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RISK MATTERS



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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. LGIS is managed by Jardine Lloyd Thompson Pty Ltd (ABN 69 009 098 864 AFS Licence 226827). The JLT Group is a part of the Marsh & McLennan Companies (MMC) group of companies.

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



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CEO's Message



JONATHAN SETH

CEO LGIS WA

jonathan.seth@lgisw.com.au

2018/19 was another successful year for your Scheme. We welcomed back the Shire of Wiluna, City of Kalamunda and Shire of Coolgardie, meaning all WALGA members are now members of the Scheme.

Their return is testament to the enduring value of the local government self-insurance scheme in delivering sustainable and tailored protection and services for the WA sector.

The strengths of LGIS have shone this closing year - confirming that self-insurance is the only model which delivers the best long term protection, expert tailored risk services, and local claims management for WA local governments.

The surplus for 2019 is ahead of budget and, combined with the previous year's allocation, has allowed the Scheme Board to declare a distribution of \$6M to members.

Pleasingly we've been able to achieve this result whilst delivering on our commitment to stable contributions. You can read more about the Scheme's reserves and surplus distribution on page 11 of this edition of Risk Matters, where our Chief Operating Officer, Peter Hoare, breaks down how these amounts are calculated.

This year, members can choose how they would like to receive their share of the distribution. Each member can continue to take their share of the surplus as a credit off next year's membership renewal contributions, or, you can now choose to instead receive it as a member's dividend (EFT) payment or elect to have it held in trust for funding risk management initiatives.

To support member's decision making, your LGIS Account Chairs will meet with members to discuss these options, and to ensure your local government is getting the most out of your LGIS membership.

In this Spring edition of Risk Matters, we also tackle cyber risks – an area highlighted by local government CEOs nationally as a key area of concern. The case of Nyoni v Shire of Kellerberrin highlights a need to understand how the Court interprets local governments' liability in misfeasance, and we share important information regarding the state-wide cladding audit and how to safeguard your buildings.

Our general claims team has seen a spike in claims regarding the theft of copper pipes and cables – find out what you can do to protect your assets on page 8, and we look at how our human risk programs add value to your local government. I do hope you enjoy this edition, and if you have a question for our Ask an Expert column, please send it through to our editorial team at olivia.lawley@lgisw.com.au

As always, if you have any questions about the magazine, or if you'd like to discuss any matter regarding your membership, cover, claims, or risk management services with LGIS, please contact me directly on 9483 8855.

Jonathan Seth
CEO

Copper pipes and cables thefts – what you need to know

Recent LGIS claims show an increase in the theft of copper pipes and cables. Over the past 12 – 18 months, these thefts have been widespread, and systematic; targeting local government assets and state government utilities across Western Australia.



On the LGIS front

Over 32 claims have been lodged so far, with payments over \$1,000,000. This is for reported property claims only and isn't inclusive of claims which have not been reported or are under the property protection policy deductible. The majority of local governments targeted are in the metropolitan region.

With the frequency of claims rising, so too is the cost and the risk to your communities, with exposed live wires often left behind.

What are we seeing?

- ▶ Majority of claims occur over weekends, during early hours of the morning
- ▶ Targeted areas include playing fields, reserves, sporting venues, and light towers
- ▶ Removing pit lids – cables are cut and dragged out by a vehicle
- ▶ Live wires are left behind
- ▶ Areas are being hit multiple times, with the same method of operation

Regulation

Through working with other utilities, consistency in reporting, and obtaining CCTV footage, the police have made some arrests. They are also working on changing the legislation around the sale of copper through scrap metal dealers. This is a work in progress.

Things to consider in the meantime

- ▶ Can copper pipes be replaced by galvanised iron?
- ▶ Can pit lids be better secured?
- ▶ Can the pit lids be changed to steel?
- ▶ Can CCTV be put on a standalone feed so it is not taken down when power is disrupted by removal of cables?
- ▶ Can you increase surveillance of targeted areas?
- ▶ Sharing information with other local governments in your area.
- ▶ Advising your contractors/ staff of this issue and encourage vigilance.

What you need to do

- ▶ Report loss immediately to the police.
- ▶ Do not remove or touch any implements which may have been used in the crime – e.g. spanner, open padlocks etc. – Police obtain fingerprints from these.
- ▶ Keep CCTV footage, even if it is not clear.
- ▶ If the incident is a claim, please report to LGIS.
- ▶ Keep a record of all incidents.

Information sharing sessions

We are arranging an information session with the WA Police and Western Power to share some tips and advice on how you can mitigate your loss and protect your assets and community. Please register your interest if you would like more information about this session.

If you have any questions or wish to attend the information session, please contact Lydia Schifferli, LGIS Scheme Claims Manager, on 9483 8849 or Lydia.Schifferli@lgiswa.com.au

OVER THE PAST 18 MONTHS, THE FOLLOWING AREAS HAVE HAD CLAIMS ABOVE THE POLICY DEDUCTABLE:

