



# Editorial



**Jonathan Seth  
CEO**

Welcome to our second edition of Risk Matters magazine for 2016. This edition investigates sources of “thinking traps”, the need to include disruption

planning in our wider risk management strategy and also uncovers what LGIS can do to help you manage contractors in your workplace and importantly reduce your exposure to risk.

I am pleased to report that we have achieved a solid result for 2015/16. Even in the face of global market volatility on investment returns and major claims losses arising from events such as the catastrophic bushfires in Yarloop and Esperance. As a result we are able to provide a further member dividend reimbursement to you this year. Your money isn't going back into the ‘pockets’ of the shareholders of large insurance companies. It is you our members who reap the rewards of working together as a sector. Benefiting from risk management support and solutions, superior protection that is competitive and cost effective, combined with continual cover enhancements and stable contributions.

At a Board level we have recently appointed two new Board members, Cr Paul Omodei from the Shire of Manjimup and Peter Forbes as an independent member. I am delighted to have them both on the team and welcome the breadth and depth of skill and expertise they offer. The Board provides overall strategic direction and governance for achieving the objectives and interest of the Scheme and for you the members.

As we continue to evolve, so does our risk management programs and services. This includes the recent merging of our injury management and health and wellbeing teams to form the new allied health services team. Their aim is to deliver proactive support and advice to assist with the prevention of injuries, facilitate best practice return to work outcomes and overall to create healthy workplaces.

I am also pleased to advise that as part of the new 3 Steps to Safety occupational safety and health verification program released earlier this year, WorkSafe plan assessments were undertaken for the City of Belmont and the City of Joondalup. The City of Belmont has been awarded a platinum certificate and the City of Joondalup a gold certificate from WorkSafe. The new 3 Steps to Safety program achieved great results and we look forward to speaking with more of you regarding our enhanced program.

It is our aim to work with you to enable you to get the most out of your scheme membership. If you have any questions surrounding the content within this Risk Matters edition or if you would like to discuss any matter relating to your Scheme please contact me directly on 9483 8855.



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services for WA Local  
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by the WA Local Government  
Association in conjunction  
with JLT Australia.

Risk Matters is an LGIS journal  
to keep member organisations,  
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 e-newsletter through the LGIS website [lgiswa.com.au](http://lgiswa.com.au)



# Councillors and officers liability: What you need to know

No local government wants to discover, after the fact, that their councillors or officers are exposed to costly liability issues.

Councillors' and Officers (CAO) cover provides financial protection for councillors and officers against the consequences of any actual or alleged "wrongful acts" when acting in their capacity as representatives of a local government.

To get a better appreciation of the protection that is available under the CAO section of the LGIS Management Liability policy, take a look at some of the common CAO risk exposures:

- ▶ Inaccurate or inadequate disclosure
- ▶ Decisions exceeding the authority granted to a councillor and officer
- ▶ Failure to comply with regulations and laws
- ▶ Employment practices

This cover provides protection from liability where an individual has acted in good faith, however, there can be circumstances where this protection does not apply. If councillors and officers are found guilty, they can be held personally liable for wrongful acts committed in the course of their position.

Where accusations are found to be vexatious, or where litigation against an individual is successfully defended, a councillor or an officer may be faced with defence costs associated with the litigation – regardless of an outcome in their favour.

## What does LGIS cover protect against?

The councillors' and officers' liability cover arranged by LGIS is designed, in part, to protect the personal assets of councillors and officers. It is also designed to protect the interests of your local government by funding the defence of claims and meeting agreed settlements/judgements.

While there are many circumstances that can cause a claim to arise, the following are some of the situations LGIS has seen or dealt with over the past 20 years:

- ▶ Instances in which council's own standing orders are in conflict with the Local Government Act or other legislation. For example, the Local Government Act restricts councillors access to information regarding matters that relate directly to their business role or are to be discussed at a council meeting.
- ▶ Failure of local government to undertake necessary investigation or failure to apply due consideration to recommendations made by local government administration. Each councillor and officer has a duty to review and consider information presented and subsequent motions.

