



Footpaths and shared paths

Risk mitigation guide

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Background

LGIS manages liability claims resulting from local government member's provision and management of footpaths and shared paths.

Where these claims tend to be of high severity and where negligence has been established, the courts have imposed correspondingly high awards.

To support our members LGIS has developed this guide for the mitigation of footpath and shared path related risk management.

Local governments owe a duty of care to users of their path networks. To assist LGIS members in discharging their duty of care this guide emphasises the requirement to be aware of the risks they are exposed to in relation to their paths, and to be able to demonstrate their systematic approach to managing those risks.

In developing and reviewing the guide, consideration was given to the risks associated with paths from concept to delivery, as well as the variety of ways members carry out operations (in-house, outsourced or a combination of both).

The intention of this guide is to provide members with a basis to analyse and/or develop their own systematic approach to managing their paths whilst reducing exposure to liability claims.



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Table of contents

Background	03
Introduction	06
Risk management	07
• Figure 1 - example of a path maintenance and renewal risk management process	
Identification	09
Table 1 – path risk zones	
A. Formal inspection, not initiated by councils, (including authorised openings)	
B. Formal inspections	
C. Customer requests	
Assessment	12
• Path risk rating	
• Table 2 - easy guide to path risk rating	
Control	14
• Table 3 example path risk action response	
New paths	15
• Design and construction	
• Consideration of path users in design	
• Design and construction risk assessments	
• Figure 2 - example of a typical path design and construction risk management process	
Appendices	20
• Appendix 1: example decision making flowchart and gathering of information	
• Example gathering information from a customer request	
• Example gathering information by insurance officer	
• Example gathering information and claims process completed by asset manager	
• Appendix 2 - example signs found on or related to paths	
Useful references	23

Introduction

Local governments across Western Australia provide millions of kilometres of footpaths and shared paths to their community. Paths are an important asset and local governments are committed to meeting the community’s reasonable safety expectations, giving consideration to risk management through construction and maintenance of path assets.

This document relates to the risk management of footpaths and shared paths, it does not cover dedicated cycle paths separated from pedestrian use which may have a greater range of risks. Considerations for cycle networks could include work on adjoining or adjacent areas including median strips and unformed verges. There is also the matter of managing the interaction of pedestrians, bicycles and other path users.

This document is not a technical guide. It’s focused on public liability and professional indemnity exposures. It can assist members to develop a risk approach to the management of paths, through the assessment of new work and periodic inspections of existing assets. These assessments should identify the risks associated with path assets and inform a strategy for the management of those risks.

A duty of care is also owed by members where problems are caused by other structures (i.e. trees and their roots, benches, signs etc.). Members should be able to demonstrate a reasonable risk management approach to these problems.

Members should have systems in place for designing, constructing, maintaining and repairing path assets. These will help reduce the likelihood and risk level of an event leading to a public liability claim being made.

This guide has been compiled to specifically address the process of determining the types of controls:

- To ensure new path assets are constructed to reduce the risk to users; and
- Hazards on existing assets are risk managed through identification, assessment, prioritisation and remedial actions.

Management of path assets should form part of the member’s asset management system. All decision making processes regarding risk management should be documented and recorded in the corporate record system. If path assets are not addressed under Integrated planning and reporting (IP&R), members should adopt a policy stipulating the methodology and commitments to manage path assets.

When local governments develop (and document) their asset management plans and policy they should consider the duty of care requirements of the *Civil Liability Act 2002 (WA)*, and the sections relative to that of a public body such as a local government member, namely:

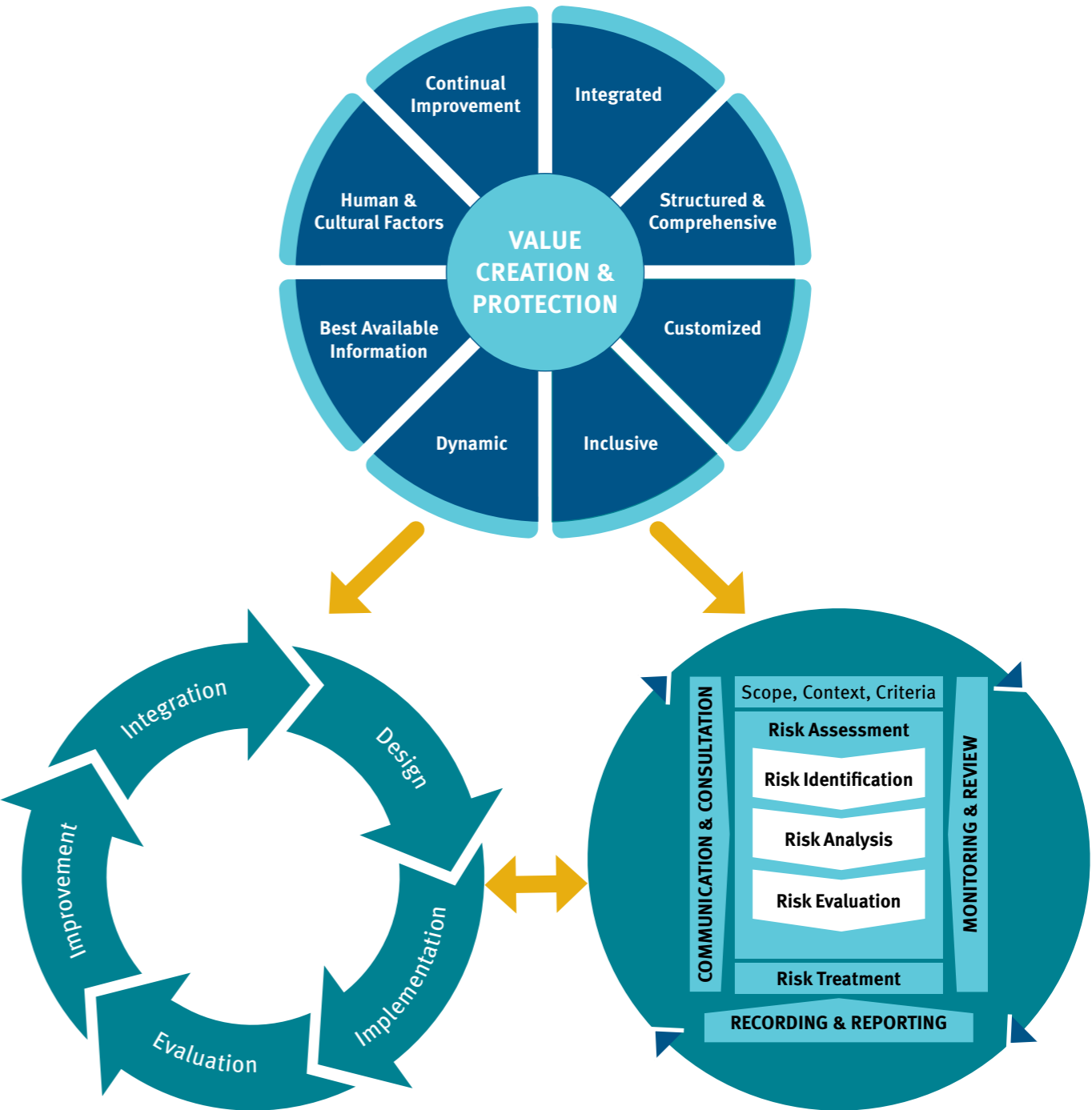
- **Section 5W:** Principles concerning resources, responsibilities etc. of public body or officer;
- **Section 5X:** Policy defence;
- **Section 5Y:** Proceedings against public body or officer based on breach of statutory duty;
- **Section 5Z:** Special protection for road authorities.

Understanding and correct application of these provisions may afford some protection against public liability claims and assist LGIS in adequately defending members who are the subject of these claims.

In order to demonstrate the local government’s commitment to managing their path network their risk management procedures and allocated resources should be documented in operation and delivery plans.