9 large metropolitan councils
HAVE HAD A TOTAL OF
24 claims

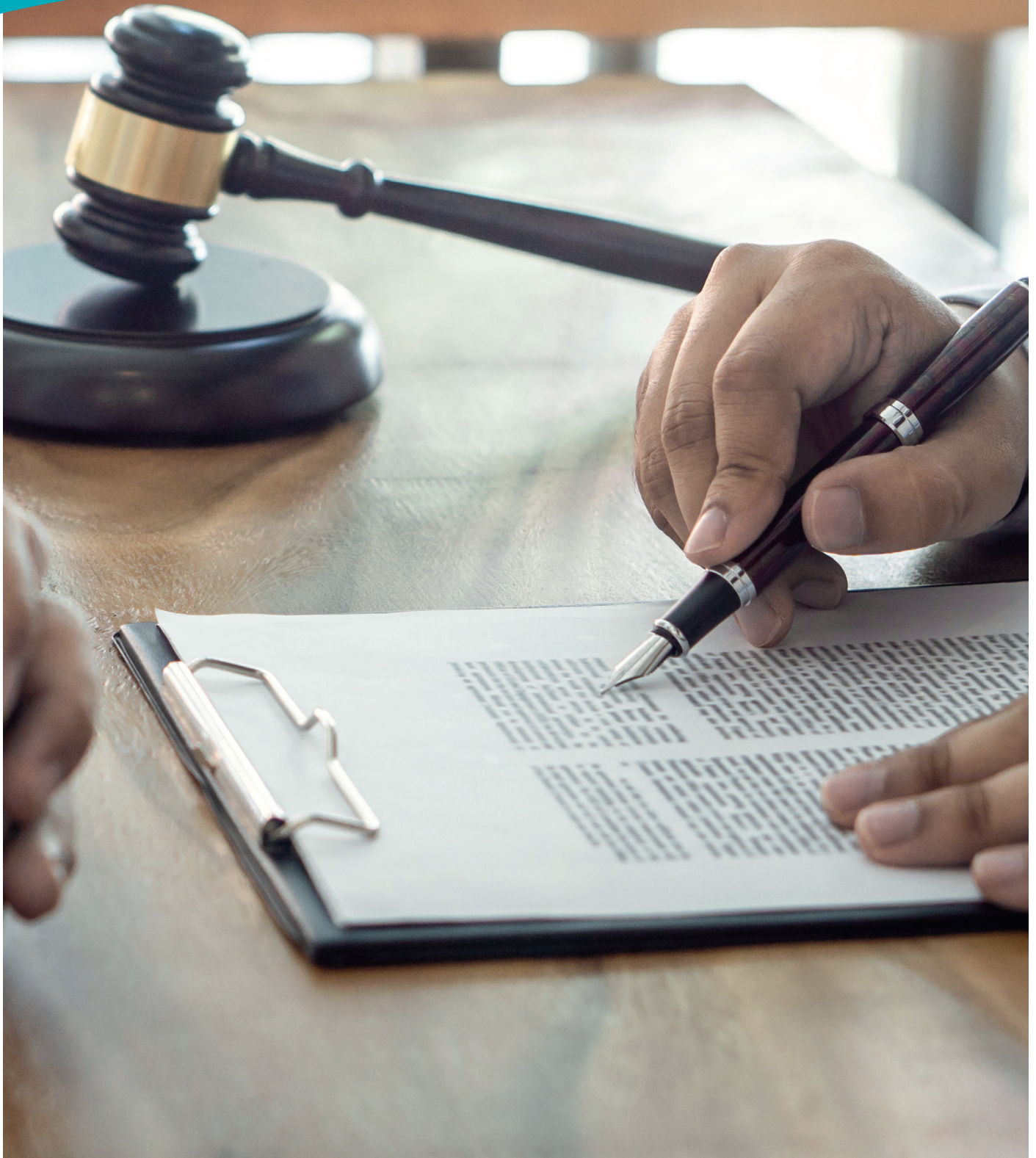
3 medium metropolitan councils
HAVE HAD A TOTAL OF
5 claims

1 large regional council
HAVE HAD A TOTAL OF
2 claims

1 medium regional council
HAS HAD
1 claim



Lessons from Nyoni vs Shire of Kellerberrin



The case of Nyoni v Shire of Kellerberrin [2017] FAF 59 provides an understanding of how the Court interprets local governments' liability in misfeasance.

In November 2018, the Federal Court of Australia found the Shire of Kellerberrin and its former CEO liable for the tort of misfeasance in public office, and ruled on damages in respect of those claims.

This finding could have implications for local government and your officers.

What is 'misfeasance in public office'?

The tort of misfeasance is a cause of action against a holder of public office on the basis they have misused or abused their power.

This can include the following elements of misfeasance:

- ▶ Knowingly in excess of powers,
- ▶ Malicious purpose, and
- ▶ Causes harm.

Conduct will be deemed malicious where it is done to cause harm. It is important to note here that even if the exercise of power would ordinarily be lawful, it will be rendered unlawful if the predominant purpose is to cause harm, which creates an element of uncertainty in the exercise of functions.

Case background

Please note – in this case, where CEO is written it refers to the then-CEO in 2010, at the time of the incident. He is no longer employed by the Shire of Kellerberrin.

The claimant, Mr Nyoni, operated a pharmacy in the Shire. The Shire's Council and administration had genuine concerns as to the level of service Mr Nyoni was providing to the community, and made a series of complaints to the Pharmaceutical Council of Western Australia (PCWA) and the Department of Health (Health Department).

During the trial, the Court accepted that it was the Shire's intention that regulatory action would be taken against Mr Nyoni.

In October 2010, the electricity supply to Mr Nyoni's pharmacy was accidentally disconnected by a local contractor. The Shire's CEO, not knowing the disconnection was accidental, reported it to Shire Councillors, the PCWA, and Health Department. The CEO was not aware of the error at the time of communication to the regulators, however did fail to notify the regulators that Mr Nyoni was not at fault once known.

