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RISK MATTERS



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on topical risk management
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CEO's Message



JONATHAN SETH

CEO LGIS WA

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Scheme shines in an eventful 2018/19

Now that the 2018/19 financial year has
come to a close, it's always useful to
reflect on what has been an eventful but
ultimately successful year for your Scheme.

We've been very pleased to welcome back
the Shire of Wiluna, City of Kalamunda and
Shire of Coolgardie, and retain the City of
Bayswater following a competitive tender
process. Their membership 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 protection, expert risk services,
and claims management for WA local
governments.

Thank you for your ongoing support
and loyalty.

Cover for bushfire volunteers

The comprehensive bushfire volunteer
personal injury cover provided by the
Scheme is unmatched. It's a complex area
and the evidence of returned members
has again demonstrated that there
is no other provider fully across local
government legislative requirements for
bushfire protection. Recent experience
has shown that WA commercial insurers
have no appetite to provide individual local
governments with the full cover necessary
- moving liability back onto the local
government, and critically limiting cover
for volunteers.

In 2018/19 the risk and financial liability
of bushfire volunteer protection for local
governments increased, following a Supreme
Court ruling (*City of Albany v State of Western
Australia*) and changes to the Workers'
Compensation & Injury Management Act
(WA) 1981, which moved the goal posts.

The Supreme Court decision means that
local governments, and the Scheme, have a
greater financial responsibility in the tragic
event of a bushfire volunteer's death. This
decision had a significant impact and LGIS
have needed to use all the weight of the
entire local government sector to negotiate
appropriate catastrophic cover from
reluctant reinsurers.

It is only because of LGIS' relationship
with reinsurers and our proven ability
in claims and risk management that has
allowed the Scheme to secure cover which
continues to protect WA local government
bushfire volunteers.

This result is a testament to the ability of
LGIS and your local government self-
insurance Scheme to secure cover in an
extremely tight and reluctant market.


This edition

We look at many different topics in this
edition of Risk Matters, from the potential
liability of your roads, to the role of
rangers within your local government and
mitigating the risks involved in their day to
day activities. We also have a snapshot of
the current insurance/reinsurance market,
and how this affects your Scheme; a look
at the Parkerville bushfire case; and the
importance of snake awareness training as
we head into the warmer months.

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

*Correction: In Autumn's edition, 'Stepping into safety – preparing
for great results', the Shire of Murray achieved a score of 86% when
assessed in 2018, not 80% as printed.*



Summertime - sun, heat, and... snakes? A large number of reported contacts with snakes in the Great Southern this past summer prompted a need for support in the risk education and safety awareness of snakes for local government workers.

Snake care of our slithery friends - build awareness on your worksites

LGIS has engaged local business Fauna for the Future to facilitate workshops to local government staff, educating through demonstrations (with non-venomous friends), information packs, and advice specific to situations often found in local government depots and work areas.

Did you know?

There are approximately 3000 snakebites each year in Australia, with 500 requiring hospital admission. Your LGIS workers' compensation Scheme has received seven claims relating to snakebites in the past three years.

There are various risks to be aware of when in the vicinity of a snake, which should be taught by trained professionals. During the workshop with Fauna for the Future, you will learn about these risks, including:

Understanding where a snake has gone

When you see a snake, it is very important to be able to track it. The reason, of course, is that by knowing the snake's whereabouts, you are most able to keep your colleagues safe.

When looking for the snake, it will almost always leave a track – but are you able to spot the track of a retreating snake? Snake tracks on sand look remarkably different to those on tiled, painted, or smooth surfaces. Remember, you should not attempt to track a snake unless you have been trained.

Searching for hidden danger

Snakes are natural hidiers who often ambush their prey. When clearing clutter from work spaces and yards, you may encounter snakes amongst the objects.

It is essential to approach this situation correctly, to protect yourself and your colleagues – do not assume noise will send the snake away; often it will drive the snake to stay hidden.

In the workshop

Snakes will always find the smallest spots to hide. Pressure against their body makes them feel comfortable, and they will often enter an area and curl up with their tail visible but their head hidden and waiting.

The side of the road

When clearing rubbish from the roadside, you must always conduct a risk assessment before commencing any work.

Entering an area

Snakes need water to survive, so you could come across a snake in your worksites, air conditioners, and water coolers, to name a few. Did you know there are ways to prevent this?

So far, 11 members – comprising of 185 workers – have participated in the workshop, with a resounding response.

For most of my staff, this was their first chance to see a snake up close in a controlled environment. We will certainly be implementing the knowledge gained, particularly during an upcoming park clean up where years of stacking paving bricks, subsoil pipes, drainage pipes, and other items has made an ideal haven for snakes.

The workshop was well presented, contained relevant information, and was of a good duration.

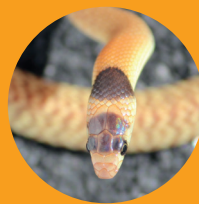
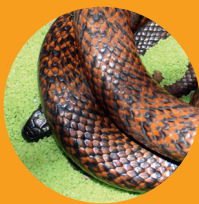
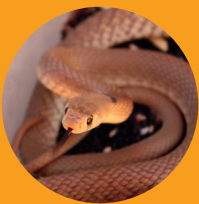
David Lynch
Manager Works and Services
Shire of Plantagenet



Can you tell the difference?

It is also a great aid to be able to recognise different snake species. Only one of these snakes is venomous – but do you know which one?

Knowing how to act when snakes are present could prevent you or a colleague from being injured, or even be the difference between life and death.



Not even two weeks after doing the Snake Awareness Course, I couldn't believe it – I came across a juvenile snake in our house. From pictures and memory, I believe it could have been a guardar or dugite.

I'm not going to lie... after seeing the snake on the lounge room floor near our cat, I panicked, shouted at the cat to leave it alone and bolted down the hallway! (Just to clarify, this was the opposite of what I learnt from the course).

Then I stopped, remembered Darren say, "Always be aware of where the snake is." I slowly went back, looked at my surroundings to see how I could keep the snake in one spot. Luckily there was a box nearby, I dropped it on top of the snake and threw the cat outside.

Although I may have panicked at first, after taking a deep breath and thinking back to the training, I felt quite confident in the next steps to follow. I highly recommend this course to everyone!

Debs Williams, Administration Officer
Shire of Kent

Now is the time to book these workshops for your local government workers, ahead of the busy summer period. For more information, please contact your regional risk coordinator or Ben Galvin, LGIS Risk and Governance Services Manager, on 9483 8888.