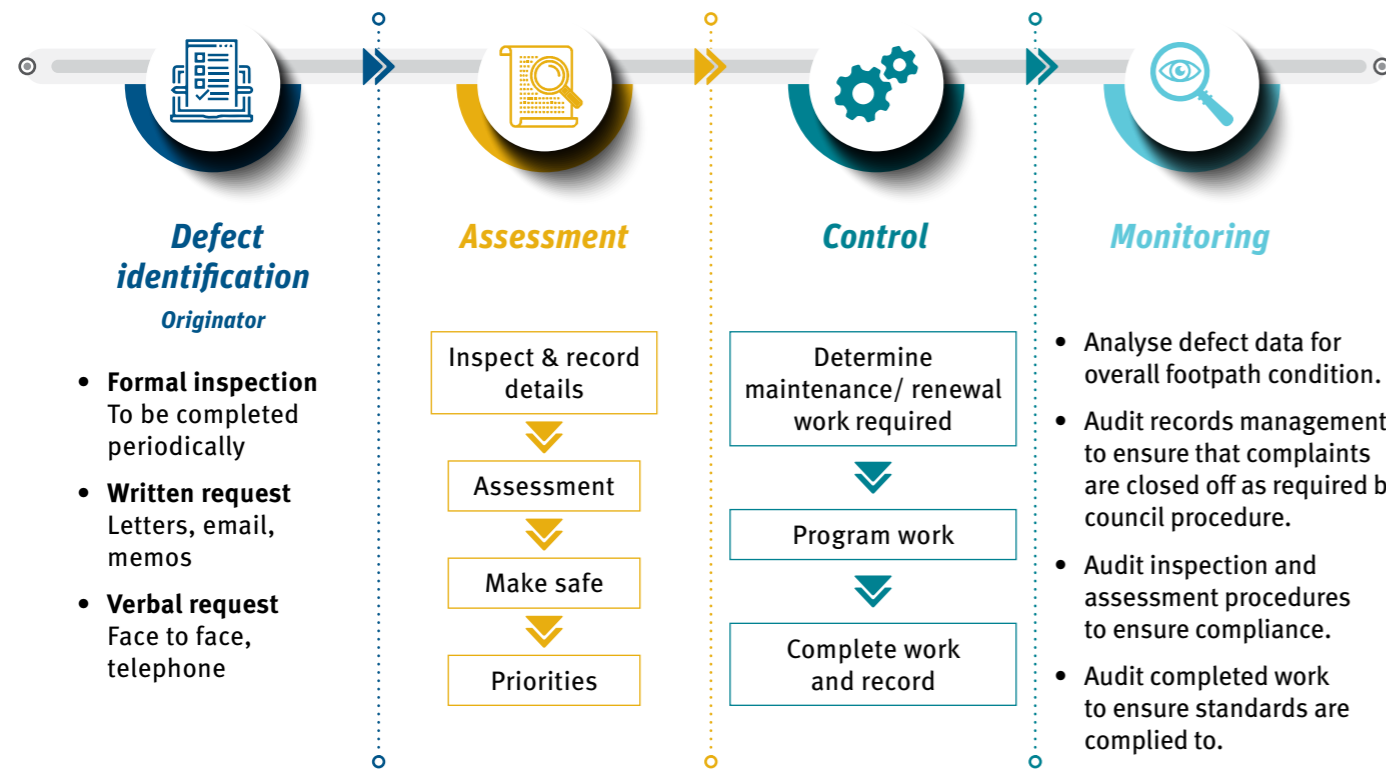
Risk management

This guide has been prepared in a format that is consistent with the *International Standard AS ISO 31000:2018 Risk Management – Guidelines*; the framework of which is outlined below. This standard provides principles and a framework for risk management. This guide follows the process outlined in the standard as it provides a practical, systematic approach that not only assists members to identify and manage risk exposures but also provides a strong platform for an efficient management system.



¹ Standards Australia Limited, AS ISO 31000:2018 Risk management – Guidelines, SAI Global Limited, Sydney, 2018. © Standards Australia Limited. Copied by JLT Risk Solutions with permission of Standards Australia and Standards New Zealand under Licence 1811-c079.

Figure 1:
Example of a path maintenance and renewal risk management process



Identification



All local governments should have a process for the evaluation of paths and identification of hazards, leading to maintenance and renewal of path assets. The process should consider available resources to make sure that it is achievable. Your process should be documented and communicated to all responsible employees.

Develop a paths register

Asset identification is the first stage of the risk management process. The data is also used for the development of member's asset management plans supporting its IP&R.

When paths are evaluated the following information should be recorded in a register which is regularly reviewed and updated:

- The location,
- Type,
- Length, width and known depth of assets,
- Usage and zoning of all segments of path networks.

Once a paths register has been created make sure that there is a process in place so that any new paths are added to the register. It's important that the register is up-to-date to support the inspection program.

Levels of service and defect parameters

The second part of the process is to work out levels of service and defect parameters. A process for developing defect criteria and examples can be found within the assessment section.

Inspection program

Inspections are a formalised identification of defects on the existing path network using a pre-determined set of criteria. They may be completed using a checklist or mobile data collection system and should be carried out by competent personnel.

The inspection program implemented by a local government will depend on the local government's resources and the extent of the footpath network, and could include one or a combination of the following methods - user requested inspections, regular proactive inspections and inspections performed in response to customer requests.

To assist with prioritising inspections, it is useful to categorise path networks into zones based on usage information. Higher risk areas may be those with high pedestrian usage or assets located adjacent to facilities where users may be at a greater risk/ considered vulnerable, such as an aged care facility. These zones may be identified in a path register using the information from the initial asset inspection along with planning knowledge. Zones with the highest pedestrian numbers or highest risk pedestrians should be inspected more frequently than other zones.

Categorising the path network based on usage patterns supports the development of an inspection program and performance benchmarking. Table 1 provides an example of risk weighting based on defined usage criteria.

Table 1:
Example path risk zones

Risk zone	Description
High	<ul style="list-style-type: none"> Constructed asset, CBD, Adjacent nursing home, Adjacent schools/ childcare, Adjacent community facilities such as halls
Medium	<ul style="list-style-type: none"> Constructed assets in urban areas
Low	<ul style="list-style-type: none"> Non-constructed paths

The inspection program is the main method of identifying all known risks associated with the path and generally takes one of the three following forms:

A. User requested inspections

These are inspections resulting from requests by users and for authorised openings from entities wishing to open areas of a member’s path network (e.g. utility providers).

In order to ensure satisfactory reinstatement of paths, local governments may implement an application for road opening, including openings on paths. This is consistent with the *Local Government (Uniform Local Provisions) Regulations 1996* (Including section 11); the theme of the *Utility Providers Code of Practice for WA*; and the *Local Government Guidelines for Restoration and Reinstatement in Western Australia*.

Written applications by entities to work on the path are a valuable source of information. This gives local government firsthand knowledge about the condition of the path. It is also an opportunity to formally inspect the area around the opening prior to, during, and after the activity. All authorised openings ideally should be inspected by members after the work has concluded to ensure the path has been left in a safe condition.