As a result, the PCWA and Health Department wrote to Mr Nyoni, censuring him for failing to maintain the electricity supply to the pharmacy.

In 2011, Mr Nyoni brought proceedings against the Shire in the Federal Court on a number of grounds, seeking damages in the sum of \$65,000,000. Amongst many other allegations, Mr Nyoni asserted that the actions of the Shire's CEO in reporting the disconnection of the electricity supply constituted misfeasance in public office.

Whilst that claim was initially dismissed, that decision was overturned on appeal. Damages were ultimately awarded against the Shire in the sum of \$30,000.

Basis for the finding

As a general rule, your local government is not liable for functions exercised reasonably and in good faith.

In this case, the Court found that:

- ▶ The Shire engaged in a campaign of malicious conduct, including raising complaints with the PCWA and Health Department with the intention of those bodies to take action against Mr Nyoni.
- ▶ The complaints made by the Shire's CEO to the PCWA and Health Department formed part of that conduct and were intended to cause harm – which made the conduct malicious.

However, the Court didn't consider whether the intention to cause harm was the CEO's predominant intention or whether it was incidental, for the good of the community. The outcome of that question has serious implications for the scope of liability for public officers.

Even so, the conduct was deemed malicious because the CEO acted with the predominant (as opposed to incidental) intention to cause harm.

Who is liable?

Local governments could be liable for the conduct of staff and officers in the following circumstances:

1. Where the conduct occurs within the course of employment ('vicarious liability')
2. Where the staff member's functions and powers are such that their conduct can be said to be that of the local government ('direct liability').

“The Shire of Kellerberrin’s relationship with LGIS throughout the entire process from the initial advice through to the final verdict has been a positive, supportive and informative relationship. To have such an organisation backing up our industry and its officers is paramount to ensure local governments can enhance, protect and govern their communities.”

RAYMOND GRIFFITHS
CURRENT CEO, SHIRE OF KELLERBERRIN

Claims for misfeasance in public office rarely give rise to vicarious liability. That is because misfeasance requires the misuse of a power, thus taking it outside of the officer’s employment.

To establish the officer is acting ‘as the local government’, it is necessary that they act as the guiding mind and will of the local government when carrying out the conduct in question.

In the case at hand, the CEO was found to have been acting ‘as the Shire’ when making complaints to the PCWA and Health Department, due to genuine concern regarding the service being provided to the community. For that reason, the Shire was found to be directly liable for the CEO’s actions.

However, the Court did not explain how such a conclusion aligned with the functions and powers attributed to a local government CEO, and those reserved to Council, under the Local Government Act 1995 (WA). Therefore, we can assume that any actions by senior members of local government may be deemed to be the conduct of the government in potential claims in misfeasance.

Limitations on cover

Where a claim of misfeasance is based upon the use of power for malicious purposes, protection will be limited and/or excluded, as the LGIS Liability protection policy is not designed to cover the deliberate actions of a local government.

Liability policies generally exclude cover for intentional, deliberate, dishonest, or malicious conduct.

Your LGIS Liability Scheme provide cover for vicarious liability for employees’ malicious conduct. However, that cover does not apply to direct liability, as the malicious conduct is deemed to be the local government’s conduct, the protection can’t respond.

Considerations

The damages in this case were relatively low. Where misfeasance is proven, the Court may award:

- ▶ Compensation for losses suffered, including reputational damage incurred (‘compensatory damages’)
- ▶ A sum of damages intended to reflect disapproval of such conduct and discourage similar future conduct (‘exemplary damages’)

In this case, the Shire successfully argued that Mr Nyoni did not suffer economic loss. As a result, his damages were limited to reputational and exemplary damages.

In awarding reputational and exemplary damages, a Court must consider:

- ▶ The nature and severity of the conduct in question
- ▶ The impact that conduct has upon the claimant, taking into account their pre-existing reputation

The damages awarded to Mr Nyoni represent typical awards for a limited publication of defamatory material in WA.

How can we manage these risks?

This case may set a serious precedent in expanding the scope for liability, holding a local government liable when senior officers carry out actions that have an intended (regardless if incidental) effect of causing harm to members of the public. A senior officer merely communicating matters of concern to third parties, for that third party to take action on the concern, may expose the local government to liability. Given the potential impact across the sector, LGIS defended this matter, spending well in excess of half a million dollars, including an appeal to the High Court (which was denied).

The Federal Court’s decision left a number of points unanswered, which is unfortunate considering the decision is binding upon Federal and State courts.

Local governments are required to take actions which, for the good of the public, incidentally cause harm to certain individuals. To minimise the risk of liability, it is best to avoid the assertion - as far as possible - that the local government’s or officer’s actions are motivated by an intention to cause harm, for example, by:

1. Ensuring decisions that affect third parties are not made by persons who have a history of animosity to those third parties. This may include a decision maker recusing themselves from such matters and delegating responsibility to a more ‘impartial’ officer.
2. Clearly documenting the rationale for taking action – ensure a paper trail exists to prove the purpose for which the action was taken. 🚩

For more information on your local government’s liability risks or cover, please contact the LGIS risk and governance team or member services team on 📞 9483 8888.

Safeguarding your buildings – state-wide cladding audit

Many of you have closely followed the news of recent catastrophic events that occurred across the world – namely the fires at the Lacrosse Tower (2014), Grenfell Tower (2017), and Neo 200 (2019). These fires reinforced the need to ensure buildings are built to standard and safe from the risk of rapid fire spread. *What does this mean for local governments?*

Background

Following the Grenfell Tower fire, which engulfed the 24-storey British apartment block and caused 72 deaths and countless more injuries, the Building and Energy division of the Department of Mines, Industry Regulations and Safety (DMIRS) began a state-wide cladding audit.