- ▶ Failure to disclose conflicts of interest. This occurs when a councillor has a direct, indirect or personal interest that is in conflict with his or her duty as a councillor [Regulation 34C of Local Government (Administration) Regulations 1996].
- ▶ Applying improper or undue influence on other councillors or members of staff in the performance of their duties or function, in order to gain either a direct or indirect advantage.
- ▶ Councillors may also be named in actions/ investigation relating to employment practices or failures under occupational health and safety legislation.

**For more information about councillors' and officers' liability cover, please contact your member services account manager on ☎ (08) 9483 8888.**

**If councillors and officers are found guilty, they can be held personally liable for wrongful acts committed in the course of their position.**

# Cyber risks: How well protected are your systems?

Every day, all around the world, thousands of IT systems are compromised.

Criminals seek out financial gain through fraud and identity theft. So called 'hacktivists' breach network security to make political statements and disrupt operations. Mobile devices containing sensitive details are lost or stolen. Workers and third party providers turn rogue, or make administrative errors.

Failing to understand and mitigate your cyber risks could result in serious negative outcomes for you. From a damaged

reputation, legal liabilities and increased costs, cyber breaches have the potential to create significant and long term damage.

You rely heavily on information technology to conduct your business. This means multiple and diverse access points are available for attack. It also means that the best approach to cyber risk is to assume that your IT systems are in a constant state of attack, because most likely they are.

For any local government considering their new cyber risk management framework, one of the biggest hurdles is identifying potential exposures, and then determining the exposures that are most critical to mitigate:

- ▶ Addressing loss prevention
- ▶ Reducing potential harm through mitigation strategies
- ▶ Transferring the risk of loss through risk financing

## Finding cyber insurance to help protect local governments

LGIS has researched the market to identify cyber insurance policies that provide, in general, protection agreements considered suitable for you. The following can provide cover against a wide range of cyber risks.



### **Incident response costs**

Cover for costs you incur to engage an accountant, legal advisor, public relations consultant or other provider, following the unauthorised disclosure of personal and corporate information or following a network security failure. For example, cover for costs to:

- Conduct a computer forensic analysis of your local government's IT system to determine the cause and extent of the breach.
- Determine whether you are obligated to notify the affected parties and regulatory agencies of the breach.
- Notify the affected parties and/or regulatory agencies and establish new account numbers for the affected parties.
- Plan, implement, execute and manage a public relations campaign to counter or minimise adverse negative publicity.
- Procure credit monitoring services for affected parties.



### **Privacy and network security liability**

Cover for defence costs and damages for third party claims arising from a failure or violation of the security of a computer system or network that results in unauthorised access, unauthorised use, denial of a service attack, receipt or transmission of a malicious code, or unintentional failure to comply with privacy policy.



### **Regulatory liability and fines**

Cover for costs to respond to a regulatory proceeding arising from a breach of privacy. This includes cover for fines and penalties to the extent allowed by law.

The best approach to cyber risk is to assume that your IT systems are in a constant state of attack.



### ***Media content liability***

Cover for third party claims alleging libel, slander, copyright/trademark infringement, invasion of privacy and similar incidents, arising out of all electronic media including social media websites.



### ***Data restoration***

Cover for costs to restore/recreate digital assets after a failure or violation of the security of a computer system.



### ***Business income loss***

Cover for business income loss and extra expenses incurred following an interruption of service due to a network security failure.



### ***Cyber extortion***

Cover for money paid to resolve a cyber security extortion threat, including costs to investigate the cause of the threat.

For more information about cyber risk, please contact your LGIS member services account manager on  (08) 9483 8888.

# Understanding how workers compensation disputes are resolved

When you combine human emotions, financial impacts and injuries (alleged or otherwise) it is no surprise that a workers compensation dispute can be complex.

The ordinary claims process itself is not as straightforward as a flowchart may suggest, and a claim can easily turn into a dispute. This occurs when you the employer and the injured worker cannot agree on a way to move forward with the aim of resolving the claim and/or getting the injured worker back to work.