The requirement to manage ongoing works associated with authorised openings in the path and to ensure satisfactory reinstatement of authorised openings is reflected in the previously mentioned code of practice and guidelines. This requirement also rests with legislation specific to some utilities. For example, the *Energy Operators (Powers) Act (WA) 1979*, Section 53 requires the energy operator to reinstate any opening in the street or pavement caused by its works. If the works are ongoing, it is to provide the appropriate warnings, barriers and lighting to manage the risk presented by the opening. The energy operator is also required to indemnify the local authority regarding any associated liability.

Requirements to maintain appropriate protections to excavated areas of the thoroughfare and ‘make good’ any damage also sit within the previously mentioned provisions of the local government regulations.

B. Formal inspections

To demonstrate due diligence, members should implement a regular and ongoing formal inspection program. This program will assist LGIS with defending claims against members. Many members will have informal inspection processes in place where employees walk paths identifying maintenance requirements. This information is often verbally relayed back to the relevant supervisors for programming and resource allocation. As this verbal step lacks the recording of the hazard identification and assessment process along with the subsequent actions, its ability to provide evidence of a member’s attempts to discharge its duty of care is limited.

The frequency of inspections along with the level of detail in the program must be considered within the confines of the member’s available resources and in the context of the extent of the path network.

C. Customer requests

Customer requests are a valuable insight into hazards. In most instances, a member’s customer service representative is the first person to record a maintenance request. The decision making process following the complaint is vital. For example:

- What information is recorded?
- Who receives the information?
- How quickly does the information get to the right people?
- How quickly could maintenance or renewal be seen to?

Appendix 1 is an example flowchart of activities that can be adopted by members for use by their customer service staff.

If a defect is reported by a staff member, this report may be considered in the same manner as a customer service request.



Assessment



There are many assessment methods used to determine maintenance and renewal programs for path assets. The chosen method should be linked to asset management plans. Any asset improvement program should be identified through the members’ IP&R documentation. Inspection results will aid this process by allowing unplanned maintenance and renewal work to be scheduled, depending upon priority.

The evaluation process should reflect the risk of incident in accordance with the severity of the defect and the frequency of use. The member is encouraged to consider the use of electronic data capture (photos, global position system (GPS) and measurement data).

Path risk rating

Below is an example method for determining footpath risk ratings for defects. This will help to prioritise maintenance and renewal works for footpaths.

Table 2 (the easy guide) provides an example of risk ratings for defects causing hazards on path networks. It is designed for investigation and review of all customer requests. The information supplied is evaluated and measured for managing the risk to an acceptable level. It is divided into two major categories of risks, physical risks and environmental risks.

The physical risks are those directly related to the hazards. These include the trip size, whether the surface of the path is uneven, how slippery the footpath is and ponding (pooling of water). These categories represent key causes of claims against members.

Environmental risks are those associated with conditions surrounding the path. They include available lighting and the degree of shadow covering the footpath.

The easy guide is used by obtaining the following information via the inspection process as previously discussed. The inspection must ascertain:

- What is the cause and size of any trip hazard?
- Is the surface uneven and to what degree?
- Is the surface slippery and to what degree?
- Is there any water ponding?
- What is the lighting like?

- Are there any shadows on the path?
- Where is the path located?
- What is the frequency of use of the path?

The inspecting officer should use site information to determine the path risk rating from the easy guide. This requires consideration of both physical risk and environmental risks to obtain a rating.

If the risk is situated in the orange area of the easy guide, then the risk zone (refer Table 1 Example path risk zones, identification section) or pedestrian usage and type should be considered. If the path falls into the high risk zone category of table 1, then the rating is moved up to the next risk rating level within the easy guide*. The user records the path risk rating using the easy guide to assist with prioritising the hazard and determining appropriate actions.

It is important members consider the service levels agreed with their community and their ability to resource maintenance and renewal work when developing their path defect criteria. These criteria may allow council to meet its commitment to the management of paths through any risk management process.

The officer conducting the inspection should use a checklist to record the findings of the inspection. A procedure for the recording and action plan for the information and data collected should also be prepared.

*Considering how the location, usage volume and type of user affect the relative risk is prudent when inspecting shared paths, as is:

- Condition of signs and pavement markings.
- Clearance to obstructions (e.g. trees) – head heights will differ between cyclists and pedestrians.
- Blind spots and lines of sight (e.g. particularly near corners and intersections).

Table 2:
‘The easy guide’ example easy guide to path risk rating

Easy Guide to Assessing Path Risk Rating						Lighting		Lighting excellent	Lighting good	Lighting adequate	Lighting inadequate	No artificial lighting
								(1)	(2)	(3)	(4)	(5)
						Shadow		No shadows	Little shadow	Some shadow	Medium shadow	Heavy shadow
Trip size (mm)		Unevenness		Slipperiness		Ponding (mm)	If rating is coloured Orange, you must consider the volume of traffic and the location of the path. If they are important, go to the next level up.					
> 30	(5)	Extreme	(5)	Extreme	(5)	> 30	(5)	VH	VH	VH	VH	VH
20–30	(4)	Very	(4)	Very	(4)	20–30	(4)	H	H	H	VH	VH
10–20	(3)	Uneven	(3)	Uneven	(3)	10–20	(3)	H	H	H	H	VH
5–10	(2)	Slight	(2)	Slight	(2)	5–10	(2)	M	M	M	H	H
< 5	(1)	Flat	(1)	Not slippery	(1)	<55	(1)	L	L	L	L	L

Control



Control of each risk exposure arising from a defect is a specific issue. No two exposures are the same. Members need to prepare their own standard for handling all situations. The type and style of control technique adopted will depend on available resources, facilities and expertise. There are two considerations to be taken into account when deciding on control measures: the type of control mechanism to be implemented and the time in which to respond.