The audit is currently in its final stages. It assessed 1,734 private buildings of three storeys or higher, in residential, hospital, aged care, and assembly building (2, 3, 4 and 9) classes. Of these, 52 buildings have been identified as moderate or high risk, within 17 WA local governments. DMIRS has issued reports informing owners of the risks associated with the buildings, and sent a copy of these reports to the respective local government to carry out any necessary enforcement measures.

Upon receiving the DMIRS report, your local government must:

1. Issue a notice of building order, and subsequent building order, to the owners requesting a detailed assessment be carried out by a fire engineer who will issue a detailed report indicating any remedial measures to reduce the risks of the building to an acceptable level.
2. Notify occupiers and neighbours that the building was identified as being at high or moderate risk by DMIRS.
3. Upon receiving the detailed report, your local government must issue a second notice of building order and subsequent building order, requesting owners implement the remedial measures indicated in the detailed report, and provide the local government with a certification issued by a private building surveyor stating the remedial measures were implemented, and the building is at an accepted level.

At the present moment, local governments have commenced 41 of the enforcement measures.

What are the risks?

There are several risks associated with the cladding issue:

- ▶ Breach of duty of care: local government is the permit authority and has the duty to enforce the measures indicated above upon receiving a report by DMIRS
- ▶ Certification of building/approval of the material and performance: the recent decision on the Lacrosse fire allocated 33% of the damages to the building certifier. Your local government must ensure the owners of buildings identified at risk are certified by a private building surveyor
- ▶ Breach of duty of care: the risks associated with cladding are of public knowledge, therefore your local government should assess its own buildings
- ▶ Disclosure of information/impact on properties commercial value: information concerning the outcome of the audit may affect the commercial value of properties. This information should not be disclosed to the public. Public queries concerning the outcome of the audit should be directed to DMIRS.

However, your local government must disclose information regarding the status of the property to prospective buyers/settlement agents

LGIS received the first claim from a local government, through failure to disclose information about the existence of a building order to a new purchaser. The party had specifically requested information on any building order concerning the building, but the local government failed to advise that a building order had been issued.

Record keeping

It is crucial your local government keeps a record of all the processes concerning the state-wide audit. Upon receiving a report form DMIRS, local governments should make a note in the property records that the building was identified as being at risk by the DMIRS. Your local government should also keep written record of all communication with owners and any decision making and enforcement measures.

Building surveyor insurance

Recently, insurers have stopped providing coverage for cladding-related matters, or have considerably increased insurance premiums for building surveyors. As mentioned above, buildings identified as being at moderate or high risk require private certification; the recent developments in the insurance industry may prevent buildings from being certified and complying with the requirements for a building permit. The eastern states have been facing similar issues, with NSW (and Victoria and Queensland following suit) amending the Building Professional Regulation to permit building surveyors to be accredited regardless of cladding insurance.

Your risk profile

If your local government has the resources to be a building certifier, you are permitted to certify buildings outside of your local government borders. However, doing so can increase your risk profile, as you assume all liabilities associated with certifying a building.

Check your own stock

The audit assessed a number of local government buildings. However, that does not mean that local government buildings outside of the audit are free of risk.

We recommend local governments inspect their buildings to identify the use of cladding and the associated risks. If your local government has any building with external cladding walls, please report to LGIS so we can advise on the process.

WALGA and LGIS are working together towards an alternative to prevent local governments from bearing the responsibility; however in the meantime, it is essential your local government is proactive in the above measures.

If you have any questions about your responsibilities around the audit, please contact the LGIS risk and governance team on 9483 8888.



Cyber security and the risks to your local government

Cyber and information security is not just an 'IT issue' – it's an 'entire organisation' issue. Failing to understand and mitigate cyber risk can damage your reputation, give rise to legal liabilities, breaches of privacy, increase costs, and have other adverse effects. With multiple access points open to attack, the best approach to cyber risk is to assume that your digital assets are in a constant state of attack.

Consider this... you're the official custodian of records for a local government shire of 12,000 people, and it is your job to maintain the Shire's archives. You keep a log of public record requests and have spreadsheets that track things like property deeds and building permits. You spent years digitizing all of these important documents, which include sensitive information about the local government, its employees, and its ratepayers.

On an ordinary day, disaster hits. The Shire is targeted in a cyber-attack, and now all computers, telephone systems, even mobile phones, have lost all data; and nearly all of the Shire's systems — including your rate payment system — are unusable, causing great inconveniences to your community. Approximately 16 terabytes of information is effectively locked (one terabyte is 1,024 gigabytes), hijacked by unidentified hackers who encrypted the Shire's computer systems and demanded more than AUD\$680,000 in ransom.

Even once the ransom is paid, more than 100 years' worth of municipal records – from ordinances to meeting minutes to deeds, permits and city resolutions – are still locked in cyberspace nearly a month later, and IT workers are unable to tell you when it will all be recovered.

Sounds like a nightmare, doesn't it. This actually happened in the United States recently, where Lake City in Florida fell victim to a "triple-threat Ryuk attack", which is usually spread through spearphishing emails. Weeks after Lake City's insurer paid the ransom, the phones are back on and email is once again working, but it has not been able to recover all of its files. There is a possibility that thousands of pages of documents that were painstakingly digitized will have to be manually scanned, again. Putting them years and years behind.

