



**"Risky Times" by C.A.L.M. Risk Management Section**

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# "MANAGEMENT" OF PUBLIC USE ON CALM MANAGED LAND.

The nature and scope of the law of negligence has expanded so that the liability of and compensation paid by public authorities to those who are injured when on land and / or water owned or occupied by that authority has increased dramatically over the past decade.

Up until the mid 1980's legal liability for visitors to Crown land in Western Australia was addressed under common law.

However, in 1985, the Occupiers Liability Act was passed in WA which brought the matter into the realm of statute law. Under this Act, land management and other government agencies are defined as "occupiers of premises", that is persons occupying or having control of land or premises. As occupiers, such agencies owe to anyone entering public lands a "duty of care". This is defined as "such care as in ALL the circumstances of the case is REASONABLE to see that that person will not suffer injury or danger by reason of any ..... danger". The meaning of the word "reasonable" is determined by the courts.

Current case law depicts the alarmingly high standard the courts have placed on public authorities in relation to the duty of care owed to visitors who come onto land occupied or controlled by these authorities.

In the widely reported case of Nagle v Rottneest Island Authority, the High Court found that the Rottenest Island Board was liable because it failed to provide warning signs that a rock ledge in the area known as "The Basin" was unsafe for diving. The plaintiff had visited a natural swimming pool on the island where he dived off a natural rock ledge and struck his head on a submerged rock rendering him quadriplegic.

In Dale v State of Western Australia and Shire of Collie, the State was found liable for spinal injuries sustained by



the plaintiff who dived into a disused open-cut mine near Collie. Mining operations had ceased many years earlier and the mine had gradually filled with water. For approximately 30 years it had proven a popular swimming area. The area was reserved for mining but at the time of the incident, the land was unvested.

The State had been involved in land management in the area, but had not participated in the maintenance of the pool to any great extent. Despite considerable involvement in the area by the Shire of Collie, which had maintained the road to the pool and placed rubbish bins in the communal area, it escaped liability.

The Supreme Court of Western Australia upheld the trial judge's decision declaring the State liable because of a failure to provide warning signs as to the dangers of diving in the area.

Obviously public authorities are enticing targets for those seeking compensation, as they are easily identifiable and are often regarded as holders of limitless funds.

Clearly liability in negligence and under the Occupiers' Liability Act is being imposed on an increasing scale to a wider category of persons and agencies, and the general community is becoming increasingly litigious.

This, added with other factors such as increasing visitation, increasing size of the recreation estate, and increasing public mobility to access the estate, are leading to an ever increasing surge of claims in the recreation and tourism arena.



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In establishing liability in negligence the plaintiff must prove that the injuries were caused or materially contributed to by the defendants negligence or breach of duty.

For example, in the Nagle case the trial judge initially dismissed the claim against the defendant on the grounds that the plaintiff had failed to establish the relevant elements of causation, i.e. that the failure to warn of the dangers of diving from the rock ledge caused or contributed to the resultant injuries. The judge concluded that as the plaintiff was aware of the presence of rocks before he dived, then the provision of warning signs would not have added to the plaintiff's state of knowledge, or indeed, prevented him from diving into the ocean. This decision was overturned by the High Court.

The majority view of the High Court now prevails, however certain courts have expressed concern at the current state and development of the law of negligence in Australia. The supreme court of Queensland, for example, has expressed apprehension over the current development of the law of occupiers liability and in particular the formulation of breach of duty.

The superior courts in Australia follow precedents set by the High Court. However, if the trend continues then it may well be that land managers will be forced to restrict access of the community to public resources and facilities. As a matter of economic necessity, those facilities may have to be withdrawn due to unrealistic and inordinately high standard of care being placed on land managers and their increasing exposure to liability claims, damage awards and escalating insurance premiums.

As a result of the Nagle and Dale decisions, land managers must take steps to discharge their duty to warn by placing adequate and sufficient warning signs in appropriate situations that warrant such steps to be taken, e.g. swimming areas. However,

careful consideration needs to be given to the design, placement and content of warning signs. Even then there is no guarantee that an authority will be deemed to have discharged their duty of care in the event of a claim, particularly if it involves serious injury.

Furthermore, a practical problem with signs is that they erode with weather and are often vandalised or stolen. They are also costly to produce and erect in large numbers over extensive areas. Therefore, once signs are installed there must be a regular system of monitoring and maintenance of the signs in question.

For example, if a warning sign regarding the danger of diving where submerged rocks or shallow water were to be stolen or vandalised, and a person should then dive and sustain injury as a consequence, then the controlling authority could well be exposed to a claim in damages.

