

Claims against the Shire: Frequently Asked Questions (FAQs)

I am making a claim or advising of a complaint?

- A claim is a demand for monies from the Shire as compensation for personal injury, loss or damage to property allegedly caused by the Shire.
- A complaint means you are not seeking reimbursement or compensation but are seeking the Shire to undertake works to rectify an issue or problem. Complaints should be directed to Customer Services at customerservice@mornpen.vic.gov.au or (03) 5950 1000 or 1300 850 600.

How do I make a claim against the Shire for injury or damages?

- Visit the [Claims Information page](http://mornpen.vic.gov.au/claims) at mornpen.vic.gov.au/claims on the Shire's website and download the Information Request Form (IRF).
- Fill out the IRF and provide all evidence you have to substantiate your claim.
- Send the completed form to claimsandinsurance@mornpen.vic.gov.au
or:

Mornington Peninsula Shire Council
c/- Legal and Insurance Team
Private Bag 1000
Rosebud VIC 3939

How is my claim assessed?

- Once your completed IRF is received, the Shire's Legal and Insurance Team will investigate the facts of the claim. This may include site inspections, gathering information and documents internally and/or from third parties such as utility companies, contractors or other statutory authorities.
- Once all information has been gathered, the Legal and Insurance Team will objectively examine the claim to determine whether the Shire has any liability.
- If the Shire is not liable, a letter denying the claim will be sent setting out reasons for the denial.
- If the Shire is or may be liable, a settlement offer setting out the settlement sum, including

a settlement agreement will be sent to you. If settlement is agreed upon, payment will only be made once the settlement agreement has been signed.

When is the Shire not liable for injury, loss or damage?

- The Shire has a range of statutory defences available in relation to common claims. They are:
 - *Natural Events* – where injury, loss or damage is caused by natural events beyond its control such as bushfires, floods and storms.
 - *Tree Root Claims* – the Shire will not be liable for root damage to property if it was not previously aware of the problem.
 - *Trips, Slips and Falls where there is an obvious risk* – pedestrians must take care to avoid hazards and imperfections on pathways where the risk is obvious.
 - *Damage to land which is not the Shire's responsibility to maintain* – such as crossovers and certain sections of road reserve.
 - *Third Party fault* – where the injury loss or damage was caused by a third party such as a utility company, contractor or other statutory authority.
 - *Road Management Act 2004 (Vic)* – the Act provides that local councils are not liable for the first \$1,460 of damage caused by the conditions of roads or road infrastructure.

Should I contact the Shire during the investigation process?

- There will generally be no need. The Shire will contact you regarding the on-going conduct of the investigation and a determination will be provided via a formal written response.
- We will contact you if we require additional information to process your claim, or if there will be delays in processing your claim.

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MORNINGTON
PENINSULA
Shire

Will the Shire reimburse me for loss or damage on compassionate grounds?

- No. Whilst we regret any incident, we have obligations to ensure ethical and prudent use of Shire funds. We are unable to use rate payers' money to pay compensation unless a clear legal liability has been established.

Can I make a claim against my own insurance policy?

- If you have property or vehicle insurance cover, you may consider making a claim against your policy.
- Please note that making a claim against your policy may result in an initial upfront payment to your insurer for the applicable excess.
- Typically, insurance companies will only pursue the Shire for reimbursement where they consider the Shire to be liable. In such cases, your excess payment may be waived by your insurer. You should discuss this with your insurer prior to lodging a claim.
- In cases where you have made a claim against your policy, the Shire will not be liable for reimbursement of your excess under the doctrine of subrogation. The doctrine of subrogation allows an insurer to bring a claim in your name against the Shire if it believes we are responsible for your loss. If your insurer brings a claim against the Shire, the claim amount will include the excess paid by you.

Can I engage my own legal representation?

- It is your right to engage a lawyer at any time during the claims process. However, the Shire accepts no responsibility for the legal costs you incur. Issues of legal costs and the risks associated with litigation is something you should discuss with your lawyer.

Freedom of Information Requests

- If you wish to have copies of the documents held by the Shire in relation to your claim you must request the documents in the *Freedom of Information Act* 1982 (Vic). For more information about making and FOI request please see mornpen.vic.gov.au/foi

I am not happy with the outcome of my claim, how do I appeal or have the decision reviewed?

- Review of the Shire's decision will only be considered if new evidence can be provided in relation to the claim.
- Once an appeal or review request has been received, the matter will be reviewed internally by the relevant Manager.
- Review of the Shire's original decision may take up to 6 weeks. A decision will be provided to you in writing.
- If you are still unsatisfied with the Shire's decision you make seek legal advice or refer the matter to the local government [Ombudsman](#).

Who do I contact about my claim?

- The Legal and Insurance Team will be your point of contact regarding all matters concerning your claim.

Please direct all correspondence regarding your claim in writing to:
claimsandinsurance@mornpen.vic.gov.au
or call (03) 5950 1000 or 1300 850 600