Unfortunately, ransomware attacks are on the rise, and they are increasingly difficult to predict and defend against. Recently, attackers have been making ransom demands of increasing values.

Even the State Government hasn't been safe – it was reported late last year that tens of millions of attempted intrusions and successful hacks have taken place against the Premier's department, Main Roads, and the finance and local government departments.

Cybersecurity experts say the growing number of attacks suggest that cyber attackers have found a ripe target: governments with weak computer protections and strong insurance policies.

What can you do?

While safeguarding against these attacks is becoming increasingly difficult due to new methods of attacks constantly evolving, it is essential to know your risks and potential exposures.

Conducting a risk assessment to determine your exposures is an important first step. The identification, assessment, management, reporting, and monitoring of cyber risks should not be treated differently to any other risks. To proactively understand and manage your cyber risk exposure the following approach is recommended:

- ▶ Include cyber risk in your risk profiling and reporting tools
- ▶ Ensure appropriate and tested information technology and systems controls
- ▶ Consider your workforce and human vulnerabilities
- ▶ Identify and appropriately manage data and information that has value to you or others, or could result in a breach of privacy obligations
- ▶ Develop a plan to respond to a cyber breach (this may form part of your business continuity plan)
- ▶ Consider cyber liability insurance

Earlier this year, the Office of the Australian Information Commissioner (OAIC) advised that two-thirds of breaches are the result of malicious or criminal attacks, and one-third can be attributed to human error.

Training employees is a great way to protect against human error data breaches, such as reporting suspicious communications (whether by email or phone), and avoiding malicious phishing emails, the most common means of attack, in which hackers send an innocent-looking email with an attachment or link that spreads the malicious code.

What cover is available?

In WA, 90% of LGIS members have chosen cyber liability cover. This policy responds to first party and third party losses following cyber events.

First party losses are those that you, the insured, suffer – such as data restoration costs, ransomware costs, reputational PR expenses, credit monitoring, and IT investigations. Third party losses are those suffered by other parties outside of the local government who may be negatively impacted by a breach of your system. In this way, the policy works as a defence for the local government.

Do our contractors need to have cyber insurance?

Whenever we look at whether contractors need insurance of any kind, it is to make sure that in the instance you suffer a loss through their actions and need to make a claim against them; you know they have the financial capacity to compensate you.

What should you consider when looking at contractor insurance?

- ▶ Is their liability for such risks already protected by other insurance (for example professional indemnity insurance)?
- ▶ What is the service being provided? (Does it involve data? Is that data sensitive? What loss could you incur if something went wrong?)
- ▶ Does the contractor have financial security to compensate you if anything does go wrong?
- ▶ Collateral damage – could that contractor be a target for a hacker? Could you suffer a loss as a result?

It is important to note that such template insurance provisions within contracts should only be considered as guidance to drafters in respect to which insurances should be requested from contractors. Every contract should be individually considered.

For more information on your cyber liability insurance, or assistance with your risk mitigation strategy, contact the LGIS member services or risk and governance teams on ☎ 9483 8888. 📧

ASK AN EXPERT

Each month we take your questions to one of our LGIS team members to answer. If you want to submit a question for next issue, email us olivia.lawley@lgiswa.com.au



PETER HOARE, LGIS CHIEF OPERATING OFFICER

Peter has been a key player in the establishment and evolution of LGIS as the WA local government sector's own solution for financing and managing risk; the past 11 years as LGIS Chief Operations Officer.

In this role, Peter works closely with the LGIS CEO and Board in the development of business strategy to maximise member benefit, and ensuring the right people and resources are in place to ensure that LGIS delivers.

Q: How are LGIS Scheme reserves calculated, and how are the member returns/surplus distribution calculated?

The true value of your protection is only realised in times of adversity, and we've helped our members after significant losses.

The reductions in contributions enjoyed in recent times are not a one year special. In the instance of a good year claims wise, where there is a little extra in the kitty, the LGIS Board can elect to distribute some of this surplus back to members. This becomes the surplus distribution.

The Scheme must also maintain reserves to provide for unexpected events – we call this the reserve.

Both the reserve and surplus distribution figures are arrived at through specific calculations.

LGIS Scheme reserves

Like any organisation, the Scheme needs to ensure it is able to pay its debts as they arise, and have adequate provision for contingencies.

Firstly, the Scheme (being a risk financing operation) has to set reserves aside for the estimated cost of claims. Quantifying this is a complex process involving claims management experts and actuarial analysts – the Scheme's actuaries are PricewaterhouseCoopers. The estimation process is also peer reviewed by our external auditor, Ernst & Young.

To decide the amount the Scheme needs to retain in reserves, the LGIS Board follows the Australian Prudential Regulation Authority (APRA) Capital Adequacy standard that applies to commercial insurers.

That standard is applied to calculate a Minimum Capital Requirement (MCR), which primarily looks at:

- ▶ Insurance risk and insurance concentration risk (outstanding claims)
- ▶ Asset risk and asset concentration risk (cash and investments)
- ▶ Operational risk

Because the MCR is, as the name suggests, a minimum that needs to be retained, a policy decision needs to be made on a 'prudential margin' to be applied, so that an appropriate amount over the MCR is retained to adequately provide for contingencies.

The policy adopted by the Board is to retain reserves equating to 150% x the MCR.

When, as in recent years, the Scheme has a good year, a distribution back to all member local governments is made which reduces the Scheme reserves back close to the adopted target.