Local government function in focus: rangers



How often do we hear the phrase, “every day brings something different” from a worker who loves their job? Rangers are certainly amongst those who embody a broad range of skills to manage a wide variety of responsibilities in their daily roles.

Rangers are at the forefront of providing services to our communities. Not only do they liaise with ratepayers – often diffusing tense situations or becoming a friendly face to offer assistance or a neighbourly chat, they also maintain our parklands and green spaces, and attend to lost pets or injured wildlife. However with these varied roles come risks – of both the physical and mental kind.

Risks within daily duties

Rangers work in alignment with many local laws, regulations, and acts of Parliament. These laws provide guides when they need to assess individual situations that pop up in their day to day duties.

In fulfilling their animal control and management duties, local government rangers work within the *Dog Act WA (1976)*. While the majority of dogs are friendly neighbourhood pets, there is always the risk of dealing with aggressive or dangerous dogs during a call out. This Act provides the legislation for how to appropriately deal with dogs and their owners. Minor offences may incur an infringement notice, while more serious offences could result in court summons. Not only do rangers meet with every day pets like cats and dogs in their daily activities, they also carry out the control and rescue of many different animals, including cattle, horses, sheep, goats, pigs, kangaroos, rabbits, poultry, birds,

and reptiles. In instances like the movement of animals, it is imperative rangers do not attempt to lift animals and that the appropriate equipment is used.

Due to the unpredictability of animal behaviour, each situation needs to be individually assessed, and it’s important to note that rangers should have the training and discretion to step away from a situation should they have concerns for their safety, that of the animal, or the public.

Under the *Bush Fires Act (1954)*, rangers can be fire control officers and in outer metropolitan and rural area they are usually the first to respond to bush fires. These duties include conducting yearly fire break inspections, fire suppression, providing public education, and advice on fire prevention and bushfire safety awareness. Fire breaks and protection measures are essential to the prevention of fires spreading, and allow safer access for fire fighters and vehicles.

Litter and illegal rubbish dumping are enforced via the *Litter Act (1979)*. The cost for local governments to remove dumped items impacts the community greatly, and offenders may incur fines or summons to court.

Local governments in WA have individual local laws relating to parking, imposed to regulate vehicle parking and assist in potential pedestrian conflict. Typical offences that impact the community include parking on or over footpaths (particularly outside schools), unregistered vehicles on nature strips, parking contrary to signs, or at bus stops, to name a few. There has been an increase in the reports of rangers being faced with aggressive members of the public when simply allocating a ticket against an offence.

Physical risks

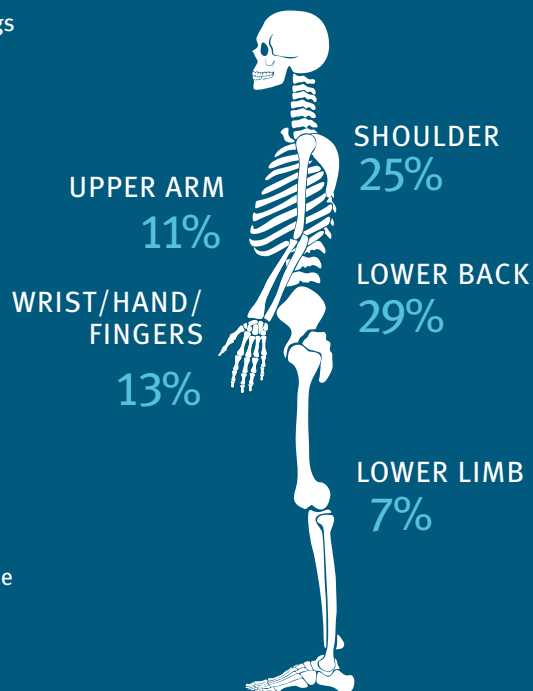
The varied duties within the role rangers perform for local government have many physical risks associated, such as bending and lifting, as well as possible injuries from animals.

Snapshot of duties

Rangers often fulfil a variety of duties every day for the community, including:

- ▶ Patrolling bush lands, parks, reserves, beaches, and local government owned buildings
- ▶ Enforcing off-road vehicle laws
- ▶ Preventing littering and rubbish dumping
- ▶ Animal control and management
- ▶ Managing fire hazards
- ▶ Assisting in the management of events
- ▶ Patrolling streets, footpaths and verges for obstructions
- ▶ Reporting graffiti
- ▶ Reporting suspicious activity
- ▶ Control of street traders
- ▶ Control of buskers
- ▶ Abandoned vehicles
- ▶ Unauthorised signs in public areas
- ▶ Working with police and other agencies to report anti-social or criminal behaviour
- ▶ Dealing with emergency situations (providing traffic and pedestrian management in the event of building collapses, major fires, major traffic accidents, storm damage, bomb threats or other emergency situations)
- ▶ In rural or remote areas, rangers also work with Indigenous communities to assist with animal health and education programs

Based on LGIS claims data, common injury locations for rangers include:



About 'manual task' workshops

Manual tasks are physical work activities that can be defined as any activity requiring a person to use part of their musculoskeletal system in performing their work. If performed incorrectly, manual tasks can be hazardous.

Prevention strategies are a key component in reducing the risk of injury, and LGIS offers specific manual task workshops to provide practical techniques for ranger-based tasks, as well as practical injury prevention strategies.

Rangers in rural or remote areas have hundreds of kilometres to travel while answering calls for assistance and many have small teams. Rangers are one of the many local government occupations that involve driving for prolonged periods of time, and these roles are known to have a high risk of developing lower back pain, as well as experiencing neck and shoulder issues.

This not only causes mental and physical discomfort, but it can also cost in workers' compensation claims and lost work time.

There are two key approaches to preventing this kind of injury:

- ▶ Maintain movement - blood flow maintains healthy muscle function, so aim for five minutes of movement every hour of driving
- ▶ Ensure correct ergonomics in the driver's seat

The LGIS injury prevention team can assist in providing knowledge on ergonomic principles for workers who drive a lot. The workshop provides workers with information to confidently and appropriately adjust their car seat as well as an awareness of in-cab stretches and the importance of taking breaks.

It is essential that rangers have the ability to assess potential hazards and put adequate controls in place.

Social risks

Consider this... you've been alerted to a car parked on the verge outside a school. When you approach the car, its owner appears and is extremely disgruntled – and becomes increasingly aggressive when you explain the restrictions and infringement notice.

