



Financial Rights

LEGAL CENTRE

FACT SHEET



Financial Rights Legal Centre Inc.
ABN 40 506 635 273

Fact sheets are information only and should not be relied upon as legal advice. This information only applies to NSW.

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FREQUENTLY ASKED INSURANCE QUESTIONS

MAKE SURE YOU HAVE A COPY OF YOUR INSURANCE CONTRACT (THIS IS COMPRISED OF YOUR PRODUCT DISCLOSURE STATEMENT (PDS) AND YOUR CERTIFICATE OF INSURANCE).

CAR ACCIDENTS

- 1. I'VE BEEN INVOLVED IN A CAR ACCIDENT. I AM NOT INSURED OR I HAVE DECIDED TO NOT CLAIM ON MY CAR INSURANCE POLICY. THE OTHER PARTY'S INSURANCE COMPANY (OR DEBT COLLECTOR) HAS SENT ME A LETTER ASKING ME TO PAY THEM MONEY FOR THE DAMAGE THEY SAY I DID TO THEIR INSURED PERSON'S CAR.**

A. WHAT IF I DON'T BELIEVE THAT I AM AT FAULT?

We are not able to give you detailed advice about whether you are or are not at fault.

If you want to dispute liability, you are welcome to contact your state's roads and traffic authority to determine whether the road rules will support you not being at fault. In cases where you believe that you are only partly at fault, you should raise this with the other party's insurance company but we encourage you to consider making a settlement offer based on what you believe you should be responsible for.

Any settlement offer that you make should be in writing. It should also have the words 'without prejudice' at the top of the letter and somewhere in the body of the letter you should use the words 'in full and final settlement of this matter'.

B. AM I ENTITLED TO MORE THAN ONE QUOTE/REPAIR INVOICE FROM THE OTHER PARTY'S INSURANCE COMPANY?

No. There is no such entitlement under the law. However, arguably if the insurance company was to commence legal action against you, they would be responsible for proving the amount of the damage claimed. If you dispute the items that have been repaired or the amount of the invoice, see 1(a) above.

C. THE OTHER PARTY'S INSURER HAS PROVIDED ME WITH AN ITEMISED LIST OF ITEMS THEY REPAIRED. WHAT IF I DISPUTE THE NEED FOR THOSE REPAIRS OR THE AMOUNT CLAIMED AGAINST ME AS EXCESSIVE BASED ON WHAT HAPPENED IN THE CAR ACCIDENT?

One option you may want to look into is to approach your local independent mechanic and provide them with a copy of the repair

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invoice from the other party's insurance company, any photos of the damage and any other evidence such as witness statements of what happened. Ask the mechanic whether they would be prepared to provide you with a written statement/opinion about whether the items that have been repaired or the amount claimed is excessive based on the nature of the accident. Provided you are able to obtain such a statement, this option is preferable to you simply arguing that in your personal opinion the repairs or amount claimed are excessive.

Once you have determined an amount that you are prepared to pay for, it is best to write back to the other party's insurance company (or their debt collector) to make a settlement offer and continue the negotiations from there.

Any settlement offer that you make should be in writing. It should also have the words 'without prejudice' at the top of the letter and somewhere in the body of the letter you should use the words 'in full and final settlement of this matter'.

D. WHAT IF I AM IN FINANCIAL HARDSHIP AND CANNOT AFFORD TO PAY THE AMOUNT OR CANNOT PAY THE AMOUNT IN ONE GO?

You have a right to request an affordable repayment arrangement. Under the General Insurance Code of Practice, the other party's insurance company must work with you in relation to your financial hardship. You should contact the company or their debt collector involved (see 1(g) below), preferably in writing, and ask to make arrangements to pay in amounts that are affordable for you. A sample letter you can use can be obtained here.

If you are forced into an arrangement that you cannot afford or if you are forced to pay a lump sum amount by a certain date which you cannot afford to do, you should email the Code Compliance Committee at gicode@codecompliance.org.au alleging that there has been a breach of the General Insurance Code of Practice and request that the Code Compliance Committee investigate the complaint. Or use our [Sample Letter: Insurance Code Complaint](#). Taking this step should help to improve your prospects of negotiating a more affordable arrangement with the other party's insurance company (or their debt collector).