How has my share of the LGIS Scheme surplus distribution been worked out?

LGIS has a formula aimed at factoring in each member's proportional contribution to the amassed wealth in the Scheme's balance sheet, while staying true to the "risk sharing and financing" nature of the group self-insurance scheme. It is designed to ensure that all Scheme members get a member dividend, without "over-rewarding" those who have had a good run or "over-penalising" members who have been hit by one or two expensive claims.

Firstly, it groups the members into 'country members' and 'metro members' categories.

From there, it draws on each member council's proportionate annual contributions (premiums) to the LGIS Liability, Property, WorkCare and Bushfire Volunteers funds and deducts their claims amount (paid + case estimates on open claims) for the same four-year period, to arrive at a 'net payments' figure.

The reason a four-year timeframe (to June 30 preceding) is taken is to smooth out the impact of extraordinary claims and to bring reward and incentivise for sustained good claims-to-contributions performance over an extended period.

To avoid skewing of the figures:

- ▶ The four largest metropolitan councils are excluded from the "metro members" grouping, to avoid their large numbers "swamping" the assessments for the other metro councils.
- ▶ Councils with a bad claims record* are put on a 'minimum dividend' which equates to half of the average bonus payment (pro rata to contributions).

** The threshold for a council being put in the 'minimum dividend' capacity is where their net payments as % of their member contributions falls below the 50th percentile for all Scheme members.*

The 2019 member returns are currently being calculated, and your LGIS Account Chair and Account Manager will visit you in the coming months to discuss your distribution. In the meantime please reach out to the member services team or myself with any questions on 9483 8888. 📞

The formula

(example for metropolitan "City of ABC"):

Contributions – Claims Incurred of
all metro Councils

÷

Contributions – Claims Incurred of
all Scheme Members

X

City of ABC Contributions paid to
the Scheme

÷

Contributions of all metro Councils

X

Surplus amount for distribution

ASK AN EXPERT



LAUREN WOJAS, INJURY MANAGEMENT CONSULTANT

Lauren's role is to provide support and education to members to manage work related injuries and facilitate recovery and return to work. Lauren is an accredited exercise physiologist and has over 6 years' experience in the workers' compensation setting. Lauren delivers training on Injury Management for Supervisors and Managers, working through legislation and return to work processes, with practical application to encourage employers to take a more active role in managing workers' compensation claims.

Q. We hear a lot about the value the human risk programs offer members. Is there any tangible relationship between the program and claims, and what is the evidence of this 'benefit'?

At its core, risk management is the foundation of successful corporate governance and ensuring safe workplaces and communities. When you manage risks successfully, you are creating the best opportunity to limit the number of claims and the cost of those claims.

If we look at the injury management (IM) program, there is a clear correlation between this program and the benefits to members. Over the past few years, the model of service delivery within the IM program has become more proactive.

Program overview

The team focusses on encouraging and advising on evidenced based injury management practices and early return to work, and providing support and upskilling through mentoring and training programs.

Key facets of your injury management program include:

Early intervention support

The IM team work from an early intervention model across the board with all claims. We screen all new claims and certificates of capacity for any issues, and initiate communication with members to provide guidance and advice. This could include becoming actively involved in managing the claim by attending GP case conferences, or documenting return to work programs. We use this opportunity to upskill members to respond to issues and build capacity to perform injury management at ground level from the commencement of the claim.

GP Education and relationship building

The IM team provide support to members to communicate and engage with medical practitioners who, while a key stakeholder in the return to work process, can also pose a significant barrier in achieving timely return to work. This support is provided on a case by case basis or when trends emerge in order to reduce time off work or progress the case.

In 2018/2019, the IM team attended over 65 case conference appointments. This helps us achieve better outcomes through demonstrating the willingness of our members to engage as a key party, offering suitable duties, working through barriers, and clarifying rehabilitation goals and return to work timeframes.

Projects

The team frequently meet to review trends and develop continuous improvement projects to enhance the services we provide our members, and ultimately improve return to work outcomes. One such project is the Workplace Rehabilitation Providers (WRP) Project.

WRPs are a key stakeholder in the workers' compensation process, assisting in addressing barriers that may be preventing an injured worker with returning to work.

To assist with the management of WRP, in August 2018 the IM team implemented a Service Level Agreement (SLA) which has been signed by 11 Approved Rehabilitation Providers. The SLA aligns with the WorkCover WA service standards, but also includes recommendations for timeframes and costs for specific services.

Consequently we have observed a significant improvement in the quality of service provision to our members, with improved communication, reduced timeframes, and reduced rehabilitation file costs to achieve positive outcomes. Consequently, the number of files being referred to the WRP has halved within the last 12 months, from 137 to 60 claims, which is a reduction from 13.6% to 7.6% of claims.

Management of complex claims

The IM team are involved in all long duration, high cost claims where strategic return to work assistance is required. We work closely with LGIS claims consultants and our members to formulate a strategy, and assist by working with the injured worker, rehabilitation provider and treating team to achieve positive and timely return to work outcomes where possible. The flow chart across the page highlights a recent claim process, where the LGIS injury management, human resources risk management, and workers' compensation claim teams worked together to the benefit of the worker and the member local government.

For more information on how the injury management team – or wider WorkCare Services team – can assist you, please contact Renee Wockner, LGIS WorkCare Services Manager, on 9483 8826.

Show me the numbers

Across the WorkCare Scheme the number of claims is decreasing, with current claim numbers for 2018/19 financial year sitting at 892. This is a reduction from the previous four financial years, which each had 1000 - 1100 claims per year.