Rangers are often faced with a large variety of complex situations to manage, and are often very adept at conflict resolution and de-escalation. Unfortunately in recent years, there has been an increase in aggressive behaviour to rangers from the public.

With reports of verbal abuse occurring up to four times per week, in 2017 the Town of Claremont was one of the first local governments to implement the use of body worn cameras. Not only do the cameras record and store information and monitor customer service performance, they provide an additional level of safety.

Last year, details of dozens of assaults against WA local government workers were released in the media, including some in which rangers were spat on, punched, and thrown to the ground. In one incident a pole was thrown at a ranger. Verbal abuse of rangers, particularly parking officers, is also widespread.

Wherever possible, of course, resolution should be attempted by discussion, negotiation, and public education.

Rangers are often faced with a large variety of complex situations to manage, and are very adept at conflict resolution and de-escalation.



Rangers wear many hats – pet wrangler, parking inspector, wildlife whisperer, neighbourhood watcher, or fire control officer – to name but a few!

‘At the coalface’ workshops

It is often said that customer service workers are at the coalface. These LGIS workshops enable workers to develop communication and self-management skills, and apply these to address workplace issues associated with public contact roles. These workshops are tailored to the specific area of work, and for rangers can include the following self-management tips:

- ▶ Communication basics
- ▶ Awareness of both verbal and non-verbal techniques when communicating with others
- ▶ Identifying and managing behaviour of a variety of patrons, including those with poor behaviour and mental health issues
- ▶ Communicating with aggressive and difficult patrons, including tips to defuse both verbal and physical altercations
- ▶ Utilising your emotional intelligence and mental skills when dealing with high emotions
- ▶ Safety and security in your workplace
- ▶ ‘Sharpening the saw’ – looking after yourself

If an incident does occur, once any injuries are responded to, it is essential to ensure the site is safe and secure to prevent further incidents or injuries from the same risk. It is important to do so while preserving the scene to assist investigation and prevention activities. Internal and external reporting must also be carried out, including your local occupational safety and health (OSH) authority, workers’ compensation authority, and the appropriate people within your local government. 🚩



To find out more about how LGIS can support your rangers, contact Renee Wockner, Manager – WorkCare Services, on 9483 8826 or Ben Galvin, LGIS Risk and Governance Services Manager, on 9483 8888.

Don't get lost down the winding road of liability

Along with the many responsibilities your local government carries, as a road authority you are responsible for your local road network and its associated infrastructure, including drainage and footpaths.

With this comes a duty of care to your community and road users over the maintenance and safety of these assets, and the need to mitigate the risk of incidents.

Background of liability of local governments in WA

By way of background around the liability of local governments, up until the turn of last century there was a view that there were problems with the law of negligence, stemming from perceptions that:

- (a) The law of negligence – as it applied in the courts – was unclear and unpredictable
- (b) It was too easy for a claimant to establish liability and successfully sue defendants (especially in personal injury claims)
- (c) Damages awarded were very high (especially in personal injury claims)
- (d) Premiums – especially in areas like liability – were rapidly increasing, and the insurance industry was feeling the pinch (for example the collapse of HIH Insurance)
- (e) The high water mark in the expansion of civil liability for negligence came when the High Court handed down its decision in **Nagle v Rottneest Island Authority**. The High Court found the authority liable for failing to erect a sign warning bathers of the dangers of diving into water from rocks

Following the *Review of the Law of Negligence (2002)* by the Panel of Eminent Persons (Ipp Panel), the *Civil Liability Act WA 2002* (the Act) was created. Section 5B of the Act stipulates the general principles of duty of care. They are:

- ▶ The risk was foreseeable
- ▶ The risk was not insignificant
- ▶ A reasonable local government in that position would have taken reasonable precautions

To determine what 'reasonable precautions' are, you need to ask yourself these questions:

1. The **probability** that the harm would occur if care is not taken
2. The **likely seriousness** of the harm
3. The **burden of taking precautions** to avoid the risk of harm
4. The **social utility** of the activity that creates the risk of harm

Under Common Law and the Act, the claimant must prove the local government failed to exercise its duty of care.

Footpaths

LGIS manages a high volume of claims concerning footpaths involving injuries or damage to property.

The majority of these claims are a result of:

- ▶ Imperfection or unevenness, commonly caused by tree roots or vehicle damage
- ▶ Damaged pavements
- ▶ Utility infrastructure – e.g. Telstra pits lids/grates broken
- ▶ Gutter/grate covers broken or not in existence
- ▶ Poor lighting
- ▶ Makeshift paths

In order for LGIS Liability to respond to a claim, and pay compensation to a claimant for their loss, a claimant needs to establish that the local government is legally liable for the claimant's loss.

Consider this... a member of your community trips over a paver which has cracked and

is now raised and at odd angles due to tree roots. They fall and injure themselves, bringing forward a claim against your local government. Looking at records, it is noted that this paver has been complained about twice in the past, however repairs have not been made yet, and no warning of the hazard has been placed at the site.

Local governments have a duty to take reasonable care to keep footpaths safe for ordinary use and therefore avoid injury to pedestrians using the footpaths.

However, it is not necessarily expected that the surface of a footpath will be smooth and free from hazards, and a pedestrian taking care for their own safety will be able to protect themselves (avoid the area) from any hazards.

Your local government has a duty to repair any known defects, prioritised based on the risks presented. If you are unable to rectify the defect then you must at least alert pedestrians to the defect.

It is very important to document/photograph (time and date stamped) the inspections, identified hazards, and the repairs or temporary safe measures.

Potholes

There is also a high volume of claims involving property damage to vehicles (or other damages) due to incidents involving potholes. Most claims typically involve damage to tyres and rims, as the potholes were not immediately seen. Claim reports increase substantially after wet weather and where roads have deteriorated.



Civil Liability Act 2002 (WA) – s5Z special protection

Local governments can rely on the special protection for local governments pursuant to s5Z of the Act. This section operates when a road authority has failed to carry out road works (e.g. repairs to roads including potholes) but did not have actual knowledge of the particular risk or hazard that caused the harm.

Essentially, if a local government did not have any knowledge of the pothole, then it cannot be liable from any loss as a result of its failure to repair the pothole.

