

**For specific advice, and to understand more about a worker returning to work after a non-work injury, please contact LGIS on  (08) 9483 8888.**

