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New Treasury web site

The Tasmanian Risk Management Fund web site is a part of the Treasury web site and can be found at www.treasury.tas.gov.au.

On the web site you will find:

- annual reports and financial statements of the Fund;
- monthly reports from the Fund Administration Agent;
- discussion papers;
- procedures manuals;
- Steering Committee and Sub-Committee terms of reference; and
- links to other useful risk management web sites.

The web site will be maintained and updated by Treasury on a regular basis.

Welcome

Welcome to the first Tasmanian Risk Management Fund (TRMF) Newsletter, *riskmatters*, published by the Department of Treasury and Finance.

The aim of the Newsletter is to provide agency staff members, who are involved in risk management, with regular access to information about risk management issues and claims trends, both within the Fund and, more generally, in Tasmania and Australia. The Newsletter will also provide information about strategies to minimise the cost of risk.

Treasury provides secretariat and administrative support for the Fund and is responsible for compiling the quarterly Newsletter.

Recent additions to the staff of the TRMF Unit of Treasury (*see page 8*) have enabled work to start on a number of projects, including the development and issue of this quarterly Newsletter, the development of a web site for the Fund, and the preparation of the TRMF Procedures Manual Version 2. Other projects that are currently underway within Treasury include:

- developing a policy on the cover provided under each risk;
- analysing trends in traffic infringements and motor vehicle accidents and developing appropriate policies and strategies;
- investigating the possibility of expanding participation in the Fund;
- developing a revised Fund Annual Report for 2001-02;
- determining methods of collecting medical malpractice data;
- co-ordinating a review of agency property registers, including building values and contents values; and
- reviewing return to work for employees on workers' compensation on a whole-of-government basis as a result of recent changes to the *Workers Rehabilitation and Compensation Act 1988*.

Future issues of this Newsletter will include updates on the progress of these projects.

I hope that you find *riskmatters* interesting and worthwhile.

I would appreciate your comments on the usefulness of the Newsletter, and any suggestions you may have for topics that you would like to see covered in future editions.

Philip Mussared
Chairman

Tasmanian Risk Management Fund Steering Committee

What is the Tasmanian Risk Management Fund?

Following a review of risk management undertaken by Treasury as part of the ongoing Financial Management Reform Strategy, the Tasmanian Government established the Tasmanian Risk Management Fund (TRMF) on 1 January 1999. On 1 July 2001, the Tasmanian State Service Workers' Compensation Scheme merged with the Fund.

The TRMF provides a whole-of-government approach to the treatment of risks to which agencies are exposed. This includes ensuring that adequate financial provision is made for the cost of risk.

All inner-Budget agencies are required to participate in the Fund and pay contributions to the Fund to meet insurance premiums, reinsurance costs, claims costs for which the Fund is responsible and administrative expenses.

Treasury is responsible for providing secretariat and administrative support for the Fund, the Steering Committee and each of the Sub-Committees. The role of Treasury is to deliver efficient and effective risk management services.

Strategic management is provided by the Tasmanian Risk Management Fund Steering Committee, an inter-departmental committee with representatives from participating agencies (*refer to page 4 for a list of the members*).

The Fund also has three Sub-Committees to deal with operational issues: one for Workers' Compensation; one for Liability; and one for Property (*refer to page 4 for a list of the members*).

Marsh Pty Ltd has been retained as the Fund Administration Agent, on a contract basis for three years from 1 July 2001.

Marsh is responsible for:

- claims administration;
- the provision of advice in relation to the identification; quantification and financing of risk;
- the placement of insurance/reinsurance as required; and
- reporting to the Fund, agencies and other bodies as required.

The management of workers' compensation claims has been sub-contracted by Marsh to NRMA Insurance Ltd. Another sub-contractor, Lumley General Insurance Ltd, undertakes the management of all claims other than workers' compensation.

What claims costs will the Fund cover?

Treasury is currently drafting Statements of Cover for the major risks – ie workers' compensation, motor vehicle, property, liability and contract works. These Statements will include definitions of terms and will detail what sorts of claims and claims costs will be covered by the Fund. Please contact Sarah Hazell on 6233 4751 if you have any queries regarding the development of these Statements of Cover.

Performance of the Fund

Following are some facts and figures regarding the performance of the Fund as at 31 March 2002. This information covers workers' compensation claims, public liability claims, property claims, and other claims.