Consider this... a local road is damaged by privately owned heavy machinery, which results in a pothole forming. The pothole is reported to your local government but no action has been taken to repair the pothole or erect warning signs within a reasonable period of time. Approximately one month after the pothole is reported, a member of the community drives over the pothole, which has grown in size.

The jolt to the driver as their vehicle hits the pothole causes injury to their back. Back injuries can be difficult to treat (sometimes requiring surgery) and could leave the injured driver requiring ongoing treatment or even with a permanent disability. In this case, section s5Z would not apply.

Things to consider

- ▶ The protection under s5Z is the primary defence a local government has against claims involving potholes
- ▶ Once the local government is aware of the pothole, it must act (within a reasonable timeframe) to repair any pothole.
- ▶ If a local government cannot repair a pothole after becoming aware of it, then it may be sufficient to erect a warning sign to warn motorists of the potential hazard. At the very least a local government ought to be doing this.
- ▶ Other actions which may be sufficient include restricting road usage or, in extreme cases, by closing the road in question.

Your local government has a duty to repair any known defects, prioritised based on the risks presented. If you are unable to rectify the defect then you must at least alert the public to the defect.


Roads

Let's look at this road in WA

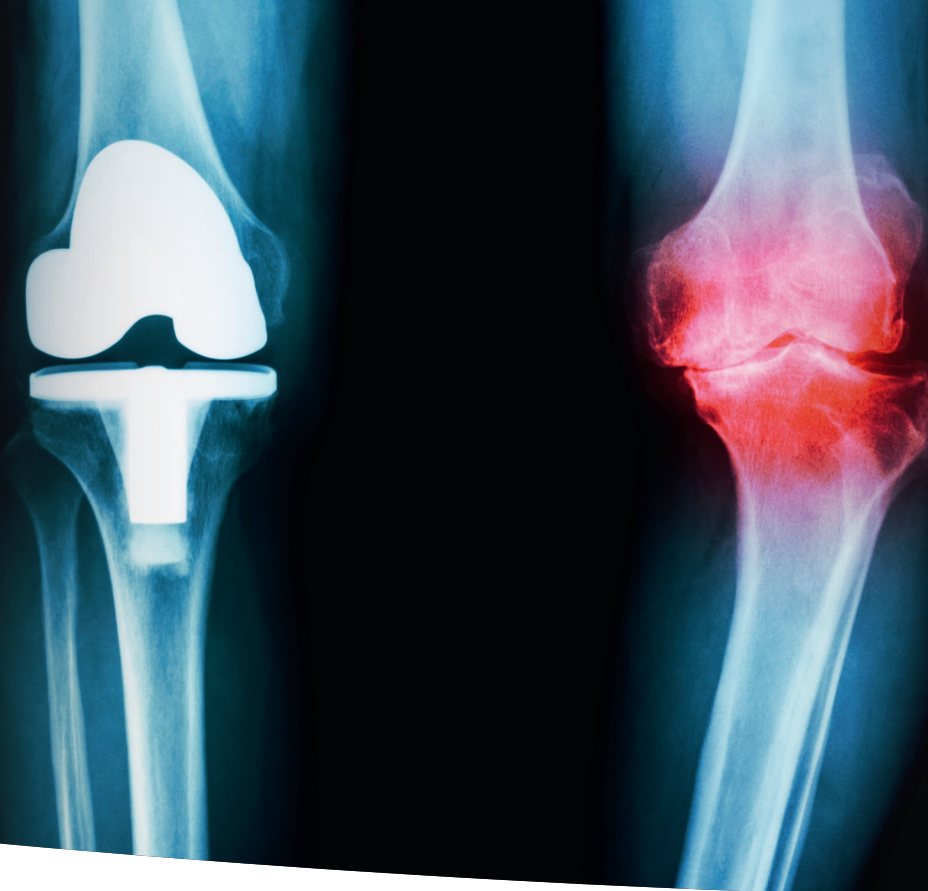
Your local government needs to ask these questions when considering the safety and imposed liability of this road:

- ▶ Does the curve constitute a danger to road users? What else should we be looking at? Consider the trees, line of sight, and signage along the road.
- ▶ If the curve is dangerous:
 - Did the local government create the danger?
 - Was the local government aware of the danger?
 - In exercising their duty of reasonable care, is the local government required to take some action in relation to the danger?
 - Could the local government's failure cause or contribute to an accident?

There are many things to consider which looking at your network of roads and how they impact on your communities and other drivers. For advice on your potential liability, contact the LGIS risk and governance team on

 (08) 9483 8888. 

A simple procedure, or is there a better way?



Osteoarthritis is one of the most common musculoskeletal ailments which can lead to workers' compensation claims within your workforce. Our guest columnist, Assoc. Prof Euan Thompson, Consultant Occupational and Environmental Physician, considers the misconceptions and opportunities when treating this ailment.

Aching knees, stiffness, deformity, difficulty walking – osteoarthritis (OA; or “wear and tear”/degeneration) is pretty recognisable. And it’s easy to go to the medicine cabinet, crack open the paracetamol or ibuprofen, and hope they are effective. However, what happens if pain becomes persistent? We may go to the doctor, perhaps get an X-ray or a scan, and maybe receive a referral to an orthopaedic surgeon, and possibly undergo an operation.

Traditional treatments

Surgery is a common outcome: at its 2011 peak, 70,000 knee arthroscopies (keyhole surgery) were undertaken in Australia; this has reduced somewhat since then, but it is still very high. Though this procedure was once considered routine, research now questions the benefits of routine arthroscopies under these circumstances. There is also increasing evidence that doing arthroscopy just for a look may not only make no difference but can cause problems later, and that removing a degenerate meniscus (cartilage) makes no difference to symptoms overall. So under what circumstances might it be helpful?

Replacement surgery can have amazing effects, and we are now learning that replacements can last longer than the 10-15 years we previously expected. However, some studies show that 10-20% of people are unhappy with their knee replacement, but (outside of the workers’ compensation sphere, where outcomes are known to be poorer) it is very difficult to identify beforehand who might be at risk of dissatisfaction. About 3-11% of people undergo redo-surgery over the next 10 years.

