



Financial Rights

LEGAL CENTRE

FACT SHEET



CALL THE
INSURANCE
LAW SERVICE
ON
1300 663 464

Financial Rights Legal Centre Inc.
ABN 40 506 635 273

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MAKING A CLAIM ON YOUR CAR INSURANCE

This fact sheet is for information only. It is recommended that you get legal advice about your situation.

CASE STUDY

Anthony had a comprehensive car insurance policy on his brand new V8 car. Three months after getting his new car he has an accident. He believes the other side is at fault. He puts in a claim. He needs his car back on the road as soon as possible. He has been ringing BIG INSURANCE COMPANY every day but nothing has happened for weeks. His car is sitting in a repair shop. BIG INSURANCE COMPANY keeps asking for information and still won't make a decision.

TO CLAIM OR NOT TO CLAIM?

Before claiming you need to think about whether you should claim at all. Making a claim on your insurance can affect:

1. Your ability to get insurance later
2. The cost of future premiums
3. Your no claim bonus

You may also have to pay an "excess". The excess is the amount of money you agree to pay in the event of a claim. In the event of an accident (rather than theft), the excess payable may vary according to who was driving the vehicle at the time. Check your policy for details.

When to consider not claiming:

1. Where there is very minor damage; and
2. The cost of repairing the total damage is less, equal to or just over the amount of the excess.

REMEMBER: The damage includes not only repairing or replacing your car, but may also include the repair or replacement of any other vehicle or property damaged in the incident, depending on who is considered to be at fault (or partially at fault).

If you are not at fault and the at-fault party is insured and admits liability, you should consider not claiming on your policy but pursuing the at-fault party instead.

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CAN I DECIDE NOT TO CLAIM AND TAKE THE OTHER OWNER TO COURT?

Yes you can but this can be risky. You may not be able to recover all of your legal costs, even if you win. You may lose, and then you would be liable for your own costs as well as the other party's costs. It is not recommended.

If you choose this option, you may not be able to change your mind later on and lodge a claim through your own insurer. Most policies give your insurer the right to deal with the driver or owner at fault themselves, if you have interfered with or prejudiced their ability to do this, your insurer may reduce or reject your claim.

CAN I CLAIM ON THE OTHER DRIVER'S INSURANCE?

You cannot "claim" on the other driver's insurance in the same way as your own insurance. It is not your insurance policy that the claim falls under. Neither you or the other driver's insurer have any obligations towards each other.

For the other driver's insurer to be involved, the other driver needs to lodge a claim and pay their excess. The only exception to this is if the other driver has passed away or cannot be found after reasonable attempts. You cannot force the other driver to claim if they do not want to.

Once a claim is lodged, the driver's insurer stands in the shoes of their customer. They may be willing to negotiate with you, but they do not have to.

They may ask you to give them access to inspect your car or to use their repairer or hire car company. You have the right to refuse and to use your own suppliers, but you do need to be very careful to act reasonably and minimise the amount you want to recover, otherwise you may end up out of pocket.

If you cannot reach an agreement with the other driver's insurer, you may need to pursue them in court. Court is risky, and you should get legal advice before considering proceedings.

The remainder of this fact sheet applies where you are lodging a claim through your own insurer. If you are uninsured see [Fact Sheet: I've had a car accident and I'm uninsured!](#)

HOW TO MAKE A CLAIM

Ring the insurer and ask for a claim form.

Many insurers now process claims over the phone (If English is a second language you may be safer to claim over the counter.) Your conversation may also be recorded by the insurer.



BEFORE you ring, work out what you are going to say. It is important to keep your descriptions simple and accurate.

DO NOT ring the insurer if you are upset or still in shock. Wait till you are calm and can clearly describe what happened.

If possible, get a claim form so you have time to think about what happened so you can describe it clearly.

IMPORTANT: If the insurer tells you over the phone that you cannot claim or your claim will be rejected, this may not be right.

YOU MIGHT STILL HAVE A CLAIM YOU CAN PURSUE.

GET ADVICE.

DO I NEED TO PAY AN EXCESS?

You need to check your policy.

There are policies that always require you to pay an excess, even if you are not at fault

Some policies will say you do not need to pay an excess if you can meet a list of conditions – eg. you are not at fault, and you can provide the name and address and registration number of the person who was at fault.

Other policies will require you to pay an excess, but will give you a refund if your insurer recovers this amount from the driver at fault. It may take months or years to get a refund, or you may not get a refund at all eg. if the other driver cannot be found or cannot pay.

CAN I PAY MY EXCESS AND DISPUTE FAULT LATER?