Workers' compensation

Claim numbers

The number of workers' compensation claims reported (regardless of when the accident occurred) has shown a general downward trend over the past three years.

Based on current trends, it is likely that 1 505 claims will be reported in 2001-02, compared with 1 667 in 2000-01 and 1 810 in 1999-00.

Claim payments

Although the number of claims has decreased over the past three years, claim payment costs have been increasing, due in part to an increase in common law payments and legal fees.

Based on current trends, it is likely that workers' compensation claim payments in 2001-02 could be as high as \$19.5 million, compared with \$17.1 million in 2000-01 and \$19.6 million in 1999-00.

Public liability

A total of 35 public liability incidents/claims have been reported since 1 July 2001, the largest of which relates to a back injury to a contractor. The contractor's employer is currently seeking recovery of workers' compensation payments from the agency where the contractor was working at the time that the injury was sustained.

Property

Housing Tasmania

Total estimated claims costs for Housing Tasmania in 2001-02 may be slightly less than in 2000-01, but claim numbers continue to increase. There have been 2 301 claims so far this financial year, compared with 2 191 claims for the same period in 2000-01.

Other property claims

As at 31 March 2002, there had been three significant property claims - two at Springfield Gardens Primary School and one at Fairview Primary School.

Other claims

Following are the number of claims made under other categories of cover:

- Travel – to date, six travel claims have been lodged due to the Ansett collapse, and one claim for lost luggage;
- Marine transit - one claim has been made;
- Machinery breakdown - one claim has been made;
- Marine hull - one claim been made; and
- Personal accident - no claims have been made.
- Medical malpractice – no claims have been made.

The above facts and figures were extracted from the Fund Administration Agent's report as at 31 March 2002.

Motor vehicle claims

The following facts and figures were extracted from the Fund Administration Agent's report as at 31 March 2002.

Claim numbers and costs

Light motor vehicle fleet

The trend for motor vehicle claims continues to improve. There has been a 24 per cent reduction in average claims costs for the light vehicle fleet in 2001-02, compared with 2000-01.

Police and Public Safety vehicle fleet

There has also been a decrease in the number of claims incurred by the Department of Police and Public Safety (53 claims for 2001-02, compared with 86 claims for the same period in 2000-01). However, there has been an increase in claims costs (\$146 814 for 2001-02, compared with \$98 186 for the same period in 2000-01).

Other vehicles

The number and cost of claims in relation to other areas – for example, Ambulances and miscellaneous vehicles have remained consistent with 2000-01.

Types of vehicle accidents

As at 31 March 2002, there have been 121 claims for the light vehicle fleet (excluding Police and Public Safety vehicles) at a cost of \$219 870.

A number of trends are emerging from the 2001-02 claims experience, including:

- single vehicle accidents are the most significant types of claims in terms of cost, comprising approximately 46 per cent of the total claims costs (and 28 per cent of claim numbers);
- in 2001-02 to date, 79 per cent of single vehicle claim numbers have been classified as either "lost control", "hit object" or "reversing";
- approximately 26 per cent of total claim numbers (ie 32 claims) relate to reversing incidents;
- out of the 32 reversing claims, approximately 69 per cent were single vehicle or "at fault" accidents; and
- in addition to single vehicle accidents, accidents in which agency drivers are "at fault" were 28 per cent of claim numbers and 23 per cent of claim costs.

Consequently, approximately 56 per cent of claim numbers and 69 per cent of claims costs are generated as a direct result of the fault of agency drivers. This is an area in which agencies can have an influence over the ultimate cost and number of claims. *Refer to Table 1 on page 4.*

Update from the Fund Administration Agent

Early Notification of Incidents

The Fund Administration Agent, Marsh Pty Ltd, has identified the importance of early notification of any incidents/claims. Early notification of incidents is important for the following reasons:

- it allows a more proactive approach to risk management to prevent further claims of a similar nature arising in the future;
- it will assist agencies in budgeting for future contributions;
- it allows more efficient and timely processing of claims; and
- it allows more effective management of matters which are initially reported as incidents, should those incidents subsequently develop into claims.

Early notification of incidents is especially important for potential public liability and professional indemnity claims because the Fund insures these risks through the private sector. Under a condition of the contract of insurance, the Fund is required to notify the insurer of all claims/incidents as soon as they come to the notice of agencies.

The Steering Committee and Sub-Committees will continue to review the reporting of claims/incidents to meet this requirement and to ensure that the Fund database is kept up to date.