Our experience is that workers compensation disputes can occur at any stage of a claim. Disputes can arise from a number of issues that include but are not limited to:

- ▶ Liability (who is at fault)
- ▶ Amount to be paid (including weekly compensation payments, loss of future income, etc.)
- ▶ Medical and related expenses
- ▶ Rehabilitation
- ▶ Return to work programs

## Steps in resolving a dispute

Resolving a workers compensation dispute can be a long and complicated process. It includes the completion of numerous forms and applications, gathering and registering of many documents, as well as holding meetings and hearings.

There are strict timeframes involved at every stage, and parties are encouraged along the way to resolve the dispute to minimise escalation.

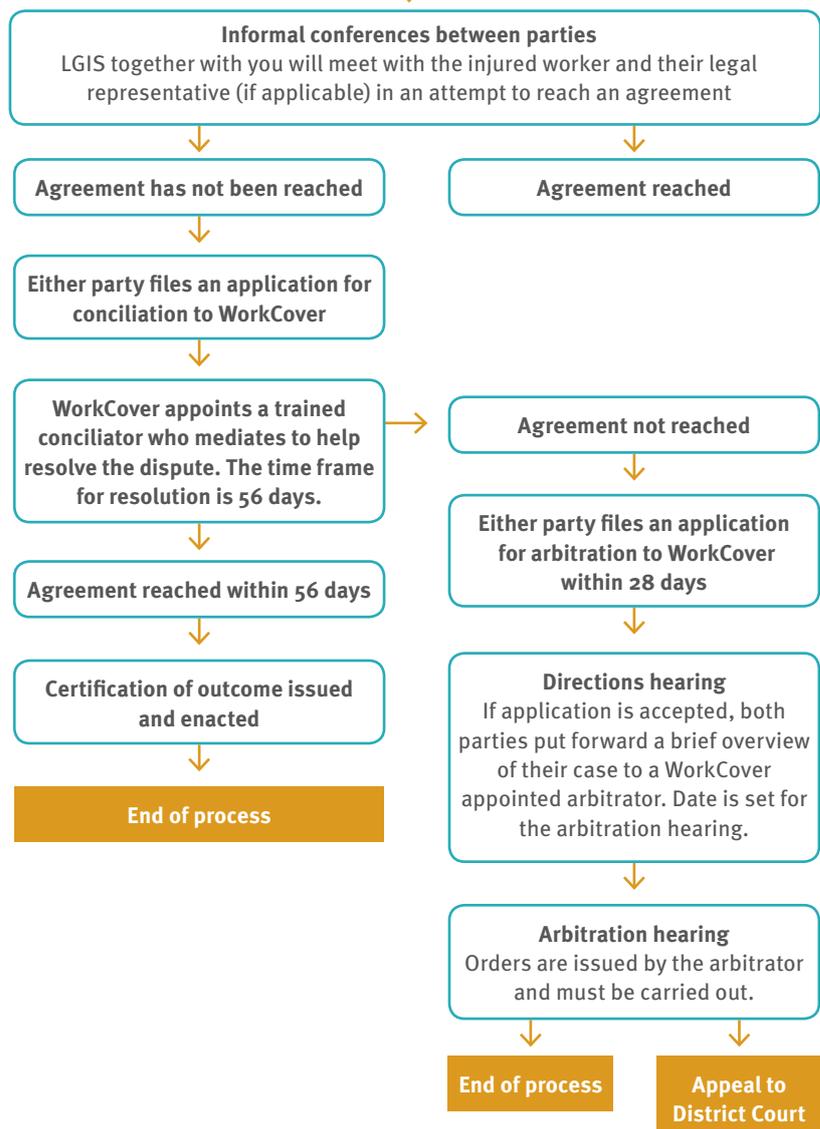
Dispute resolution can be very confusing for you and your workers. In line with the *Workers' Compensation and Injury Management Act (1981)* a dispute in its most complex form goes through many stages and follows several options, including informal conferences, conciliation and arbitration.

The diagram here shows a very simplified version of these stages.

In our experience there can be a long waiting list for arbitration. Parties in dispute could wait six months or longer for a hearing, and then a further six months for a decision to be handed down.

We are here to assist members every step of the way and we will work with you to ensure an appropriate outcome is achieved for all parties.