E. CAN THE OTHER PARTY'S INSURANCE COMPANY REPAIR THEIR INSURED PERSON'S CAR WITHOUT LETTING ME EXAMINE THE CAR AND GET MY OWN QUOTES FOR REPAIRS?

Yes they can.

Under the insurance contract that they have with their insured person, they have an obligation to their insured person to conduct repairs as soon as reasonably practicable. If you dispute the items that have been repaired or the amount of the invoice, see 1(a) above.



F. HOW LONG DOES THE OTHER PARTY OR THEIR INSURANCE COMPANY HAVE TO CONTACT ME IN RELATION TO A CAR ACCIDENT DEBT?

The other party or their insurance company can contact you at any time. Sometimes the first contact happens years after the accident. Be aware that the debt may become statute barred after a period of time (in most states 6 years). If the debt being claimed is old get advice before making any payment.

G. IF I RECEIVE A LETTER FROM A DEBT COLLECTION COMPANY FOR A CAR ACCIDENT, DO I RESPOND TO THE DEBT COLLECTION COMPANY OR THE INSURANCE COMPANY THAT HIRED THE DEBT COLLECTION COMPANY?

You should respond preferably in writing, to the debt collection company. However, if you wish to invoke the General Insurance Code of Practice, because you are in financial hardship for example (see 1(c) above), you should also send a copy of that letter to the insurance company.

CAR INSURANCE CLAIMS

1. DOES MY INSURANCE COMPANY HAVE TO CASH SETTLE, REPLACE OR REPAIR?

B. YOU WILL NEED TO CHECK YOUR SPECIFIC INSURANCE POLICY BUT IN MOST OF THE CAR INSURANCE POLICIES THAT WE HAVE COME ACROSS, THE INSURANCE COMPANY RESERVES A RIGHT TO DECIDE WHETHER TO AGREE TO CASH SETTLE, REPLACE OR TO REPAIR.

However, if you prefer cash settlement, replacement or repairs you can still try to negotiate with your insurer providing them with reasons why for example, it would be better to cash settle with you since there have been so many attempts already by them to repair, ample money already wasted doing so and the underlying problem is unlikely to ever be resolved so more money would be wasted for no good reason.

3. IF I DECIDE TO CLAIM THROUGH THE OTHER PARTY'S INSURANCE POLICY (BECAUSE THEY ARE AT FAULT), DO I HAVE TO LET THE OTHER PARTY'S INSURANCE COMPANY'S PREFERRED REPAIRER EXAMINE AND OR REPAIR MY CAR?

Yes. If you do not want to do this, then go through your own repair person and then make a claim for this amount on the other party's insurance company.

4. IF I MAKE A CLAIM ON MY OWN INSURANCE POLICY, CAN I CHOOSE MY OWN REPAIRER OR DO I HAVE TO GO WITH MY INSURANCE COMPANY'S REPAIRER?

You should check your own policy to be sure, but in most car insurance policies, the insurance company reserves a right to decide which repairer they want you to go to.



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If you are not too concerned either way, there is one main advantage of going with your insurer's chosen repairer. Under the General Insurance Code of Practice, if your insurance company chooses the repairer, they will be responsible for the quality of the repairs and the materials used, and handle any complaints about the timelines and conduct or behaviour of the repairer. If you choose your own repairer, your insurer may not accept responsibility for the quality of the repairs and materials used by your chosen repairer. It will then be up to you to dispute any unsatisfactory or inadequate repair issues with the repairer yourself.

Some insurance companies claim to allow you the choice of your own repairer although it is not uncommon for these insurance companies to make the ultimate decision about which quote they will go with, your repairer's or theirs. Usually the lower quote will be there's and they will give you a cash settlement for the lower amount leaving you out of pocket if you still go ahead with your own repairer. So you may not really have a choice of repairers if you don't want to be out of pocket.