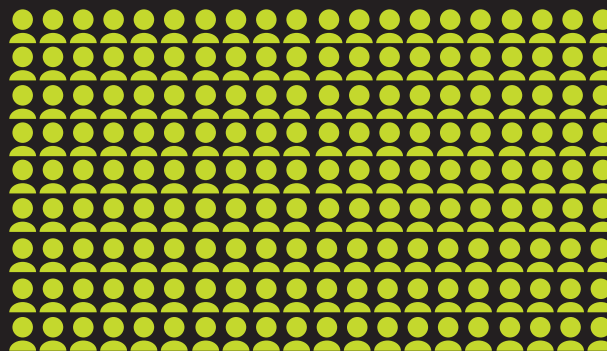
To make sense of these uncertainties, let’s look at some more facts and figures. OA is very common affecting 2.1m Australians; most people over 50 have some OA in their knee joints (but only a 45% have a lifetime risk of symptoms from it, which is most likely to arise in 55-64-year-olds), and about 25% or so will have some degeneration in their menisci (thin fibrous cartilage between joints which, on a scan, can look like a tear). In fact, it’s so common that for typical OA symptoms, guidance recommends not bothering with scans or X-rays, and that if imaging has been performed there is no benefit in doing repeat imaging to monitor it – it won’t change the treatment.



IN 2016 NEARLY
100,000
AUSTRALIANS
UNDERWENT HIP OR
KNEE REPLACEMENTS

COSTING
\$2bn

Frequency varies hugely amongst Organisation for Economic Cooperation and Development (OECD) nations, from Mexico (3/100,000 people) to the USA (226); Australia (at 180) was above the average of 121.



Parallel to this, about a quarter of adults have frequent knee pain; this also seems to rise with age, so it seems logical to conclude an association between degeneration and pain, in which case it would make sense to do arthroscopy, and perhaps to tidy it up (debridement – the removal of damaged tissue or foreign objects from a wound) or perform meniscectomy (removal of all or part of the meniscus), or – if severe – knee replacement. However, this association may be a fallacy: how bad it looks on X-ray or MRI does not equate to how painful or physically limiting it is (as above – most people over the age of 50 have OA, but only 45% have symptoms).

Furthermore, research shows that the reporting of knee pain has risen over the last couple of decades. Is this because people are getting older or heavier, or do their scans look worse? Apparently not: these variables had been taken into account. The prevalence of pain reporting in other body parts, for example in the lower back, has also risen dramatically - it is possible that people feel less inhibited in complaining about pain than 30 years ago, and perhaps have greater expectations of being pain-free. Also telling is that 1 in 4 people with OA reported “fair” or “poor” general health: twice the prevalence of those without OA.

Since pain is one of the major determinants as to whether or when to do a knee joint replacement, this is a concern, and may partly explain the recent sharp increases in knee joint replacements undertaken in the US, the UK, and here. In Victoria, there has been a 285% increase in the last 20 years.

Figures also vary widely between states: 155 per 100,000 people in the Northern Territory undergo replacement, compared to 284/100,000 in Western Australia; higher in inner and outer regional areas than in major cities or remote areas, but not clearly related to socioeconomic disadvantage. About 7 in 10 are done privately.

Are there other options?

Guidelines recommend a range of treatments before resorting to surgery, which include physiotherapy, medication, and weight loss. For context, in overweight individuals the risk of knee osteoarthritis is doubled, and in people who are obese (i.e. with a Body Mass Index (BMI) of over 30), the risk is quadrupled. An estimated 43% of knee osteoarthritis and 53% of total knee replacements are due to obesity.

Overweight men have a six-fold risk of knee replacement, and overweight women an 11-fold increased risk; in the obese rising to 12-fold and 16-fold, respectively). Yet weight loss of just 5% (5kg in the average man, and 3.6kg in the average woman) can improve symptoms. However, only an estimated two in five people are having treatment in line with guidelines.

Other recognised risk factors include injury and previous surgery, gender, genetics, and many years in a heavy job (particularly in an obese individual who squats or kneels for many hours; however, there is no association with walking, running, jumping, or ladder- or stair-climbing, nor is any specific occupation implicated). Correctable factors, such as obesity and deconditioning, have a huge influence on its development, and managing these can resolve or reduce pain.

The role of surgery is debated, and treatment guidelines recommend that non-surgical treatments are tried first. This is not to throw the baby out with the bathwater: many operations are enormously successful, but there are significant risks, rehabilitation is lengthy, and it can be difficult to detect those who will have problems; we are also just learning the circumstances under which it might make no difference, or be detrimental. 🚩



Bio: Euan is a UK- and Australian-accredited specialist in both Occupational Medicine and Primary Care, and a WorkCover WA Approved Medical Specialist. He has experience in a range of industries including Maritime, Commercial Diving, Oil and Gas, Transport and Logistics, Healthcare, Retail and Hospitality, Armed Forces, Local Government and Mining. He is an AMROA-accredited Medical Review Officer for Drugs and Alcohol, and a Rail Industry Safety and Standards Board Authorised Health Professional.

Understanding the Parkerville Bushfire Class Action

Chad Cossom,
Senior Claims Consultant, LGIS



Following a seven week Supreme Court trial, judgment was delivered in *Daniel Herridge & Ors v Electricity Networks Corporation t/as Western Power [No 4] [2019] WASC 94* on 28 March 2019.

The decision is important for statutory authorities generally, as well as maintenance contractors in clarifying the limits of their respective duties, and how their specific actions may shift or create liability in crucial ways. The decision also serves to clarify the circumstances in which a party may be held to have a non-delegable (cannot be contracted out of) duty of care.

Background

Between 1970 and 1980, property owner Mrs Campbell's husband installed a power pole at their property in Parkerville, with an electrical cable connected to the top of the pole.

The pole collapsed due to rot and termite damage, leading to the Parkerville bushfire, which burnt approximately 392 ha of bushland and resulted in the destruction of 57 homes and a number of outbuildings. There were approximately 500 individual plaintiffs, who owned property destroyed or damaged in the fire.

↑ 1970 - 1980

↑ 12 JAN 2014

↓ JUL 2013

Thiess, contracted by Western Power, replaced that electrical cable.

↓ 28 MAR 2019

Judgement was delivered in the Supreme Court.