There is now no question that land managers should ensure that they have in place a properly structured risk management program which incorporates three main components:

- (a) a clear and definitive policy needs to be in existence;
- (b) an efficient and effective system for identifying, assessing and prioritising risk management issues backed by appropriate mechanisms for dealing with any problems reported must be implemented;
- (c) there must be documented and functional inspection and maintenance procedures in place.



**Peer Support**

Nominations are now being taken for Critical Incident Stress Peer Support training to be conducted May 19th and 20th 1998.

# ARE YOU FIGHTING FIT?

A total of 153 CALMfire Fitness Assessments have been documented for 1997/98.

To let you know how you compared, the following table outlines the times for the 2.4 km run and 4.8 km walk, including details on the preferred, fastest and slowest times.

	2.4 km RUN	4.8 km WALK
Number assessed	47	106
Average time	11 min 52 sec	41 min 48 sec
Fastest time	8min 55 secs	31 min 38 sec
Slowest time	15 min 30 secs	50 min
Preferred time	13 mins	45 mins
Average >30 years	11 min 52 sec	40 min 52 sec
Average 30 - 34 years	11 min 21 sec	41 min 52 sec
Average 35 - 39 years	12 min 43 sec	44 min 03 sec
Average 40 - 44 years	12 min 45 sec	41 min 50 sec
Average 45 - 49 years	11 min 47 sec	44 min 20 sec
Average > 50 years	14 min 45 sec	41 min 40 sec

## Aerobic Fitness Index.




Aerobic fitness is defined as the maximum capacity to take in, transport and utilise oxygen. It indicates the functional capacity of the respiratory system (take in oxygen), the circulatory system (transport oxygen) and the muscles (utilise oxygen).

You can estimate your level of aerobic fitness, using the "Aerobic Fitness Index." This index is based on the relationship of regular physical activity to fitness.

**Fitness Index = Intensity x Duration x Frequency.**

Unlike others fitness tests, this will not raise a sweat as it only requires paper and pencil.

To calculate your fitness index, multiply the score in each category; Compare your result with the table below.

CATEGORY	SCORE	ACTIVITY
 Intensity	5	Sustained heavy breathing and perspiration
	4	Moderately heavy breathing and perspiration
	3	Intermittent heavy breathing, as in recreational sports
	2	Moderate, as in brisk walking or volleyball
	1	Light, as in fishing, gardening, or easy walking
 Duration	4	Longer than 40 minutes
	3	30 - 40 minutes
	2	20 - 30 minutes
	1	Less than 20 minutes
 Frequency	5	Daily or almost daily
	4	Three to five times a week
	3	One to two times a week
	2	Less than once a week
	1	Once a month

### Fitness Estimate

SCORE	EVALUATION
100	Very active and fit
80	Active and fit
60 to 80	Active and healthy
40 to 60	Consider changes
20 to 40	Improvement needed
less than 20	Sedentary

WHAT'S HAPPENING; COMING EVENTS	APRIL	MAY	JUNE
	5 April Bridges Run 10 km . Fun Run 1998 calendars available.	1 May Quit Day 3 - 9 May Heart Week 31 May World No Tobacco Day	Planting season begins. Start pre-season exercise program 6 weeks before. Warm-up and stretch daily.

If you have events which you think should be included, or would like further info. give Linda a call on (08) 9334 0397.