If you want to go with a particular repairer you trust or that is closer or more convenient for you, some insurance companies might allow you to negotiate with them on these issues particularly if your chosen repairer's quote is less than theirs.

5. TOTAL LOSS (WRITTEN OFF) CLAIMS

See our [Factsheet: Your Vehicle has been 'Written Off'](#)

A. PREMIUMS - IF I PAY MY PREMIUMS BY INSTALMENTS AND MY CAR IS DECLARED A TOTAL LOSS DO I HAVE TO PAY THE BALANCE OF THE PREMIUMS?

Yes. An example of this wording in the AAMI policy is below:

"If we decide to make a write-off payment or replace your car under your policy, we will require you to first pay us the total unpaid balance of your premium as we have agreed to cover your car under the terms of the policy for the full period of cover. In the case of a write-off payment, we will deduct your unpaid premium from the payment we make."

B. IF MY CAR IS DECLARED A TOTAL LOSS, CAN THE INSURER DEDUCT THE VALUE OF THE WRECK AND UNEXPIRED PORTION OF MY REGISTRATION FROM THE INSURANCE PAYOUT?

Yes. If your car is declared a total loss, your insurance company will deduct from your payout, the unexpired portion of your vehicle registration. They will then provide you with a letter to your state's roads and traffic authority to enable you to receive a refund of that unexpired portion of the registration.

If you want to keep the wreck, the salvage value of the wreck will be deducted from your insurance payout. If instead of receiving a payout, your car is replaced (for example, because your policy has a condition where if your car is not more than x years old, you will get it replaced) you

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may need to pay your insurance company the salvage value if you want to keep the wreck and have a replacement car.

C. WHAT IS THE DIFFERENCE BETWEEN A REPAIRABLE AND A STATUTORY WRITE OFF?

A repairable write off is when your insurer decides that your car is uneconomical to repair because the amount it would cost to repair the damage to your car is close to or more than the market value of your car (or the amount you insured it for) so it would be better for them to pay you out for the market value of your car (or the amount you insured it for) instead of repairing it. If you decide to keep the wreck in these cases, you should be able to re-register the car with your state's roads and traffic authority provided you prove to them that the car has been repaired to a roadworthy condition or any other conditions they may impose.

A statutory write off is when your car is determined to be so damaged that it cannot possibly be repaired to a condition where it would ever be roadworthy again. You are not able to re-register a car declared a statutory write off.

D. WHEN CAN MY CAR BE DETERMINED A WRITE OFF AND WHO GETS TO DECIDE THAT?

If you are claiming under your insurance policy or someone else's insurance policy, most policies will state that the insurance company has the choice on whether to declare your car a write off. It is up to you to argue otherwise by reference to your State's roads and traffic authority and laws. For NSW for example, see http://www.rta.nsw.gov.au/registration/written_off_vehicles/index.html

Please note that we do not have expertise in traffic laws and cannot provide you with detailed advice in relation to these matters.

5. EXCESS AND FAULT – DO I HAVE TO PAY MY EXCESS WHEN I AM NOT AT FAULT (I.E. CAN I NAME THE OTHER DRIVER AND PROVIDE THEIR PARTICULARS)?

You should talk to your insurance company about what their procedure is in relation to payment of excess and fault. Most insurers will not simply take your word for it that you were not the one at fault. They will therefore require you to pay the excess to contribute to the amount that they may have to pay the other party in the event that you are found to be the one at fault.

If it is your insurance company's practice that you pay the excess first and once they have fully investigated the matter and found that you are not at fault they will refund you the excess, there are still conditions for when they will refund the excess. You should check your policy wording for more information particularly the sections on when an excess applies and when an excess does not apply.



As an example, the NRMA NSW comprehensive policy states the following (note the bold words 'we agree'):

When an excess does not apply

You will not have to pay an excess if:

- *You make a claim for an incident that we agree was not in any way the fault of you, the driver of, or a passenger in your vehicle, or a substitute vehicle, and*
- *You can provide the name and residential address of a person(s) we agree is at fault, and the amount of the claim is more than any basic excess."*

Can I pay my excess and dispute fault later?