There are three basic control measures generally implemented by local governments:

- make area safe by installing temporary safety barriers and signage;
- effective repair of defect; and
- effective renewal of defective asset.

The reaction time for response is perhaps the most critical single variable when assessing the control of a hazard. To determine these timeframes members will have conducted a review of their maintenance targets when completing their asset management plans for IP&R. Response times should be based on realistic, achievable times and depending on resources available. As circumstances change these may be reviewed and adjusted accordingly.

Table 3 below provides members with example control mechanisms and response times. Before committing any control mechanisms and response times to policy, members should ensure they are both reasonable and achievable. Using the parameters of table 3 as an example, if members are unable to commit resources to ensure defects are repaired within 2 days when assessed as a high priority, they should consider adopting an achievable process. This might include delivering an alternative control which reduces the risk rating to an acceptable level. Overall it is important this process is documented, repeatable and ensures the member is fulfilling its strategic community plan commitments.

Table 3: Example path risk action response

Priority	Control Mechanism	Response Time
Low	Consideration should be given as to whether action needs to be taken	As resources permit
Medium	Program into maintenance works	15 Days
High	Make safe Effect repairs	1 Day 2 Days
Very High	Make safe Program immediate repair or renewal	Within 4 hours 1 Day

New paths



To ensure the path network meets community needs and pedestrian safety, consideration should be given to residents' amenity, path usage and surrounding land use. Any conflict areas are to be designed to ensure pedestrian and other users' safety.

The new asset should be included in the relevant asset management plan and form part of the IP&R process. This includes ensuring adequate resource requirements for the life of the asset and the sustainability of the entire network.

Design and construction

All new infrastructure ideally should be designed and constructed considering *Australian Standard AS1428 – Design for Access and Mobility (Set)*.

A road safety audit of projects including areas of high risk of conflict for pedestrians with other forms of transport should be completed if necessary. All designs should be completed as required by the member's design procedures and construction should ideally be to the minimum requisite standards where standards are applicable. This may include standards specified by relevant bodies such as Austroads, Main Roads WA and IPWEA. For example, *Austroads Guide to Road Design Part 6A: Paths for Walking and Cycling*; and *MRWA Supplement to Austroads Guide to Road Design - Part 6A*.

Where design and/or construction is outsourced, specific requirements including compliance with Australian Standards and the member's own standards should be documented within the procurement and tender process.

The process of handover of a new path from a developer should be considered and documented (preferably) as this will assist with evidencing the condition of the path. For example, including condition in accordance with the standards/conditions of the development approval.

Consideration of path users in design

The interaction of pedestrians and bicycles is particularly important given cyclists of all ages are now permitted to ride on WA footpaths, unless the path is otherwise signed. There is no doubt sharing of paths provide many benefits to the community but there are a number of issues that need to be considered when planning and designing new paths as well as retrofitting paths to accommodate a shared facility.

Some of the basic design criteria for shared paths include:

- Adequate width, 3m is a preferable minimum.
- Gentle gradients and turns.
- Clearance from obstacles.
- Sight distances.
- Appropriate surfaces.