Yes, and you should be upfront with your insurer about this.

Paying your excess first can help you avoid delays eg. in repairing your own car, and also dealing with the other driver or their insurer.

You can continue your dispute for a refund of the excess even after it is paid.

If you are experiencing hardship in paying, you should ask to pay the excess in instalments – see below.

WHAT IF I CAN'T PAY THE EXCESS?

The excess is the amount you have agreed to pay in the event of a claim. In a way, the insurer is asking you to contribute an amount to the costs of the claim so that you share some of the risk.



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If you are in financial difficulty you may not be able to pay the excess. If this is the case, ask the insurer to take the excess out of any claim you are to be paid. It is unreasonable for an insurer to not agree to do this unless it is not practical (for example, you will not be receiving money because your car is being repaired). Then you should request to make payments by instalments to cover the excess. If the insurer won't be reasonable – GET ADVICE. For further information, see [Sample Letter – Can't pay my excess](#).

IMPORTANT: Do not drop your claim because you can't pay the excess. The insurer cannot refuse your claim just because you cannot pay the excess up front. Remember, even if the damage to your vehicle is minimal, there may be other damage arising from the incident that you may have to pay if your claim is not approved.

WHAT TO DO WHEN YOU ARE IN INSURANCE CLAIM LIMBO

Sometimes, like Anthony in the case study, you can get stuck in limbo where you have made the claim but have not had an answer. You ring the insurer and they keep asking for more information or saying your claim is still being processed.

Insurers are required to comply with the General Insurance Code of Practice. Section 3.1 of the Code states that an insurer must decide to accept or deny your claim within 10 business days of receiving the claim. If the insurer decides it needs further information or an assessment to decide your claim, then the insurer must notify you within 10 business days of receiving the claim:

1. What further information is required;
2. If a loss assessor needs to be appointed; and
3. An estimate of the time required to make a decision.

So if the insurer is not making a decision and not informing you whether further information is required or why there is a delay try sending the following letters to the Insurance company or call the insurance company and make a note of the call.

For further information, see [Sample Letter: Raise a Dispute \(choose the unreasonable delay option\)](#)

If this does not work you can send a letter of complaint to Insurance Code Compliance. See [Sample Letter: Insurance Code Complaint](#)

The above complaint should assist in getting a response. However, if this is unsuccessful you could refer the matter to the Financial Ombudsman Service.

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HOW TO LODGE A DISPUTE WITH THE FINANCIAL OMBUDSMAN'S SERVICE

You need to lodge a dispute in writing with FOS. DO NOT just ring FOS as your dispute will not be lodged. You should lodge the dispute online (www.fos.org.au) and it will be received straightaway.

Keep the information in your dispute simple to start with as you can add further information later. Keep a copy of your dispute form.

For more information see our [Dispute Resolution Factsheet](#).

WHAT CAN I DO IF MY INSURANCE CLAIM IS REFUSED?

If your claim has been refused read the [Fact Sheet – What can I do if my car insurance claim is refused?](#) If your claim is approved, read on.

WILL THE CAR BE REPAIRED OR WRITTEN OFF?

Most policies will give your insurer has the right to choose to:

1. repair the car
2. pay you to do the repairs or
3. write-off the car (either for the sum insured or replacement value)

Some policies may give you the right to choose your own repairer, but you need to be careful about the limitations – the insurer may be able to decide on how repairs are done, or have rights to make adjustments to your repairer's quote. You should also read the paragraphs below about the difference between your insurer doing repairs and you doing the repairs.

Your insurer does have an obligation to act in the utmost good faith (ie. fairly and reasonably). This means your insurer cannot insist on repairing your car if it cannot be done safely to its previous condition. You may need to obtain your own expert mechanical evidence about this, to refute any evidence from the insurer that the car is safe to repair. You should also check your State's roads and traffic authority and laws as these may also set requirements for when a car must be written off.

If there are no safety concerns but you have a preference on whether the car should be repaired or written off, you can still try to negotiate with your insurer. However you need to be reasonable and not expect the insurer to pay the sum insured for a total loss if the car can be repaired.

WHAT HAPPENS IF THE INSURER CHOOSES THE REPAIRER AND DOES THE REPAIRS

The General Insurance Code of Practice at s.7.20, provides that if your insurer chooses and authorises the repairer, your insurer is responsible for the quality of the workmanship and materials. The insurer must also



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handle any complaint about the timeliness of the work or conduct of the repairer as part of their complaints handling process.

So, if the repairs are faulty or incomplete then the insurer is responsible for fixing this.

Your policy may also give you additional rights eg. “lifetime guarantees” for repairs.