Changes to Reporting

Marsh has recently included a page at the front of TRMF reports providing an explanation of the terms used within the reports. In the future, it is proposed that cover pages will be provided for individual reports, explaining what the report shows and the information that can be obtained.

Wage Reimbursement Forms

Marsh has developed a standard Wage Reimbursement Form, which all agencies are now required to use to claim wage reimbursements. If your agency has not yet received the new forms, please contact Malcolm Grimes, of Marsh, on 6220 7064.

Reduce driving risks

Agencies have a legal obligation under the *Workplace Health and Safety Act 1995* to provide employees with information, instruction and training reasonably necessary to ensure that employees are safe while driving for work purposes.

Improving the driver safety of employees will reduce costs associated with:

- claims cost of repair and replacement of vehicles;
- workers' compensation claims under the *Workers Rehabilitation and Compensation Act 1988* in the event that employees are injured; and
- claims made by third parties, whether for property damage or personal injury.

TABLE 1: Light motor vehicle fleet claims

| | 1999-00 | | 2000-01 | | 2001-02 ¹ | |
|----------------------------------|--------------|----------------|--------------|----------------|----------------------|----------------|
| | No of Claims | Total Cost \$ | No of Claims | Total Cost \$ | No of Claims | Total Cost \$ |
| Multiple Vehicle Driver at Fault | 83 | 114 077 | 55 | 184 382 | 34 | 50 491 |
| Single Vehicle Driver at Fault | 108 | 195 315 | 40 | 93 484 | 34 | 100 459 |
| Unknown Third Party at Fault | 25 | 73 705 | 22 | 50 977 | 8 | 7 255 |
| Third Party at Fault | 51 | 38 659 | 41 | 47 015 | 40 | 42 044 |
| Other | 6 | 40 830 | 1 | 255 | 5 | 19 621 |
| Total | 273 | 462 586 | 271 | 375 663 | 121 | 219 870 |

Note. 1. As at 31 March 2002

TABLE 2: Membership of the TRMF Steering Committee and Sub-Committees

| Agency | Steering Committee representative | Liability Sub-Committee representative | Property Sub-Committee representative | Workers' Compensation Sub-Committee representative |
|--------------------|-----------------------------------|--|---------------------------------------|--|
| Treasury | Philip Mussared (Chair) | Craig Jeffery (Chair) | Craig Jeffery (Chair) | Craig Jeffery (Chair) |
| Treasury | Robert Cockerell | Michael McIntyre | Michael McIntyre | Jane Goodluck |
| Education | Simon Barnsley | Armin Howald | Armin Howald | David Salisbury |
| Health | Dianne Smith | David Page | Peter Alexander | John Burgess |
| Infrastructure | David Hudson | Stephen Shirley | Stephen Shirley | Amanda Russell |
| Justice | Brian Smith | Brian Smith | Brian Smith | Linda Urh |
| Police | Frank Ogle | Ian Latham | Ian Latham | Dianne Green |
| Premier | Geoff Owen | Peter Wright | Paul Jacobs | Mark Cook |
| Primary Industries | Michele Moseley | John Doering | John Doering | Karen Steenhuis |
| State Development | Peter Harwood | Kevin Thomas | Kevin Thomas | Greg Burgess |
| TAFE | | David Marshall | David Marshall | Leo Foley |
| Office of the DPP | Paul Turner | | | Luci Wilkins |

A number of agencies have either formal or ad hoc programs in place for the driver training of relevant employees.

However, there are differences in the focus of training. Some agencies are concerned with increasing driver awareness by providing mainly theoretical training, with a limited practical element. Other agencies focus on increasing the practical skill level of its employees, by arranging "advanced" driver training.

Treasury has implemented a "low risk" driving program for its employees, through the RACT and including a four-hour practical session. The aim of the program is to reduce the risk of injury to Treasury employees and reduce associated costs to the agency. The experience that Treasury has gained may be of assistance to other agencies in developing a driver-training program, or reviewing an existing program.

For further information about the Treasury program, contact Keri McKibben on 6233 3210.

Statement of Findings Report

KPMG has recently completed the Statement of Findings Report of the Tasmanian State Service Workers' Compensation Scheme for the year ended 30 June 2001. The objective of the Report is to ensure procedures and processes of the Fund Administration Agent comply with the *Workers Rehabilitation and Compensation Act 1988* in respect to the management of claims and reimbursement of expenditure.