## STATISTICS FOR CALM MARCH 1997 - FEBRUARY 1998

	NUMBER		FREQUENCY RATE		AV DAYS LOST	HOURS WORKED	NO DAYS LOST
	LTI	MTI	LTI	MTI + LTI			
<b>Central Forest</b>							
Bunbury	0	0	0	0	0	47044	0
Busselton	2	6	20	78	27	102097	53
Mornington	3	8	24	87	4	126845	11
Blackwood	4	10	32	112	17	124618	69
<b>Total</b>	<b>9</b>	<b>24</b>	<b>22</b>	<b>82</b>	<b>15</b>	<b>400604</b>	<b>133</b>
<b>Goldfields</b>							
Kalgoorlie Total	0	0	0	0	0	18644	0
<b>Kimberley</b>							
Kununurra	0	0	0	0	0	23920	0
Broome	1	2	61	184	2	16307	2
<b>Total</b>	<b>1</b>	<b>2</b>	<b>25</b>	<b>75</b>	<b>2</b>	<b>40227</b>	<b>2</b>
<b>Midwest</b>							
Geraldton	1	0	34	34	4	29711	4
Moora	0	1	0	55	0	18254	0
Shark Bay	1	0	56	56	7	17984	7
<b>Total</b>	<b>2</b>	<b>1</b>	<b>30</b>	<b>45</b>	<b>6</b>	<b>65949</b>	<b>11</b>
<b>Pilbra</b>							
Exmouth	0	2	0	131	0	15258	0
Karratha	0	2	0	57	0	34939	0
<b>Total</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>80</b>	<b>0</b>	<b>50197</b>	<b>0</b>
<b>South Coast</b>							
Albany	0	6	0	108	0	55651	0
Esperance	0	0	0	0	0	21533	0
<b>Total</b>	<b>0</b>	<b>6</b>	<b>0</b>	<b>78</b>	<b>0</b>	<b>77184</b>	<b>0</b>
<b>Southern Forest</b>							
Manjimup	0	0	0	0	0	123972	0
Manjimup Region	1	0	31	31	4	32593	4
Pemberton	0	11	0	115	0	95383	0
Walpole	1	5	11	63	18	94749	18
<b>Total</b>	<b>2</b>	<b>16</b>	<b>6</b>	<b>52</b>	<b>11</b>	<b>346697</b>	<b>22</b>
<b>Swan Region</b>							
Dwellingup	1	6	9	64	44	108559	44
Kelmscott	0	2	0	106	0	18833	0
Mundaring	4	6	37	91	35	109445	138
Marine	0	1	0	49	0	20387	0
Perth	3	7	24	78	61	127653	184
<b>Total</b>	<b>8</b>	<b>22</b>	<b>21</b>	<b>78</b>	<b>46</b>	<b>384877</b>	<b>366</b>
<b>Wheatbelt</b>							
Katanning	0	0	0	0	0	12488	0
Narrogin	1	1	36	72	1	27734	1
Merredin	0	0	0	0	0	8355	0
<b>Total</b>	<b>1</b>	<b>1</b>	<b>21</b>	<b>41</b>	<b>1</b>	<b>48577</b>	<b>1</b>
SOHQ Admin	1	8	1	13	9	691628	9
Forest Resources	2	13	4	32	7	469703	14
Science and Info.	3	9	12	46	2	260614	7
<b>Total for Dept.</b>	<b>29</b>	<b>106</b>	<b>10</b>	<b>47</b>	<b>19</b>	<b>2854901</b>	<b>565</b>

LTI = LOST TIME INJURY MTI = MEDICAL TREATMENT INJURY

FREQUENCY RATE = No. OCCURRENCES IN PERIOD x 1,000,000 / TOTAL HRS

AVERAGE DAYS LOST = No. OF DAYS LOST / No. OF LTI's

## SIGNIFICANT INCIDENT

Although this fire season is drawing to a close a recent incident highlights an ever present problem: heat exhaustion.

It was a very hot day of 40 degrees and personnel were required to extinguish a wildfire. One of our employees succumbed to the slow onset of heat exhaustion.

Risk control factors include;

- The wearing of appropriate work clothing, light weight, long sleeved/leg.

- Head protection.

- The level of effect is governed by four factors, convection, conduction, radiation and work rate.

- Personal factors such as age, weight, fitness, medical condition and acclimatisation add to the equation.

- The body reacts by sweating and the body is cooled through evaporation. As the humidity rises the body's ability to cool decreases.

- Ensure an adequate intake of cool drinking water. (1 litre per hour in 27c temperatures with a moderate work load.)

- Remember a conscious effort must be made to drink as thirst is a poor indicator of the body's need for replacement fluids.

- It is not possible to roster the work to cooler parts of the day, therefore a paced workload with adequate built in workbreaks is essential.

*Take early action if symptoms of heat exhaustion occur.*

For further information on any issues discussed in "Risky Times" or recommendations for future editions please contact Risk Management Section. - SOHQ, 50 Hayman Road, Como 6152. PHONE (08) 9334 0397 OR FAX (08) 9334 0475.

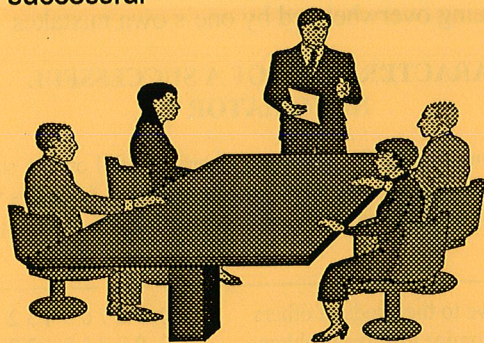


# A 'PACE' AHEAD

AN INITIATIVE FROM YOUR PACE EMPLOYEE ASSISTANCE PROGRAM

## HOW TO NEGOTIATE DIFFERENCES

When it comes to personal or work relationships, ultimatums rarely work. Instead, it helps to know how to give and take - to negotiate. Learning to effectively confront, cooperate, and understand are the most effective skills we have for successful negotiations.



### COMMUNICATE POSITIVELY

In order to resolve differences or negotiate, it is important to face the other person. You don't need to be angry or accusing. But you should be direct. Positive communicating includes honestly saying how you feel and what you want.