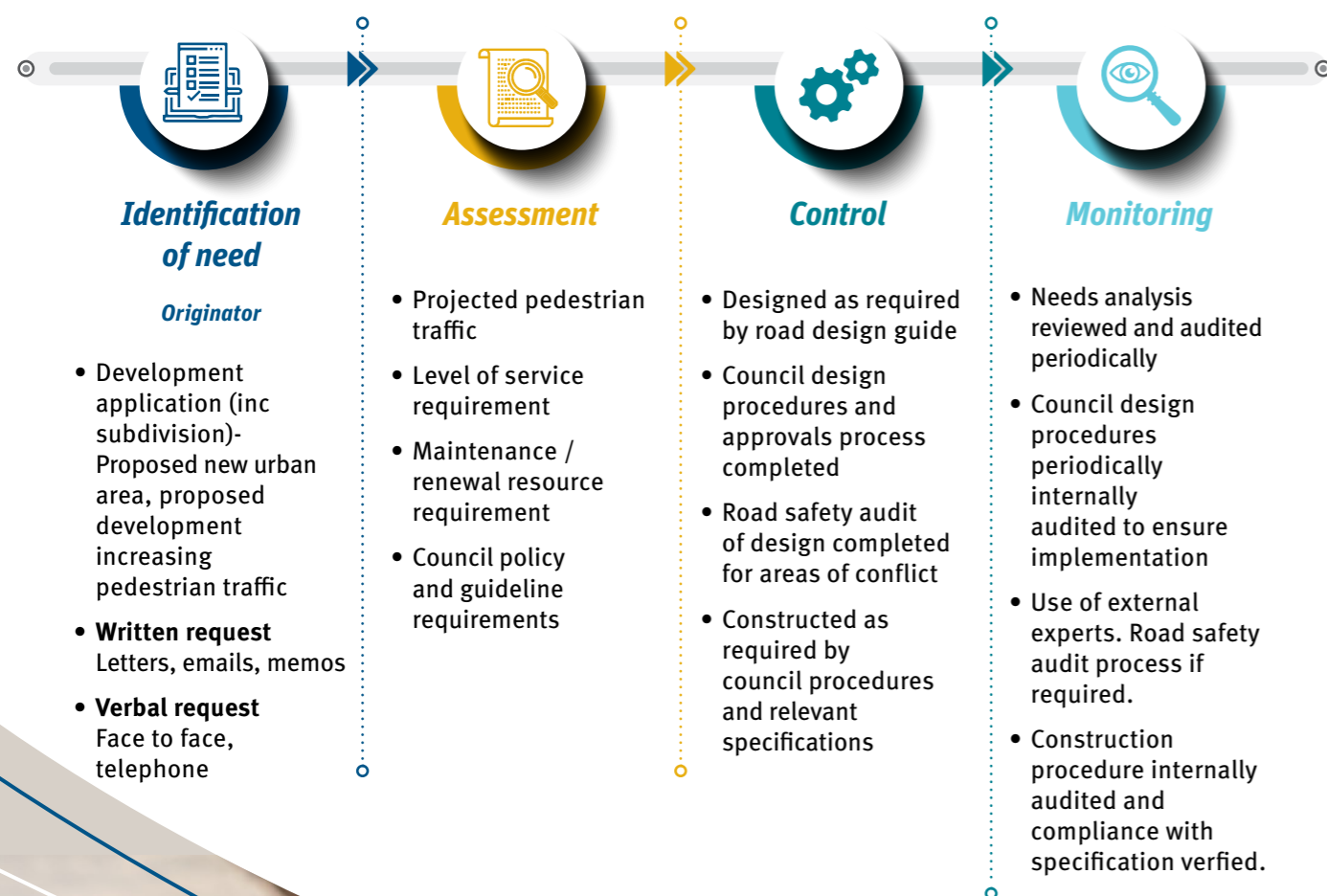
Where a decision is made to restrict users of the path to pedestrians only, i.e. exclude cyclists, consideration is required on how this restriction will be clearly communicated to all path users. For example, the provision of appropriate signage, markings and warnings.

Similarly where there are shared paths there is an obligation to consider relevant signage and markings along with its appropriate placement that provides advance warning of hazards, such as:

- Merging traffic
- Sharp bends
- Steep incline and decline
- Path and street intersections

In some cases design may call for the use of regulatory signs, such as stop and give way depending on the interaction between shared path users and traffic.

Common examples of signage are located in Appendix 2.



There are other relevant considerations for non-standard signage and information (e.g. maps, promotional material) available to shared path users. When this is used in combination with good design and management it can greatly reduce the likelihood of accidents and conflict between path users. For example, commonly stated rules for cyclists (*Road Safety Commission WA and Australian Road Rules*) include themes of:

- Pedestrians, including mobility scooters and motorised wheelchair users, always have right of way (i.e. give way to pedestrians).
- When riding on a shared path, keep left at all times, unless it is impractical to do so.
- Cyclists should use their bell to alert other shared path users that a bicycle is approaching.
- Overtake on the right hand side.

There are of course other users of paths. As indicated in the above rules, pedestrians include motorised wheelchairs and mobility scooters. All pedestrians, including these unique users should be contemplated in planning and design not only giving consideration to relevant Australian standards for disability access and inclusion but also the member's own disability access and inclusion plan.

Another user group, whilst not yet widely considered in contemporary design, relates to the emergence of devices such as e-Rideables. These devices are an increasingly prominent feature on member path networks and present new challenges in relation to people's attitudes and behaviours, particularly in the absence of clear and enforced regulation.

Similar to traditional wheeled devices, e-Rideables present a risk of injury to the rider as well as other path users. With their potential power, ability to speed and combined with their relatively small wheels, there is the chance path features or indeed defects that would otherwise be insignificant to other path users may be problematic to e-Ridable users.

Factors such as speed and power of these devices are governed under the *Road Traffic Code WA (2000)* with enforcement under the purview of WA Police. From a member risk point of view and at this stage, path design considerations of these devices over and above other wheeled path users, is unlikely a reasonable obligation of local government. However, given the spate of e-Ridable incidents at the time of writing this guide,

it remains to be seen if further legislative changes are made in this environment. Whether such changes could impact local government members is a matter for review at that time.