As the claims administration function is shared between the Fund Administration Agent and agencies, many of the findings relate to the procedures and processes used by agencies.

The Report contained a number of findings relating to claims estimates. The following is a summary of these findings:

- Agencies must provide appropriate and timely information when submitting reimbursement schedules in order to ensure wage reimbursements are calculated correctly.
- Step downs of normal earnings should be applied in accordance with the Act. Agencies that decide to pay claimants at 100 per cent of their normal earnings after the step down period has been reached should absorb the extra cost rather than the Fund.
- Agencies must ensure case estimates are accurate and up-to-date.
- Revision of the estimates should be performed at each file review date and approved by appropriate officers (from both the Fund Administration Agent and the agency).
- Any revision of case estimates should be evidenced on file.
- Independent reviews of initial claim estimates should also be undertaken to ensure estimates are accurate and reasonable.

These findings highlight that it is important for agencies to review outstanding workers' compensation claims estimates. Marsh Pty Ltd and its workers' compensation sub-contractor, NRMA, are encouraging agencies to place a greater emphasis

on the development of claims estimates. To assist with this, NRMA will:

- be available to attend more frequent file review meetings with agencies; and
- hold a seminar in May 2002 on the calculation of claim estimates.

Treasury has recently held meetings with a number of the larger agencies to discuss claims estimates and management, file reviews and the new claims administration system (STARS). If you would like to arrange a similar meeting, please contact Bindi Knoop on 6233 6597.

Frequently asked questions

Q. How is the Tasmanian Risk Management Fund administered?

A. The Department of Treasury and Finance is responsible for administering the Tasmanian Risk Management Fund (TRMF), through the TRMF Unit of the Procurement and Property Branch. The Unit is responsible for delivering efficient and effective risk management services, which includes: research and development of risk management policies and procedures; communication strategies; and the provision of budget and other financial information. In addition, Treasury's Government Finance and Accounting Branch is responsible for administering the Special Deposits and Trust Fund Account into which agency contributions are paid and from which all costs associated with the operation of the Fund are met.

Q. When will the Fund Administration Agent's claims administration system, STARS, be made available to agencies?

A. It is proposed that agencies will have the option of purchasing "read-only" access to STARS from 1 July 2002. This will allow sufficient time to ensure that the system is fully operational. In the meantime, agencies will receive reports generated by STARS, either in electronic or hardcopy form.

Q. Is the Steering Committee looking at the reserves in the Fund and the value of outstanding claims?

A. Accrual accounts are being developed to give a more complete financial picture. In addition, a financial model is being developed by the Fund's Actuary in relation to the revenue, expenditure, assets and liabilities of the Fund.

Q. In relation to professional indemnity, is it possible for agencies to indemnify themselves against third parties seeking to recover workers' compensation payments made to their employees who are injured while working in agencies?

A. The *Workers Rehabilitation and Compensation Act 1988* specifically allows for the recovery of payments from third parties. As a consequence, any attempt to limit such recoveries through indemnities may be void as being against public policy.

Q. *How does an agency recover motor vehicle claims costs from a third party where the claims costs are less than \$500?*

A. As a general rule, motor vehicle claims that fall under the excess of \$500 should not be reported to the Fund Administration Agent's motor vehicle sub-contractor, Lumley General. However, in the event that an agency wishes to recover an amount less than \$500 from a third party, Marsh Pty Ltd has developed a number of sample letters of demand to send to third parties, requesting payment. Agencies should obtain these letters to send to the third party. In the event that no payment is received, agencies can take action to recover the claims costs through the Small Claims Tribunal.

Estimated Fund contributions for 2002-03

In February 2002, the Actuary calculated the estimated Fund contributions for each participating agency for the 2002-03 financial year. This estimate gives each agency an indication of the level of contribution that will be required. The aim of this is to help agencies in their budgeting process.

For those risks for which contributions are determined using claims experience – for example, workers' compensation, motor vehicles and Housing Tasmania cover - the relative performance of agencies in the final six months of 2001-02 will determine any difference between the estimated contribution for 2002-03, calculated using claims experience as at 31 December 2001, and final contributions, calculated using claims experience as at 30 June 2000.

The estimated contributions for 2002-03 for all risks were advised to agencies.

Excess

The estimated contributions represent the upper limit of payments that agencies will make to the Fund.

A memorandum will be sent out in May 2002, requesting each agency to review the excesses that form the basis of the calculation of the contribution for each risk.