Findings

The Court held that:

1. Western Power did not have a duty to regularly inspect and maintain the pole (which was located on private land) on the basis that it was incompatible with its legislative powers and duties in relation to **Western Power owned assets**, as distinct from privately owned assets (such as the pole).
2. It would have been unreasonable to expect Western Power to inspect and maintain assets it did not own as it did not have the requisite control over the source of the risk of harm.
3. Western Power did have a duty to ensure the pole was safe to remain connected to its network. However, this duty was delegable (i.e. could be transferred to another party), and Western Power had taken reasonable steps to engage an objectively competent contractor (Thiess) to do the relevant work.
4. Thiess breached its duty by failing to adequately train and supervise the line crew and by failing to exercise due care and skill in inspecting the pole in line with its **contractual obligations** and **industry standards**. A reasonable inspection of the pole in July 2013, in accordance with its contractual obligations, would have revealed the pole was unserviceable due to rot and termite damage.
5. Western Power did not have a duty to warn a property owner of their responsibilities with respect to that property, even if it is known that the property owners are unlikely to be aware of their responsibilities. As a general rule a person does not have a duty of care to avoid risk of harm by advising another person of their legal duties and responsibilities.
6. Mrs Campbell breached her duty to take reasonable care to inspect and maintain the pole in a safe and serviceable condition by failing to make any inspection.
7. Thiess was 70% liable for the damage caused by the fire, and Mrs Campbell was 30% liable. Total damages are likely to be in excess of \$50m.

What does this mean?

This case confirms that statutory authorities (such as local governments) can delegate maintenance tasks and other functions to objectively competent contractors. When such a specialist contractor (with specialist expertise) is appointed, and the principal does not have the capacity to influence due to the nature of the work, there is no requirement to train or supervise the contractor. Importantly, in this case if Western Power had in fact supervised the work on site, it is likely that it would have been found liable, along with Thiess, for the fire. Although you should ensure that the contractor can do the work they are required to do any interference or overreach in your approach can and will often provide the basis for responsibility, and therefore liability in the event that an incident such as this occurs.

General knowledge of a danger, and a power to prevent it, will ordinarily be insufficient to establish a duty to exercise control – however control may be established by:

- ▶ Specific (not a general) knowledge of a risk. In this case, Western Power's general knowledge that privately owned power poles

generally were unlikely to be properly maintained did not give rise to a duty (but knowledge of a specific privately owned power pole that was a risk would have given Western Power a duty to mitigate the risk). Therefore, once you know of a specific risk, you are required to act.

- ▶ “Entering the field” - if a statutory authority takes steps to mitigate a specific risk, it must do so in a reasonable way. But if it assumes responsibility to mitigate a more general risk (when there isn't statutory duty but there may be the statutory power to do so), it may be held to have assumed “control” of that risk generally – opening itself up to liability any time that risk leads to damage.

This case also highlights the importance for contractual terms to:

- ▶ Clearly define the relationship between the parties (independent contractor/principal)
- ▶ Establish a principal has discharged its duty of care by engaging a competent and reputable contractor, ensuring that, amongst other factors:
 - There are detailed instructions to carry out the work with appropriate warranties; and
 - The work is to be done with care by skilled and qualified personnel in accordance with industry standards.
- ▶ Provide appropriate indemnities. Western Power could have relied on the indemnities in the contract with Thiess, had it been found liable for any works undertaken by Thiess.
- ▶ Have appropriate insurance cover. In this case, Thiess will be liable for approximately in excess of \$35m in damages. Local governments need to ensure contracts with contractors stipulate appropriate insurance limits (a \$10m limit is likely to be insufficient – as this case illustrates).
- ▶ List clear and complete delegation of responsibilities from one party to another.

Important note: Local governments do have duties to labour hire employees when supervision of works by local governments is necessary. Labour hire employees are, effectively, employees of local governments, and the obligations under the Occupational Safety and Health Act 1984 (WA) (the Act) to ensure a safe work environment is provided to all employees is extended to labour hire workers. Further, when local governments are partially involved in works with contractors, or have some supervisory role, they need to ensure they fulfil their obligations under the Act. The extent of the obligations imposed on principals towards contractors is conditioned on whether the principal had the capacity to influence that contractor. What that means is that if you have engaged a competent contractor to undertake work that the principal is not competent to do due to a lack of knowledge, skills and experience, it could be considered that there was no capacity to influence that contractor. However, there may be instances where you have the capacity to influence or have the capacity to exert some form of control over that contractor when they undertake the work, or parts of the work, then you have the same obligations to that contractor as you do to employees to ensure a safe working environment.

In summary

- ▶ Make sure your contracts are clear and clarify the essential issues with your contractors (relationship, warranties, indemnities, insurance limits, etc).
- ▶ Ensure you undertake full due diligence with respect to selecting independent contractors – ensure they are objectively competent, have the necessary skills, training, qualifications and people to carry out the work, and safety management practices are in place.
- ▶ Do not overreach in circumstance where you do not have the capacity to influence the contractor – if you have objectively satisfied yourself during the procurement process the contractor is competent to carry out the work, any on site intervention may expose the local government to potential liability.

For more information regarding your individual needs or circumstances, please contact the LGIS risk and governance team on 9483 8888. 📞

Bounce into safety

Soaring through the air, and then coming back down to earth before launching back into weightlessness. Such is the joy of trampolining as a child.

Raise your hand if you grew up playing with your buddies on the trampoline. Keep your hand raised if you or someone you know sustained an injury while playing.

Like many childhood activities, there are risks involved in trampolining. When your local government-run clubs, centres, or events have trampolines, while a lot of fun for the kids, it's important to reduce the likelihood of injuries and potential claims.

Studies show that children under six years should not use trampolines, as they're not developmentally ready for this type of activity. A 2012 Princess Margaret Hospital for Children's Emergency Department study shows that the largest number of trampoline injuries presented in the Emergency Department occurred in the 0 to 4 year old age group, accounting for 45.6%. The injuries include broken bones, concussions, and head and neck injuries.

So while it's advised to keep children younger than six off trampolines altogether, what can you do to ensure the safety of older ages in your YMCA clubs or rec centres?

1. *One at a time.*

Ensure only one child at a time uses the trampoline. Multiple bouncers can easily bump into each other or bounce a smaller child off the trampoline, into the springs, or onto the ground. One at a time may be tough to enforce, but it's worth the wait and it's a great way to reduce the chance of an injury.

2. *Watch.*

Supervise children at all times, regardless of age. The temptation to jump into danger can be too enticing. Encourage kids to stay in the centre of the trampoline when they jump.

3. *Safety padding.*

Use safety padding on the frame to avoid injuries if a child accidentally hits the frame.

4. *Check condition of mats, net, and springs.*

Regularly check that the trampoline is in good condition and ensure that the mat and net don't have holes, springs aren't rusty, are intact and securely attached at both ends, frame is not bent and leg braces are securely locked. Setting trampolines on grass or wood chips, which will absorb energy, rather than concrete.