The current average claim cost for 2018/2019 is \$14,861, which is the lowest in five years, and at the time of printing, the average claim duration of 17 days is the lowest in over 20 years by almost 50%.

These positive results can be attributed to the proactive and collaborative services and support provided across the LGIS WorkCare team including injury prevention, human resources risk management, injury management, and the occupational safety and health team.

\$13,193

LOWEST AVERAGE CLAIM COST IN 10 YEARS



Across the Scheme the number of claims is decreasing:

785

current claims as at May 2019.

Average claim duration



17 days

Working together for the best claims outcomes

- Lower back injury sustained from a fall at work on 11 November 2017.
- First medical certificate received 13 November 2017.
- 2B Claim form signed by the worker and local government on 22 November 2017.
- Claim received by LGIS on 28 November 2017.
- Claim accepted and processed by senior claims consultant on 4 December 2017.
- Injury management consultant made initial contact with the worker and local government on 7 December 2017. Information was provided during these conversations regarding the requirements of the return to work program. Worker raised issues at this point about feeling under pressure to get back to full duties.
- Injury management consultant raised the issues of workplace pressures with the senior claims consultant to keep all parties updated as the worker had noted these concerns in the initial conversations.

Initial Management

- LGIS HR Risk Consultant advised that an HR Needs Analysis would be appropriate.
- HR Consultant conducted week long interview process at the local government as part of the HR Needs Analysis.
- Injury management consultant and senior claims consultant advised LGIS HR consultant of internal issues that would benefit from HR services.
- Injury management consultant travelled to the Shire to conduct injury management training for supervisors/managers and attend a case conference review with the treating doctor and the injured worker.
- Injury management consultant met with the treating physiotherapist to review claim progress and recovery timeframes. Injury management consultant continued to provide ongoing support via phone and email as the local physio had limited workers' compensation experience.
- Senior claims consultant continued to provide ongoing management to the local government HR manager in terms of claims strategy and reimbursements.
- Senior claims consultant arranged for an IME to occur to provide further recommendations for the claim as progress had become stagnant. The report was then distributed to the treating doctor for reference.
- Injury management consultant, senior claims consultant and the new HR manager at the local government conducted several teleconferences throughout the duration of the claim to provide direction.

Ongoing Management

- Injury management consultant and senior claims consultant and local government HR manager discussed option of permanent restrictions to progress to claim closure. HR manager agreed to this option.
- On 18 October 2018 the injury management consultant conducted teleconference with the worker and GP to seek a final certificate with permission to work. The worker received a final certificate with ongoing restrictions accommodated in their role as Team Leader.
- LGIS HR Risk Consultant is continuing to roll out interventions to address internal barriers and provide support as required.
- Senior claims consultant proceeded with finalising claim.

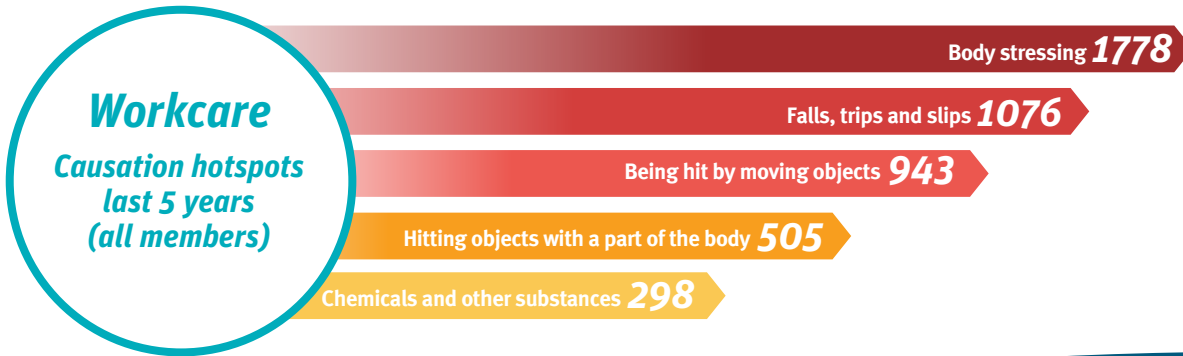
Result

Looking back to move forward

Claims management is a core in-house function for LGIS. Over the 2018/19 year, we handled 2,473 claims across the property, liability, WorkCare and bushfire volunteer personal accident portfolios. Each claim is handled by your dedicated specialist claims consultant who manages the process from beginning to end.

Claims hotspots

Over the past five years we've seen some consistent trends in claims from our local government members.

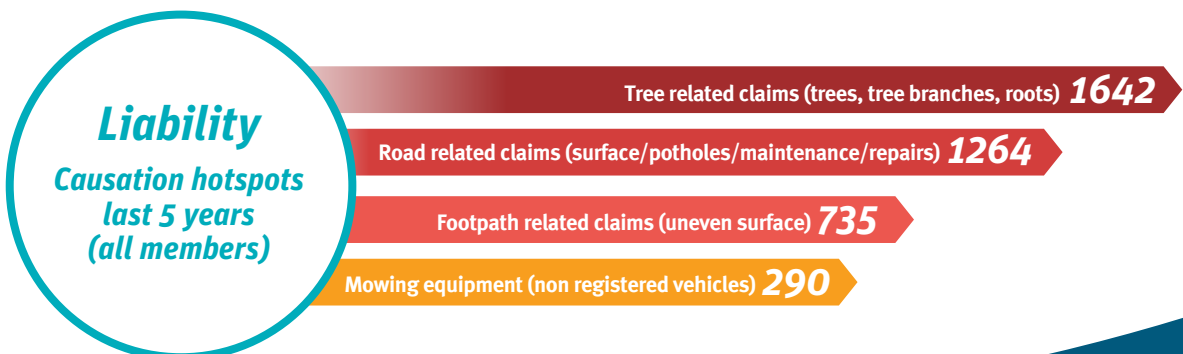


Although not in the top five claims areas mental stress isn't far behind. Claims costs for mental stress are increasing, making it an area to watch for the WA local government sector.