It is recommended that you arrange for the insurer’s repairer to fix your car, because the insurer is responsible for making sure the repairs are reasonable quality.

WHAT HAPPENS IF THE INSURER GIVES ME THE MONEY TO DO THE REPAIRS

The insurer has no further involvement and takes no responsibility for the repairs.

It will be up to you to find an appropriate repairer, and you will need to deal with any issues that come up between you and your repairer.

Before accepting money for repairs, you must get your own quotes and be satisfied it is enough for you to do the repairs properly.

WHAT HAPPENS WHEN A CAR IS WRITTEN OFF

If a vehicle is deemed a statutory write-off, this means the vehicle can’t be registered again because the vehicle is so badly damaged it would be unsafe to repair it.

If a vehicle is deemed a repairable write-off it means that the vehicle can be repaired but the insurer considers the cost of repairing the vehicle uneconomical to repair.

The insurer has a legal obligation to notify your state’s roads and traffic authority to record this on their register of written-off vehicle.

You need to be very careful if you want to repair a car that has been declared a repairable write-off. There will be additional requirements and costs for you to meet before the car can be reregistered. You should check these requirements before you start repairs, otherwise you may find out later on that you cannot re-register the car.

If the car is a write-off then the insurer will either:

1. take the damaged car, and pay you the sum insured; or
2. give you the option of keeping the damaged car but only pay you the value of the car less its salvage value.

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DO I HAVE TO PAY THE PREMIUM I HAVEN'T USED?

Check your policy. Most policies allow your insurer to reduce the final amount you receive, by taking out or keeping:

1. YOUR EXCESS

Your excess is your contribution to a claim

2. THE REST OF THE YEAR'S PREMIUMS

The cost of your insurance (the premium) is for the value of the sum insured. When you have a total loss claim, the whole premium for the rest of the year is payable

3. UNUSED PORTION OF YOUR REGISTRATION AND CTP INSURANCE

Your unused CTP and registration is recoverable from your CTP insurer or state registration authority. Most insurance policies define the value of the car as a registered vehicle with compulsory 3rd party insurance

AGREED VALUE OR MARKET VALUE?

The amount the insurer will pay you depends on whether you have insured your car for an agreed value or a market value. Agreed value is where you and the insurer have agreed in the policy about what you will be paid if the car is a total loss. For example, if you and the insurer agree that the car is worth \$20,000 and then the car is a total loss, the insurer will pay you \$20,000 (but see box below).

The agreed value will usually reduce automatically upon renewal of your policy because it is assumed that your car will depreciate (go down in value) over time. It will be difficult to dispute the agreed value (because you didn't actually "agree") at the time you make a claim if you have not raised this with the insurer upon receiving your renewal notice. If you think you have been treated unfairly, get advice.

The market value is what your car was worth if you sold it. It will almost always be less than the agreed value as your car loses value over time as you use it. For example, if you bought your car for \$20,000 and two years later the car is a total loss, the market value may only be \$15,000 or less.

It can be very difficult to work out the market value of a car.

If you dispute the market value given to your car, get evidence. For example, obtain an independent valuation, find advertisements for comparable cars, or check www.redbook.com.au, [glasses guide](#), or [SMH Drive](#).



WHAT IF I ONLY HAVE THIRD PARTY PROPERTY INSURANCE?

You may claim on this type of policy if there is any damage to any other car or property. If there is damage to your vehicle, you will need to pay for the repairs yourself. If you believe that someone else caused, or partially caused the accident you may be able to recover your costs from them or their insurance company.

UNINSURED MOTORIST EXTENSION

Your third party property policy may entitle you to claim up to \$3000 (or \$5000) for damage to your car. The policy may include a benefit called uninsured motorist's extension (UME). You can claim if the other driver was at fault, uninsured and you can identify the driver of that car. It is not easy to claim this benefit and if your claim is refused you should seek legal advice. See [Fact Sheet: I've had a car accident and I'm uninsured!](#)

WHAT IF I HAVE A DISPUTE ABOUT THE WAY MY CLAIM IS PAID OR HOW MY CAR IS REPAIRED?

You need to write to the insurer and raise a dispute. See [Sample Letter to Insurer: Raising a Dispute \(about quality of repairs\)](#)

If the insurer refuses to fix the problem you should confirm this in writing.

If the insurer confirms their refusal to fix the problem then you should complain to the Financial Ombudsman Service Australia (www.fos.org.au or 1800 367 287).

NEED SOME MORE HELP?

See [Fact Sheet: Getting Help](#) for a list of additional resources.

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