By selecting a higher excess, an agency will be able to reduce the contributions payable to the Fund, as the agency will be responsible for a greater proportion of the cost of the risk.

Payment

Agencies will receive one invoice in July 2002 for the contributions payable for all risks.

Actuarial Fund estimations

The Actuary has advised that the total contribution pool (ie the combined amount from all participating agencies) for 2002-03 should be \$32.105 million (inclusive of GST, but prior to optional excess reductions).

Following is a breakdown of the estimated Fund contributions for 2002-03 for the categories of workers' compensation, motor vehicles, and other risks:

Workers' compensation

The total estimated contribution cost for workers' compensation is \$19.093 million (inclusive of GST, but prior to optional excess reductions).

The same excess arrangements that applied in 2001-02 will continue to apply for 2002-03 – ie agencies will be responsible for meeting the first five days of weekly benefits paid to employees and can opt to be subject to a higher excess on weekly benefits in exchange for a reduction in weekly benefits.

Motor vehicles

The total estimated contribution for motor vehicles is \$789 200 (inclusive of GST), comprised of:

- **Light vehicle fleet**
Estimated contribution of \$490 600.
- **Police vehicle fleet**
Estimated contribution of \$232 100
- **Miscellaneous fleet**
Estimated contribution of \$75 500.

Other risks

Property and business interruption

In relation to all other property, and business interruption cover, the same contributions that applied in 2001-02 should continue to apply in 2002-03.

Liability

In relation to liability risks (including public and products liability, professional liability and medial malpractice liability), there should be a 10 per cent reduction in 2002-03 from the contributions that applied in 2001-02.

TRMF Procedures Manual

Following the receipt of comments from agencies on the draft version of the TRMF Procedures Manual, Version 1 of the Manual was completed and distributed to agencies by Treasury on 24 December 2001. The electronic version of the Procedures Manual is available on the TRMF page at:

www.treasury.tas.gov.au

Further versions of the Procedures Manual will be developed by Treasury to expand on existing sections. Version 2 is currently being developed and will be released in July 2002. An issues register will be included in Version 2 of the Manual in order to track suggested amendments made by agencies.

If you would like to make any suggestions for Version 2 of the Manual, please contact Sarah Hazell on 6233 4751, or e-mail sarah.hazell@treasury.tas.gov.au.

Liability issues

At a recent meeting of the Liability Sub-Committee, Ms Luci Wilkins, Legal Officer at the Office of the Director of Public Prosecutions, provided an overview of the law governing liability claims. The following article summarises Ms Wilkins' presentation.

The law of negligence comprises three basic elements:

- the existence of a duty of care owed by one party to another;
- a breach of that duty of care after applying the relevant standard of care; and
- injury suffered by a person to whom the duty of care is owed as a result of the breach of the duty of care.

The "duty of care" entails the notion that one party has responsibility for the safety of another person.

A duty of care may arise where one party is responsible for controlling an environment that is accessible by other parties - eg occupier's liability. A party occupying premises has control over who enters the premises and must safeguard the well being of those who do. As a consequence, an occupier must take reasonable steps to safeguard against any risk of foreseeable injury to those who enter the premises.

The standard of care may vary from person to person - eg a school/teacher owes a very high standard of care to pupils due to the relationship of dependency. This higher standard of care is also owed to the elderly. A higher standard of care is also owed to people under various types of disability, including intoxication - eg extra precautions must be taken by an occupier of licensed premises to ensure the safety of patrons or visitors.

An occupier's duty of care is generally owed to people who enter premises legally, but a duty may also be owed to those who enter premises as trespassers. For example, a child may enter school property on a weekend to use the school's tennis courts. If the school is aware of this use and that there may be a risk of injury to the trespassing child, then the school may owe a duty of care to the trespassing child. A duty of care may arise even where the other party is aware of the risks they are being exposed to - eg playing football. In these cases, it may be a defence to argue that the participant in the match voluntarily assumed the risk of injury by agreeing to play.

Courts do not expect occupiers to create a risk-free environment. The focus of the law of negligence is on taking reasonable care to address reasonably foreseeable risks. Where the risk of injury is very remote or slight, compared to the costs of preventing the injury, a court may hold that the standard of care has not been breached. However, in general terms, if a risk is foreseeable, then courts will expect the occupier to take reasonable steps to minimise that risk.