Otherwise, in addition to previously mentioned standards, there are a number of documents available to guide the design of paths that are intended to accommodate both pedestrians and cyclists (e.g. shared paths). For example:

- **IPWEA Practice Note 1 2014-** Footpaths and cycleways
- **AS 1742.2 - 2022** Manual of uniform traffic control devices – Traffic control devices for general use
- **AS 1742.9 - 2018** Manual of uniform traffic control devices – Bicycle facilities

Design and construction risk assessments

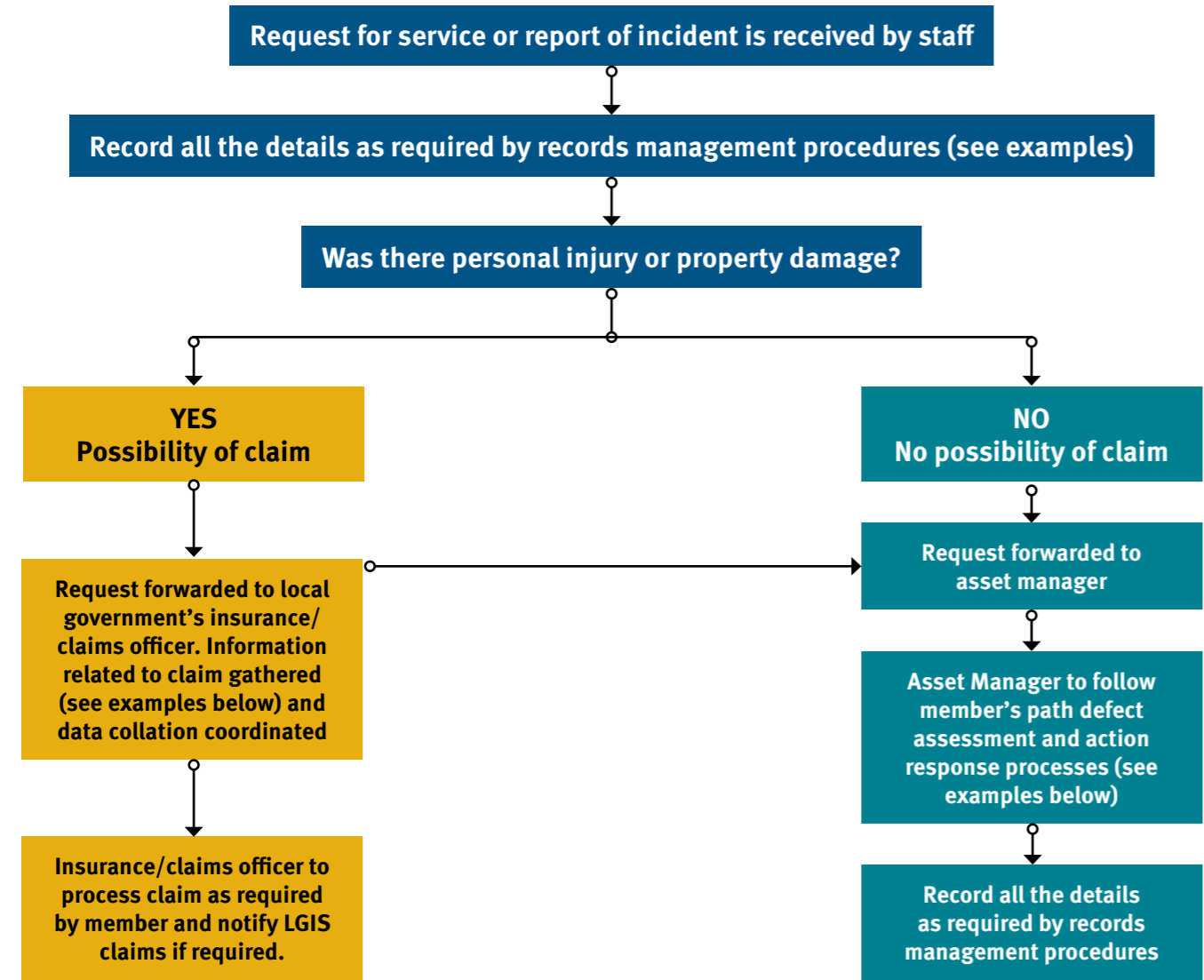
When designing and constructing a new footpath asset, the risks associated with the use and future management of the new asset should be assessed. A road safety audit is a formal examination of proposed or existing roads and road related areas from the perspective of all road users, including pedestrians, with the intention of identifying road safety deficiencies and areas of risk that could lead to incidents. This is required of main roads managed by the WA state government department Main Roads WA, and foot paths within a Main Roads WA area where there is a permanent change to layout (new road project or improvement project). Examinations by Main Roads WA are led by an independent, qualified team of professionals who are accredited through IPWEA WA (Institute of Public Works Engineering Australasia WA) / Main Roads WA and listed on the Road Safety Audit Portal.

While not necessarily a requirement of local government, a road safety audit will help to identify risks, suggest risk elimination or mitigation measures and therefore be able to control risks at new sites. This is consistent with the long-term best practice themes of Austroads guidance (e.g. *Guide to Road Safety Part 6: Road Safety Audit, S.12 Auditing at Local Government Level, Austroads 2022*).

Figure 2 outlines an example of the risk management of new path infrastructure.