### BE COOPERATIVE

"Cooperate" means "working together." To achieve this, each person states the problem or situation from his or her point of view. Don't defend your position, but listen. Ask questions if you don't understand the other person's feelings. Next, each person can try to come up with a few ideas for solving the conflict. If possible, suggest solutions that are "win/win." Assume you share a common interest: the desire for a friendly outcome.

### BE UNDERSTANDING

To negotiate wisely, put yourself in the other person's shoes. What would satisfy him/her? What does he/she want? Avoid criticizing; when people feel inferior, they get angry. When they're angry, you're less likely to get what you want.

### CHARACTERISTICS OF AN EFFECTIVE NEGOTIATOR

1. Preparation
2. Knowledge of subject matter
3. Ability to think clearly under pressure
4. Ability to speak clearly
5. Listening skills
6. Intelligence
7. Integrity
8. Persuasiveness
9. Patience
10. Decisiveness
11. Ability to win respect and confidence
12. Analytical skills
13. Self-control
14. Insight into other's feelings

### THE SIX BASIC STEPS IN NEGOTIATING

#### Step One : Getting to Know One Another

It is helpful to assess the other person's issues before negotiations begin. It is important to observe, listen and learn. What are the needs, both personal and organisational, of the other person?



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## AN INITIATIVE FROM YOUR PACE EMPLOYEE ASSISTANCE PROGRAM

### Step 2 : Statement of Goals and Objectives

Specific issues are not normally raised at this time. Explore the needs of the other. Negotiating usually flows into a general statement of goals and objectives.

### Step 3 : Starting the Process

Once you have reviewed the issues, begin to deal with them one by one. You may begin with the minor issue or the major issue.

### Step 4 : Expressions of Disagreement and Conflict

Once the issues have been defined, disagreement and conflict often will occur. This is an important part of negotiation, as during this time you will realize that this process of give and take is where successful deals are made. Conflict handled properly can also bring you together. When presenting the issues, most negotiators will explain what they "want". It is the task of the other negotiator to find out what they "need", or will settle for.

### Step 5 : Reassessment and Compromise

At a particular stage you may move toward compromise. Statements reflecting this often begin with words like, "Suppose that...?", "What if ...?", "How would you feel about ...?" It is important to listen and pick up when a compromise is being offered. When offers are made, it is a good practice to restate them back for confirmation. This can force the other person to accept this offer or suggest an alternative.

### Step 6 : Agreement in Principle or Settlement

When agreement is reached, it is necessary to affirm it. It is important to obtain a decision about how the final agreement will be obtained, especially if additional approval is required. This normally means placing the agreed terms in writing, a process that can be done while you are together so both parties agree on the language.

Maddux, R. (1986). Successful Negotiation. Crisp Pub:California

### COMMON MISTAKES MADE BY NEGOTIATORS

- not listening/poor listening
- overreacting to stress
- debating instead of negotiating
- making assumptions without checking them out
- not disclosing own concerns/goals/feelings
- failing to evaluate alternatives
- not responding to cues the other side gives about what is important for them
- losing one's temper, being too aggressive
- compromising own objectives
- underestimating the other side, or overestimating own case
- making promises that can't be kept
- being overwhelmed by one's own mistakes

### CHARACTERISTICS OF A SUCCESSFUL NEGOTIATOR

Circle the number that best reflects where you fall on the scale. The higher the number the more the characteristic describes you. When you have finished, total the numbers circled in the space provided.

I am sensitive to the needs of others	10 9 8 7 6 5 4 3 2 1
I will compromise to solve problems	10 9 8 7 6 5 4 3 2 1
I am committed to a win/win philosophy	10 9 8 7 6 5 4 3 2 1
I have a high tolerance for conflict	10 9 8 7 6 5 4 3 2 1
I am willing to research and analyze issues	10 9 8 7 6 5 4 3 2 1
Patience is one of my strong points	10 9 8 7 6 5 4 3 2 1
My tolerance for stress is high	10 9 8 7 6 5 4 3 2 1
I am a good listener	10 9 8 7 6 5 4 3 2 1
Personal attacks do not unduly bother me	10 9 8 7 6 5 4 3 2 1
I can identify bottom line issues quickly	10 9 8 7 6 5 4 3 2 1
Total:	_____

If you scored 80 or above, you have characteristics of a good negotiator. You recognize what negotiating requires and seem willing to apply yourself accordingly. If you scored between 60 and 79, you should do well as a negotiator but have some characteristics that need further development. If your evaluation is below 60, you should go over the items again carefully, or you may have identified some key areas on which to concentrate as you negotiate.

### PACE W.A.

EAP counselling is a positive and effective way to deal with personal, family and work-related problems.

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