For more information about workers compensation and the dispute process, please contact the LGIS WorkCare claims team on  (08) 9483 8888.



# Disruption plans are critical to effective risk management

You may think disruptive incidents will not affect your local government or that there is no need to worry until they occur.

At LGIS, when discussing important topics like business continuity and emergency management with you, we regularly hear responses such as:

“It won’t happen to me.”

“That’s what we have insurance for.”

Yes, it does happen, with many recent events resulting in disruption to Western Australian Local Governments and their communities. It is of critical importance to be aware of and anticipate incidents, as well as plan for business and community disruption.

From natural disasters and utility outages, to acts of sabotage or countless “quiet catastrophes”, disruptive incidents include:

- ▶ Flood
- ▶ Structural fire
- ▶ Bush fire
- ▶ Earthquake
- ▶ Cyclone
- ▶ Storm
- ▶ Smoke damage
- ▶ Coastal erosion
- ▶ Hazardous materials leak
- ▶ IT failure
- ▶ Breach of sewage ponds
- ▶ Loss of plant and equipment
- ▶ Regulator investigation
- ▶ Major incident recovery
- ▶ Power failure
- ▶ Telecommunication failure
- ▶ Internet outage
- ▶ Data breach
- ▶ Friable asbestos
- ▶ Unavailable contractor
- ▶ Loss of key staff
- ▶ Poorly managed change
- ▶ Maintenance failure
- ▶ Critical infrastructure failure
- ▶ Ground water contamination
- ▶ Burst water pipe
- ▶ Human factors

## What are your plans for disruption?

All of the above incidents can and may cause business and community disruption. Your obligations are to prepare for and respond to these. Right now, do you:

- 1) Comply with relevant emergency management legislation and requirements?
- 2) Have a current and effective business continuity plan that is tested from time to time?

Disruption plans, and their validation, form an essential component of good public sector governance. They should be a part of your overall approach to effective risk management.

## How LGIS supports your plans.

We help you to adequately prepare for and respond to any incident that may cause disruption to your community and/or normal operational activities.

The preparation includes supporting you to develop and implement plans to manage, build resilience and recover from a disruptive incident.

### Plans include:

- ▶ Coordinating your local emergency management response
- ▶ Ensuring appropriate internal emergency responses for specific incidents
- ▶ Business continuity planning for internal resilience
- ▶ Training for specific individuals
- ▶ Situational awareness for monitoring and mitigation of threats and vulnerabilities

The objective of these plans is to ensure your local government can continue delivering services to your community following a disruption. Plans also support your local government to display leadership through potentially difficult times for normal community and working life.

Your plans should facilitate organised decision making in the event of a disruptive and chaotic incident. They should focus on strategies to:

- ▶ Protect the safety of workers, visitors and the community
- ▶ Provide flexible responses to a variety of incidents, including unanticipated or first-time incidents
- ▶ Assist decision making in a potentially uncertain and stressful environment
- ▶ Manage and minimise the consequences of incidents for your community and operations

For more information and assistance in the design of your business and community disruption framework, please contact the LGIS risk and governance services team on  (08) 9483 8888.

# Think about thinking: Recognise negative traps

Every day you make hundreds of reasonable and rational decisions. Right? So you may think.

Whether it is deciding what you are going to eat during the day, identifying who you would select to join your team, questioning whether to continue funding a project, or considering a big career move, flaws and patterns in your thinking can result in questionable judgements. That can lead to making serious mistakes.

How often do you think about how you think? Are you aware of how you reach decisions and, more importantly, of the many traps that any of us can and do fall into? Negative thinking traps present a risk to the quality of our judgements, and the results that spring from our decisions.

Behavioural scientists have uncovered sources of thinking traps, or what they call cognitive biases. These affect the

quality of your decision making, but you can improve both your competence and your confidence when it comes to making decisions that matter.

How? You can become aware of the traps, think about your thinking to consider which biases you may be more vulnerable to, and consciously check your decision making process.



## Managing your thinking patterns.

Take a look at these forms of bias and how you can change and manage your thinking patterns to reach more positive decisions in your work and everyday life.