5. *Hazard free surrounds.*

Ensure that the area around the trampoline is free from hazards like walls, fences, play equipment or garden furniture. Also make sure there is an overhead clearance to avoid objects like clothes lines, trees and wires.

6. *Keep it clear.*

Don't store anything under the trampoline and don't let kids play underneath it when someone is using it.

Remember, trampolining is great fun, and it's exercise – which is always a positive activity for young and old. Just be careful to ensure the safety of those using trampolines and reduce injuries in your clubs and centres.

For more information on the risks involved, or for a risk assessment to be carried out at your local government's venues, contact the LGIS risk and governance team on 9483 8888 or your regional risk coordinator. 🚩



Our service commitment to you – new Member Service Charter

The new LGIS Member Service Charter is now available in the footer of our website.

Our members are at the heart of LGIS; we recognise that it's only through working together that we can successfully protect WA local governments and their communities. That's why we've developed our new Member Service Charter, and the service promise within it is integral to us delivering on our commitment to work together with our members.

The Member Service Charter encapsulates our commitment to deliver high level service anchored in our in-depth knowledge of local government. All our employees, volunteers and contractors are expected to adhere to this charter.

This document comprehensively covers our service commitment and includes key elements which all members are encouraged to be familiar with. These are:

cLGIS Collection Statement

- ▶ LGIS Privacy Policy
- ▶ LGIS Financial Services Guide

For more information, contact your LGIS member services account manager on 9483 8888. 📞

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Member survey results

The 2019 LGIS member survey is now complete, with 153 CEOs/ senior managers, 100 operational staff, and 136 elected members taking part. Thank you to all of our members who took the time to share their thoughts.

There were some great results, with ratings averaging above 80% in service quality, success achieved, trust, favourability, performance, and loyalty.

Members strongly confirmed the importance and benefits of the Scheme's risk management program:

- ▶ 91% of CEO's, 88% of senior managers and 83% of operational staff agreed that complimentary risk services support better practices, reducing claims, ensuring sustainability of their Scheme; with only 4% disagreeing.
- ▶ 79% were satisfied and only 3% dissatisfied, that LGIS provides the right complimentary risk services to meet their requirements; with evidence in the detailed responses that all ten of the risk service areas are being taken advantage of.
- ▶ Complimentary risk programs and services rated by elected members as a top three benefit of being part of a member-owned scheme; with 99% of elected members rating risk management programs and services to protect their local government organisation, its people and the community as important.

Suggested improvements for the Scheme included:

- ▶ Increase communication with elected members
- ▶ Focus on high quality member service
- ▶ More regular visits to smaller members
- ▶ Present at more council meetings

For more information, or to engage LGIS in any of the above, please contact your LGIS member services account manager on 9483 8888. 📞



of CEO's agreed that complimentary risk services support better practices, reducing claims, ensuring sustainability of their Scheme



were satisfied that LGIS provides the right complimentary risk services to meet their requirements



of elected members rating risk management programs and services to protect their local government organisation, its people and the community as important.

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

UDAM WICKREMARATNE

Udam has nearly 20 years' experience in insurance and risk management. Since joining LGIS, he has worked with WA local governments specialising in risk management and has served as account manager to a number of Scheme members.

Udam now manages the Property and Liability portfolios of your Scheme. In this role, Udam is responsible for coverage, claims strategy, pricing, and (re)insurance purchased by the Scheme to protect members.

Q: What does the insurance market look like at the moment, and how will it affect my local government?

The insurance market tends to flow between soft and hard markets, which in turn affect the availability and price of insurance cover. The benefits of being part of a mutual are very noticeable in a hard market – but what are the differences between hard and soft markets?

Hard or soft?

The insurance industry goes through soft and hard market cycles. During a soft cycle, underwriting criteria is typically more flexible, coverage is readily available, and rates are stable. In a hard market, the opposite is true. Typically, the main cause of a hardening market is a long period of heavy claims activity, such as what we've seen as a result of the recent rise in natural disasters.

We are coming off the worst consecutive years on record for catastrophic events. Due to this, the current year is shaping into a very challenging period as insurers suffer significant pressure on profitability. In 2017 and 2018 combined, the impact of global insured losses from natural catastrophes reached \$219 billion, a record high over a two-year period, according to the Swiss Re Institute's sigma report. We are, therefore, moving into a hard market.

Market conditions – 2019/20

Australia suffered from Cyclones Veronica and Trevor, hailstorms in Sydney, and the Townsville flood event. Further afield the US hurricane season and wildfires in California were some of the worst they have experienced. It is estimated that Australian premium increases have driven a 16% jump in commercial pricing in the fourth quarter, signifying no change in pricing trajectory. In our view this Australian market correction is driven by the increase in the number of medium sized losses impacting local insurers' balance sheets.

The London market is equally impacted, with recent reports indicating over 60% of Lloyd's of London (syndicates) have been unprofitable, which means there will be an increased focus on profitability (which equates to insurers offering less capital to cover risks and at a higher price).

The impact this has had on the market includes:

- ▶ **Asset exposure:** Assets exposed to 'modelled' catastrophic risk such as cyclone and earthquakes are increasingly unattractive to insurers. We are aware of increases of over 15-20%, or insurers reducing their appetite to cover these locations. Assets exposed to bushfire (Southwest) and storm activity (Wheatbelt/Goldfields) are increasingly under review.
- ▶ **Building approvals:** Continued focus on the impact of poor quality material and the level of involvement of local government in the approval and enforcement process. The recent Lacrosse Tower verdict in Victoria provides a concerning trend given the potential for local government involvement and abdication of the builder's responsibility on the basis of reliance on professional advice. This serves as an example to highlight the concern insurers have over the practices of the construction industry as a whole.
- ▶ **Royal commissions:** Increased view to de-risk insurers' portfolio in terms of professional indemnity risk and increased focus on local government activities in the areas of disability, aged care and potential exposure to child sexual abuse.

The re/insurance market has turned and after many years of chasing poor risk, businesses are now aggressively seeking and achieving corrections, some of which we witnessed in the last fund year.

What is re/insurance?

Re/insurance is the practice where insurers transfer portions of risk to other parties, in order to mitigate against large losses. Your Mutual Scheme engages re/insurance to further protect your local government should major events occur.