Often the situation arises where there are competing duties of care owed to different parties. For example, the Crown owes a duty of care to employees of nursing homes that it operates, but it also owes a duty of care to the elderly people living there. Some times these duties may conflict - eg a work practice benefiting the employee may not benefit the elderly patient. Meeting one duty may increase the risk of injury to another party. A court will consider the reasonableness of the action taken by a defendant to guard against the risk of injury to a party where it has had to weigh up the respective risks and appropriate action to remedy those risks in circumstances where there are several parties to whom a duty of care is owed. In some cases, the duty of care owed to more than one person will coincide - eg tripping dangers present a foreseeable risk of injury to both staff and the public, and removing this hazard fulfils the duty of care owed to both parties.

If a court finds that there has been a breach of a duty of care, it will then go on to consider if the injury was caused by that breach. For example, if a person is admitted to hospital for surgery as a result of an injury and the doctor makes an error during surgery, the doctor may have breached his duty of care owed to the patient. However, if the ultimate injury suffered by the patient was an inevitable consequence of the initial injury, and the doctor's breach was not the cause, then a court may hold that the breach did not cause the injury. As a consequence, the patient's action for negligence against the hospital/doctor would fail.

A defendant may attempt to prove that the plaintiff failed to take reasonable care for his/her own safety and wellbeing, and that this failure contributed to their subsequent injury. If a court accepts this defence, then the plaintiff's award of damages is reduced by a percentage reflecting the amount to which the defendant contributed to his/her injuries. It was noted that the defence of contributory negligence generally does not succeed in cases where children are involved.

The existence and implementation of appropriate risk management strategies and processes may help in the defence of a negligence claim, and will certainly help to avoid accidents that may give rise to such claims. However, not acting on risk management strategies that identify foreseeable risk of injury to others could potentially put a defendant in a worse position as it will not be able to claim it was not aware of the potential risk. Therefore, risk management procedures/strategies, once started, must be implemented.

Ms Luci Wilkins is a representative on the Workers' Compensation Sub-Committee of the TRMF.

The Tasmanian Risk Management Fund Unit

The Tasmanian Risk Management Fund Unit is part of the Procurement and Property Branch of the Department of Treasury and Finance. The Unit is located on the third floor of 80 Elizabeth Street, Hobart.

Treasury's TRMF Unit is responsible for providing secretariat and administrative support for the Fund, the Steering Committee and each of the Sub-Committees.

The role of the TRMF Unit of Treasury is to deliver efficient and effective risk management services. This includes:

- research and development of risk management policies and procedures;
- communication strategies; and
- the provision of budget and other financial information.

If you have any questions regarding the Fund or risk management issues, please contact Treasury.

Treasury contacts



Tom Saltmarsh

Principal Policy Analyst
TRMF Unit
Procurement and Property Branch
Department of Treasury and Finance
Ph: 6233 3763

E-mail: tom.saltmarsh@treasury.tas.gov.au

Tom is responsible for:

- managing the TRMF Unit of Treasury;
- managing the Fund Administration Agent contract; and
- providing agencies with support and advice on risk management issues.



Bindi Knoop

Senior Policy Analyst
TRMF Unit
Procurement and Property Branch
Department of Treasury and Finance
Ph: 6233 6597

E-mail: bindi.knoop@treasury.tas.gov.au

Bindi is responsible for:

- developing and implementing communication strategies on risk management policies and procedures, including the preparation of Treasury's Newsletter *riskmatters*;
- providing agencies with support and advice on risk management issues; and
- assisting with the management of the Fund Administration Agent contract.



Sarah Hazell

Senior Policy Analyst
TRMF Unit
Procurement and Property Branch
Department of Treasury and Finance
Ph: 6233 4751

E-mail: sarah.hazell@treasury.tas.gov.au

Sarah is responsible for:

- participating in the development and implementation of the Risk Management Policy Framework;
- providing agencies with support and advice on risk management issues; and
- assisting with the management of the Fund Administration Agent contract.



Kate Daley

Senior Policy Analyst
TRMF Unit
Procurement and Property Branch
Department of Treasury and Finance
Ph: 6233 6627

E-mail: kate.daley@treasury.tas.gov.au

Kate is responsible for:

- providing administrative support;
- monitoring and preparing reports for agencies on the Fund;
- providing assistance and advice to agencies on contributions, claims management and risk management; and
- liaison with the Fund Administration Agent, the Actuary, the Office of the Director of Public Prosecutions, and the Office of Employment Policy.

riskmatters

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