### Confirmation Bias

We love to agree with people who agree with us, and we tend to listen only to information that confirms our preconceptions. Referred to as the mother of all misconceptions (by Rolf Dobelli in his 2014 best seller 'The Art of Thinking Clearly') this is the tendency to interpret new information in a way that it becomes compatible with our existing theories, beliefs and convictions.

**Better thinking:** To overcome confirmation bias, we may need to sit with the discomfort that comes with different points of view and to broaden our perspective.

### In-Group Out-Group Bias

Somewhat similar to confirmation bias, this springs from our innate tribal tendencies which help us to forge tighter bonds with people in our in-group ("us") and makes us suspicious, fearful and disparaging of others ("them"). Ultimately the in-group bias causes us to overestimate the abilities and value of our immediate group at the expense of people we do not really know. This distortion can be dangerous especially in the workplace, where it can lead to the infamous organisational blindness.

Also we tend to perceive people outside our own group to be more similar than they actually are. Called the out-group homogeneity bias, this can be the basis from which stereotypes and prejudices stem.

**Better thinking:** We can steer away from these traps by spending time with people who think differently to us – people whose experiences and expertise are different from ours.

### Availability Bias

We create a picture of the world using examples that come most easily to mind. This can be because we attach too much likelihood to both recent and the repeated events (front of mind). We are also more swayed by spectacular, flashy or loud outcomes. For example, someone might argue that smoking is not that unhealthy because their grandfather smoked three packs a day and lived to be 100 years old.

If we overestimate the importance of information we can access or digest more easily, we could travel through life with an incorrect risk map in our heads. In the workplace, in meetings and on committees we tend to discuss only what is on the agenda, and to make decisions based on information that is easier to obtain.

**Better thinking:** We can keep our eyes and ears open to other relevant information that might be more difficult to get hold of.



### Information Bias

How often are studies commissioned, one after another, even though the critical facts are readily available? This information bias reflects a tendency to seek information when it does not affect action. More information is not always better; superfluous knowledge is worthless, whether you know it or not. As historian and librarian to the US Congress Daniel J Boorstin said: “The greatest obstacle to discovery is not ignorance – it is the illusion of knowledge”.

**Better thinking:** We can challenge the information bias by looking critically at whether additional information will really add value, and do our best to get by with the bare facts.

### The IKEA Bias

This is the tendency for people to place a disproportionately high value on objects they partially assembled themselves, such as flat-packed furniture from IKEA, regardless of the quality of the end result. Although sounding like a joke, this is serious as it may contribute to the *sunk cost effect*, which occurs when managers continue to devote resources to sometimes failing projects they have invested their labour in. The IKEA bias is also related to the “*not invented here*” syndrome, describing how managers disregard good ideas developed elsewhere, in favour of (possibly inferior) internally developed ideas.

**Better thinking:** We can step back from projects we are closely involved in, and ideas that spring from outside of our usual reference base. We can be more open to evaluating the success or failure of projects and look more objectively at ideas from elsewhere.

### The Current Moment Bias

We find it difficult to imagine the future and alter our expectations and behaviours accordingly. Most of us would rather experience pleasure in the current moment, while leaving the resulting pain for later. This bias is closely studied by health professionals, and by economists, as it usually involves our willingness to save and not overspend. One study showed that when making snack food choices for the coming week, 74% of participants chose fruit, however, when the food choice was for the current day, 70% chose the unhealthy option.

**Better thinking:** We can become more aware of the pull of the current moment bias, and challenge temptation and short term thinking. By focusing on the ultimate outcomes and making considered decisions, we can establish effective habits for long term gains, such as bank account savings or healthier eating for wellbeing.

### Negativity and Positivity Effects

Whether we like someone or not can affect how we evaluate the cause of their behaviour. The negativity effect causes us to see positive behaviours in a person we dislike as being more likely down to the environment, and we think they are just doing that to look good on this occasion. If we see negative behaviours we attribute them to the person’s inherent nature, feeling it is typical of them. The inverted pattern or *positivity effect* is seen in the way we evaluate the causes of our own behaviours, or someone we like. For example, we may see our success as a result of personal effort but see our failure as outside our control. Both effects are biases.