What this means for WA local governments

It is important to remember that local government is a complex business. WA local governments are involved across so many different specialisms and consequently have significantly wider exposures – local governments are occupiers of land, contractors, construction experts, road management experts, bushfire and emergency management experts, aged care providers, child care providers, and certify multi-million dollar buildings. The local government sector is a multitude of industries rolled into one. Underwriting local government is complex, and insurers with no understanding in this sector enter in bursts and retreat equally quickly. Some insurers who previously supported local government business are no longer offering cover, and some are seeking significant increases in premiums.

As a member of a sector-focused Scheme, you are avoiding the volatility of the commercial insurance market. The Scheme benefit and focus is (and has always been) to provide stability and demonstrate value through our offering to you. The larger the pool the more protected you are from price volatility and ability to access the cover to adequately protect your community.

The Scheme's long term contribution credit strategy continues to benefit members and contain the cost of cover.

If you have any enquiries regarding the market at the moment or how it impacts your cover renewals, please contact your LGIS member services account manager on 9483 8888. 📞



JAMES LARKIN
Exercise Physiologist

James is an Accredited Exercise Physiologist with over 8 years' experience working in occupational health, injury prevention and rehabilitation. James has a clinical background, and has provided services such as pre-employment health assessments, drug and alcohol screening, audiometric testing and exercise rehabilitation for return to work programs. James has also developed and delivers a range of occupational health and wellbeing services such as manual handling training, ergonomic assessments and a variety of seminars focused on improving employee health. He brings with him a wealth of knowledge in the areas of occupational health and wellbeing.

Q: When (and why) should we utilise a pre-employment medical?

As the name suggests, pre-employment medicals (PEM) should be utilised prior to hiring an employee, as part of a well-rounded recruitment and selection process.

The information gained via a PEM ensures you hire the most suitable candidate for the role and all the duties involved.

This means recruiting the person with the best qualifications and skills, but also ensures prospective employees are physically and psychologically capable of doing the work proposed, taking into account any current or previous injuries or illnesses.

Benefits of a PEM

1. Provides important information regarding a candidate's prior medical history, pre-existing and/or current injuries and conditions
2. Increases likelihood of a reduction in workplace injuries
3. Increases likelihood of a reduction in workers' compensation claims costs
4. Ensures you match the physical capacity of a worker to the role
5. Identifies any unknown medical conditions which the candidate may not be aware of, allowing earlier intervention and possible prevention of future medical complications
6. Improves overall health and wellbeing of the workforce
7. Improves safety and wellbeing culture in your workplace

When to perform a PEM in the recruitment process

The timing of a PEM is one of its most misunderstood aspects. It is important to treat the PEM as the final stage in the recruitment and selection process. This means the PEM must be completed before you offer the position to a candidate.

Often the PEM is seen merely as one of the 'tick box' requirements of the recruitment and selection process. However, the PEM is one of the most important parts, and provides information that will minimise risk to your local government and the potential worker should they begin in the new role.

What is involved in a PEM?

Pre-employment medicals come in all shapes and sizes. A PEM can be as simple as a general check-up with the worker's private general practitioner (GP), or as complex as a 2-3 hour medical and physical capacity screen targeting a range of health conditions.

Importantly, the PEM should be tailored to your local government's requirements and the job role. However most commonly, it will cover the following:

- Medical history questionnaire
- Medical assessment
 - Height, weight, body mass index (BMI), blood pressure, vision, and GP check up
- Drug and alcohol screening
- Physical capacity test
 - Range of movement
 - Upper body, lower body and core strength tests
 - Cardiovascular test
 - Manual handling component
 - Audiometric testing (hearing test)
 - Spirometry (lung function test)

Why include a PEM in your recruitment process?

Before you develop a PEM protocol for your recruitment and selection process, it is important for your local government to answer the following key questions:

- Why do we want to do pre-employment medicals?
- Which jobs or roles should they apply to?

Answering these questions clearly will allow your local government to design an appropriate PEM protocol for your workplace with specific requirements for particular roles. It's important to remember that it is never a 'one size fits all' process.

Legal requirements

When it comes to any PEM, your local government needs to understand and comply with industrial, anti-discrimination, and privacy legislation, ensuring the medical testing conducted relates clearly to the inherent requirements of the intended role, rather than simply taking a blanket approach to all jobs.

The main features of a non-discriminatory PEM are:

- ▶ It relates specifically to the genuine and reasonable requirements of the job role
- ▶ The specific physical capacities required for the job are accurately identified and are reasonable in all the circumstances
- ▶ Reasonable ways of accommodating people with disabilities/impairments have been considered
- ▶ Any facilities or services reasonably required by applicants with disabilities/impairments are provided
- ▶ Any assessment of a person's ability to perform the inherent requirements of the job is made in conjunction with these facilities or services
- ▶ The test only assesses current health status and does not attempt to predict any future deterioration unless the employer can demonstrate that it is reasonable to do so

How can LGIS help?

The LGIS injury prevention team can perform job dictionaries/job task analyses which will provide valuable information on the physical capacity requirements of particular roles. This information will provide the base on which to build your recruitment process with the possible inclusion of a PEM.

Contact the LGIS WorkCare Services team on 9483 8826 for more information.

The proof* is in the numbers:



Non-screened (pre-employment medical) workers have a 33% higher injury rate of workers' compensation claims than screened workers

Non-screened workers incur

4.3

TIMES HIGHER claim costs

18:1

The average cost of return to work cases for non-screened workers was 18:1 higher than screened workers

*Roshenblum & Shankar, (2006). A study of the effects of isokinetic pre-employment physical capacity screening in the reduction of musculoskeletal disorders in a labour intensive work environment

Where we've been

Workforce Risk Forum

On Tuesday, 28 May 2019, local government workers attended the full day Workforce Risk Forum, which was developed recognising that safe, supportive workplaces don't just happen - they are created with intent and purpose. The comprehensive program began with keynote speaker Matthew Gill, Manager of Beaconsfield Mine during the 2006 catastrophe which saw 3 miners trapped a kilometre underground. 📌





HR Forum

On Thursday, 4 July, the metropolitan WALGA and LGIS joint HR Forum was held, which facilitated discussions on human resources, employee relations and occupational safety and health matters with a specific focus on topics relevant to the local government sector



Upcoming events

25 July – Regional WALGA and LGIS joint HR Forum – City of Busselton
7 - 9 August – Come visit us at the WALGA Convention



lgiswa.com.au