Proactive on workers' compensation

Looking for ways to reduce the number of workers' compensation claims for your local government? Claims analysis highlights four key areas which need focus across LGIS members:

- ▶ **Fit for purpose.** Employ people who are right for the role, ensure that employees are physically capable of fulfilling the responsibilities of the job.
- ▶ **HR Process.** Review your HR practices and make sure that managers are trained and supported.
- ▶ **Aging workforce.** Over 50% of claims are from the 40-60 age group of local government workers. Review tasks and physical requirements; make sure the individual is able to work within their capacity.
- ▶ **Manual handling and job dictionaries.** Job dictionaries document the physical requirements of a role; coupled with manual handling training and guidelines they help to match an individual to a role and work within their capacity to reduce injury.





Trees

Trees continue to be the number one cause of claims, with claims growing due to increased urban density/changing climate (more stress) and maintenance regimes. Root claims have also grown due to planting of inappropriate trees, inadequate action following a complaint and inadequate controls pre-planting.



Footpath

Claims are predominantly uneven footpath, trip and falls, loose sections of kerb and path, corroded steps causing injuries. Issues are due to tree roots, wear and tear, and utility damage eg Telstra vehicle damage to pit lid.



Roadworks

Claims are predominantly from pothole damage, roadworks, grading works, vibration, faulty drain grates and flooding due to drainage blocks.



Mowing equipment

Rocks and projectiles fly up from ground damaging property, vehicle etc. Liability is due to various reasons, lack of signage, works crew sighted in area, mowers are not registered so motor vehicle policy does not apply.

Proactive on liability

Looking for ways to reduce local government's liability exposure? Claims analysis highlights four key areas which need focus across LGIS members:

- ▶ **Trees** – Review lists of recommended trees for verges and public places selecting breeds with non-invasive roots. Review complaint handling process to make sure appropriate action is taken.
- ▶ **Footpath** – Audit/review and action to footpaths and areas which attract large amount of footfall to be repaired or section of area replaced. Lack of lighting is also an issue and planning around this is paramount.
- ▶ **Roadworks** – Make sure that pre and post inspections are carried out and documented ensuring that there is evidence that the inspection has occurred. Also make sure that correct signage is used.
- ▶ **Mowing equipment** – Make sure signage is clear and the area is free of pedestrians.

Property

Causation hotspots
last 5 years
(all members)

Burglary/theft **660**

Malicious damage **622**

Storm and tempest **473**



Burglary/theft

Once again areas targeted predominantly include libraries, recreational areas, increase in copper pipes/cables thefts and equipment.



Malicious damage

Parks, reserves, club rooms, ovals, recreation centres attract low socio economic behaviours. This is a substantial cost which also includes graffiti damage, minor equipment damage but can also result in significant fire losses



Storm/weather

Weather related events continue to drive costly losses with a higher frequency of storm and hail. Worldwide, there is growing acknowledgment of the impact of what is referred to as "secondary perils" (storm, hail and bushfire) that increase in frequency and severity. There is no doubt that a changing climate is making an impact. ▶

Simple steps on property protection

- ▶ Investigate the benefits of passive controls such as CCTV, vegetation management, lighting which would increase the risk of an offender being sighted.
- ▶ Improved housekeeping within and around buildings and ensure preventative maintenance is completed on schedule – simple things such as ensuring bins are secured/ gutter are regularly cleaned, no dense foliage encroaching on property.
- ▶ Ensure contractors are appropriately managed and apply your local governments hot works arrangements.
- ▶ Consider the value of using window treatments such as plastic microfilm to reinforce glass.

If you have any enquiries about your claims performance or trends, please call Carrisa Chung, LGIS Portfolio Manager for WorkCare and Bushfire on 9483 8861, or Lydia Schifferli, LGIS Manager, Public Sector Claims, for Property and Liability, on 9483 8849.

Where we've been

Risk & Governance Day

The Avon Risk and Governance Day was held in Northam on 3 September.

It was an informative day, with topics including:

- ▶ Pre-employment medicals – pros and cons
- ▶ Project risk management
- ▶ Strategic risk management
- ▶ Managing emergency service volunteers
- ▶ Playgrounds – what's the liability?
- ▶ Safe Work Method Statements
- ▶ Regional Risk Coordinator Program. ▶





Intermunicipal Golf Tournament - Kalgoorlie

The City of Kalgoorlie-Boulder hosted the 2019 LGISWA Inter Municipal Golf

Tournament on 13 September. It was a great event, filled with camaraderie and friendly competition. 🏌️



Upcoming events

Great Southern Risk Forum

Date: 5-6 December

Location: City of Albany

Presentations across a wide range of risk areas by LGIS local government experts and hands on workshops.

Local Government Professionals Annual State Conference

– 6-8 November. Make sure you stop by the LGIS stall to try your hand at our Grip Challenge!



lgiswa.com.au