The negativity effect plays a role in producing the fundamental attribution error, which is a major contributor to prejudice. The *positivity effect* can stand in the way of appropriately accepting accountability.

**Better thinking:** We can become more aware of how we evaluate people and their behaviour, and learn to separate the two aspects as we consider the behaviour and the person on their own merits. We can also focus on our own behaviours and learn to identify when we should be accepting accountability for our actions.

### The Ostrich Effect

Sometimes we decide to bury our heads in the sand, “ostrich-like”, to ignore negative or threatening information, such as signs it is time for a career move, or the need to address a gap in our skills. Perhaps, we need to address a dysfunctional workplace relationship.

Often we have a niggling feeling that something needs our attention, but it is difficult to escape the *ostrich effect* on our own. Not everyone has the self-awareness to know they are blocking out valid information. This is when colleagues or peer groups become important. Having people challenge our decisions and pointing out when we are ignoring critical information often provides great insight into our decision making process.

**Better thinking:** We can encourage our colleagues to respectfully challenge our decisions and the thought processes that drive them. We can allow them to point us to additional information that may provide better insights into our evaluation and judgement of situations.



## Get to know the traps.

To deal with negative thinking traps and all the cognitive biases we may not know we use every day, we firstly need to acknowledge that we are all at risk of making biased judgements from time to time.

When we know what the traps are and how they may ‘catch’ us, we can think about our thinking, and challenge ourselves to counter the influence of various biases. When we do this, we are all in a position to make better choices in everything we do.

For managers, you need to make a multitude of personal and organisational decisions every day. Sometimes an external sounding board can help you to be aware of potential traps in your thinking and can support you in making a more informed and defensible decision.

If you are faced with concerns about evaluating someone’s behaviour or performance, or you want to ensure your recruitment and selection processes are robust enough to minimise bias, or if you just want to speak to someone about how thinking biases might affect how you manage your teams, the LGIS human resources risk management team is here to assist you.

For more information about managing thinking biases, please contact the LGIS human resource risk management team on (08) 9483 8888.

# Contractors and risk: Taking control



All contractors come with a degree of risk, and that risk should never be underestimated.

In local government, when you engage a contractor, from an administrative temp to a high risk construction worker, it's important to remember that no matter the contractor, they will come with a degree of risk you should be fully aware of.

The occupational safety and health legislation highlights your duty to ensure the safety and health of the contractor and the contractor's employees. Depending on your capacity to exercise control over the contractor, this duty could be the same duty you have to your own workers.

This means when you use a contractor, and you can exercise control over that contractor, then you have the same duty to that contractor and their workers as you do to your own workers.

This control can relate to the activity as a whole, or parts of it. For example, if you engage an air conditioning contractor to work on an air conditioner from the roof, you have a duty to protect the contractor from the hazard of falling from the roof. You must ensure appropriate systems and adequate fall protection are in place. These are matters you have the capacity to control.

When it comes to actually working on the air conditioning system, your local government has no expertise in this. Therefore, you would not have the capacity to control the way work is done.

## **LGIS OSH Contractor Management Toolkit**

To help you manage your contractors and lessen the risks, LGIS has developed the OSH Contractor Management Toolkit. By applying risk mitigation strategies, the toolkit assists you to manage the safety of all parties when you are using contractors.

While it is only one piece of the contractor management jigsaw, the toolkit provides you with guidance, actions, easy to follow flowcharts, templates and forms that help ensure working with contractors does not become a burden.

### **What is in the toolkit?**

The toolkit is made up of three distinct parts that together guide and assist you to manage contractors.

**Part A:** Establishes your safety principles for managing contractors.

You can achieve this by developing a contractor management policy, and assigning responsibility. To help you, the toolkit includes an example of an OSH contractor management policy, plus examples of responsibilities.

**Part B:** Sets requirements and procedures for managing each contractor, in three steps.

Step 1: Defining the scope of work and classifying the risk level.

Step 2: Using this risk level, follow three simple flowcharts for low, medium and high risk contracts. The flowcharts outline steps to take when selecting a contractor, the actions to take when work is being carried out, and the actions to take after work is complete.