Appendices

Appendix 1: Example decision making flowchart and gathering of information



Example gathering information from a customer request

Below below is a checklist to help ensure adequate details are gathered following an incident:

1. Name, address and contact details of customer.
2. Date/time of incident.
3. Location and defect reported.
4. Weather conditions.
5. Details of injury or damage to property, including name, address, contact details and age if available of injured parties.
6. Description of how incident occurred if known.
7. Any other details given by the customer about the incident.
11. Maintenance records of the site.
12. Records of any council civil works at or adjacent to the site.
13. Construction records of the site.
14. Inspection records for the site.
15. Any identification/control recommendations for the site.
16. Member council's footpath risk management documentation.

Example gathering information by insurance officer

Below is a checklist for insurance officers to use following an incident. This information will help LGIS with decisions to deny, investigate or defend claims:

1. Name, address and contact details of customer.
2. Date and time of incident.
3. Location.
4. Weather conditions.
5. Details of injury or damage to property, including name, address, contact details and age if available of injured parties.
6. Description of how incident occurred if known.
7. Other details given by the customer about the incident.
8. Any witness to the incident? Y / N, if yes, record witness name and contact details.
9. Any statement/s taken? Y / N, if yes, please attach to back of form.
10. Photographs of defect.
4. Photographs of defect.
5. Maintenance records of the site.
6. Records of any council civil works at or adjacent to the site.
7. Construction records of the site.
8. Inspection records for the site.
9. Any identification/control recommendations for the site.
10. Document footpath risk management actions taken.

Appendices

Appendix 2: Example signs found on or related to paths

For accuracy of signage use members should refer to current standards and guidance (e.g. including: *AS1742 Manual of uniform traffic control devices (set)*, *Road Traffic Code 2000* and other relevant legislation, *Austroads* and *MRWA guidance material*).



Bicycles only

Only cyclists may use this path.



Bicycle lane

Part of the road is designated for use by cyclists. These can either be on the vehicle carriageway or separate from it. When a bicycle lane has been designated, cyclists should wherever possible, try to use this lane.



Bicycle route

A route for cyclists, which may combine local streets, bicycle lanes, bicycle paths and shared footways.



Shared path

For use by cyclists, those in wheelchairs and pedestrians. Cyclists must give way to pedestrians on shared paths.



Road ahead

Warns cyclists and pedestrians that a road crosses the path ahead.



Lane end

This indicates that cycle pathway is ending and care should be taken.



Bicycle prohibition

Bicycles are not permitted where this sign is displayed.



Segregated path

One side of the path is for cyclists and wheeled recreational devices, such as rollerblades, skateboards and tricycles; while the other is for pedestrians and wheelchairs



CROSS HERE
WITH CARE

Bicycle crossing

Safe crossing for cyclists. Used to warn motorists of the likelihood of bicycles crossing road.



THINK AHEAD
THINK HELMET

Non-standard information signage

It is important that cyclists and pedestrians respect each other on shared paths and footpaths and adopt certain behaviours to ensure cycling and walking on our paths is safe and enjoyable for everyone. This provides an opportunity to promote safe use messages and educate users.



END

Shared use path signs

These signs indicate a path is shared with pedestrians. Cyclists as well as other wheeled recreational devices including skateboards, scooters and rollerblades must be aware that pedestrians have the right of way on shared paths. In WA a cyclist can legally use a footpath unless signed with a bicycle prohibition sign. Cyclists and other wheeled recreational devices must give way to pedestrians on a footpath.



Path condition warning signs

Used to warn users of changes in the shared path conditions, such as steep descent, winding path or slippery surface conditions.



Regulatory signs

Used to control situations where shared path users will interact with moving traffic. These are regulatory and consequently are enforceable at law.




Useful references

1. *AS ISO 31000:2018 Risk management – Guidelines*
2. *AS 1742.2 – 2009 Manual of uniform traffic control devices – Part 2 Traffic control devices for general use*
3. *AS 1742.9 – 2018 Manual of uniform traffic control devices – Part 9 Bicycle facilities*
4. *AS1428.1:2009 – Design for Access and Mobility*
5. *Australian Standard AS1428 (Set) – Design for Access and Mobility (Set)*
6. *Austroads Guide to Road Design Part 6A: Paths for Walking and Cycling*
7. *MRWA Supplement to Austroads Guide to Road Design - Part 6A*
8. *Road Traffic Act 1974 (WA)*
9. *Road Traffic Code 2000 (WA)*
10. *Local Government Act 1995 (WA)*
11. *Local Government (Administration) Regulations 1996 (WA)*
12. *Integrated Planning and Reporting Guidelines (Department of Local Government, Sport and Cultural Industries)*
13. *Civil Liability Act 2002 (WA)*
14. *WA - Traffic Management for Works on Roads Code of Practice – Main Roads WA.*
15. *Utility Providers Code of Practice for WA*
16. *Energy Operators (Powers) Act 1979 (WA)*
17. *Local Government Guidelines for Restoration and Reinstatement in Western Australia*
18. *IPWEA Practice Note 1 – Footpaths and Cycleways, Version 2, 2014*
19. *Pedestrian Council of Australia*
20. *Individual Member's Disability Access and Inclusion Plan*



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