Step 3: Keeping records. This is an important component of contractor management.

**Part C:** Contains the many templates and forms referenced in the toolkit.

### **Who can use the toolkit?**

All LGIS members have access to the toolkit. For members with limited contractor management policies, procedures and practices, the toolkit is a great way to start. For those with existing policies and procedures, the toolkit is designed to supplement these as and when appropriate.

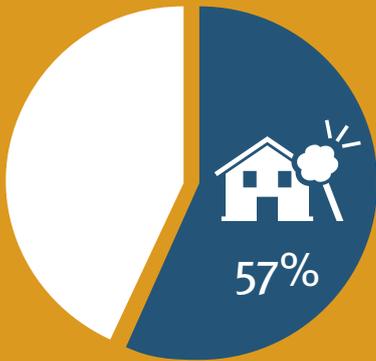
### **Where to find the toolkit**

For your complimentary copy, simply contact the LGIS occupational health and safety team, or your regional risk coordinator. You can also download a free copy from the LGIS website, [lgisw.com.au](http://lgisw.com.au).

**For more information on the management of your contractors or the application of the toolkit, please contact your regional risk coordinators or the LGIS occupational safety and health team on  (08) 9483 8888.**

# Branch out and manage liability exposure for trees

In the past ten years, incidents involving trees have accounted for 29% of all claims managed on behalf of members by the LGIS Liability Scheme.



Of this figure, tree branches make up 57% of claims that have resulted in either property damage or, to a lesser extent, personal injury.



In general, if a tree is on land that is within your local government's control, you have a duty of care to the public and neighbouring land owners/occupiers. This means taking reasonable care to prevent damage or injury that is reasonably foreseeable, from occurring. It is not, however, reasonable to expect you to prevent every risk associated with trees from happening.

## What is regarded as reasonable care?

There is no single answer. It would ultimately depend on the facts of a particular incident being assessed as to whether you would be considered as exercising reasonable care, and therefore discharging your duty of care.

Where you are operating as a road authority and there is no knowledge of a particular risk that caused the harm or damage, the *Civil Liability Act 2002 (WA)* offers some liability protection. Depending on the circumstances, the Act may not offer absolute protection.

It is therefore advantageous to have a system of tree management (inspection and maintenance) in place. A well-documented tree management system can provide evidence that you are doing what is reasonably expected of you in discharging your duty of care. This ultimately reduces your exposure to liability.

For managing existing trees, it is unreasonable to be expected to regularly inspect and maintain every single tree in

your jurisdiction. The achievable level of management will understandably differ across local governments, as will the risk of harm or damage posed by trees.

It is ultimately up to you to carefully consider the magnitude of risks. Balance this against resource implications and other competing priorities to decide on the appropriate level of management.

## How to allocate limited resources.

As a general guide on managing trees, consider which locations should receive priority. More attention would be given to areas the public visit frequently, where high numbers of people congregate, and where trees are positioned with the most potential to cause injury or property damage. Less attention would be given to areas where trees are left to grow in their natural environment.

High priority areas may include:

- ▶ Parks and reserves, near:
  - picnic facilities (tables, benches, barbecues etc.)
  - playground equipment
  - footpaths and trails
- ▶ General areas:
  - near power lines, schools, and shopping centres
  - within car parks, caravan parks and campsites

## Steps to a tree management plan.

Begin a proactive tree management plan by undertaking the following:

- ▶ Identify the number of trees under your control
- ▶ Create and maintain a register of trees
- ▶ From the above, form an inventory of trees identified as a priority
- ▶ Record relevant information, such as species, location size, condition, complaints, inspections and maintenance
- ▶ Decide on:
  - frequency of inspection and maintenance
  - additional triggers for inspection (eg. extreme weather, reported damage and complaints)
- ▶ Use appropriate contractors and expert advice
- ▶ Develop policies on:
  - managing existing trees
  - new trees, including appropriate species selection and placement

For more information about managing liability exposures associated with trees and, in particular, branches, please contact the LGIS risk and governance team or liability claims team on ☎ (08) 9483 8888.

A well-documented tree management system can provide evidence that you are doing what is reasonably expected of you.