If your insurer disagrees that you are not at fault and provided you can pay your excess, you are welcome to pay your excess to avoid any delays for example to getting your car repaired, and raise a dispute later with your insurer for a refund of the excess.

6. HOW CAN I DETERMINE THE FAIR MARKET VALUATION FOR MY CAR?

Try visiting the following websites and if they support your valuation, provide a copy to the insurance company involved:

- Red Book: www.redbook.com.au
- Glasses Guide: <http://www.glassguide.com.au/>
- Sydney Morning Herald Drive: <http://smh.drive.com.au/>

INSURANCE INVESTIGATIONS

If you are the subject of an insurance investigation Download our '[Know Your Rights Checklist](#)'

7. I'VE MADE AN INSURANCE CLAIM. MY INSURANCE COMPANY IS REQUESTING INFORMATION AND OR DOCUMENTS FROM ME.

A. HOW MUCH INFORMATION CAN MY INSURANCE COMPANY REQUEST FROM ME?

As much information as they need to make a decision on whether to approve or reject your claim. However, a request for information has to be relevant to the claim. See 7(b) below.

It is a good idea that if you provide the requested information you should also keep a copy for your own records and keep a record of every time you are being requested for more information, why it is being requested



and when it was requested and provided.

B. DO I HAVE TO GIVE MY INSURER SENSITIVE PERSONAL INFORMATION SUCH AS BANK STATEMENTS AND PHONE RECORDS ETC.?

You only need to give your insurance company information and or documents that are relevant to the claim. If you feel that the information that has been requested of you is irrelevant to the claim, ask your insurance company to explain why they think it is relevant to the claim. After being provided with their response, it is up to you to decide whether you still want to provide the information requested. Please note though that if you do not provide the information requested and your insurance company still believes that that information is relevant to deciding whether to approve or reject your claim, they may deny your claim on the grounds that you have failed to cooperate with the claims investigation process as required of you by your insurance contract and more generally under your legal duty of utmost good faith.

Bank statements and phone records are very standard information that insurance companies generally request from insured persons particularly those who make a claim for a single vehicle collision or theft. Bank statements are relevant to determining whether an insured has a motive for making a fraudulent claim. However, in and of itself, having a low bank balance is not conclusive evidence that the claim is fraudulent. On the other hand, large, suspicious and unexplained movements in and out of your bank account prior to the insurance claim, may paint a different picture.

Telephone records are relevant to verifying your version of events if for example you have mentioned to your insurer that you telephoned someone to let them know about the car accident or called someone to drive you home when your car was stolen etc. If you did not call anyone, arguably the phone records are not relevant.

It is important to remember that if your claim is a genuine one, there should not be anything that you need to hide or fear being uncovered. Therefore, it is always a good idea to cooperate with your insurance company and provide them with as much information as they think they need to decide your claim with the only proviso being that you are well within your rights to ask them why they think that particular information or document is relevant to the claim. It is a good idea that if you provide the requested information you should also keep a copy for your own records and keep a record of every time you are being requested for more information, why it is being requested and when it was requested and provided.

8. WHERE DO I GET MORE INFORMATION ON THE VICTORIAN FIRE SERVICES LEVY MONITOR?

Visit <http://www.firelevymonitor.vic.gov.au/home/the+levy/>



HOME & CONTENTS INSURANCE

9. DOES MY INSURANCE COMPANY HAVE TO CASH SETTLE, REPLACE OR REPAIR?

You will need to check your specific insurance policy but in most of the Home and Contents insurance policies that we have come across, the insurance company reserves a right to decide whether to agree to cash settle, replace or to repair.

However, if you prefer cash settlement, replacement or repairs you can still try to negotiate with your insurer providing them with reasons why for example, it would be better to cash settle with you since there have been so many attempts already by them to repair, ample money already wasted doing so and the underlying problem is unlikely to ever be resolved so more money would be wasted for no good reason.

10. IF I MAKE A CLAIM ON MY OWN INSURANCE POLICY, CAN I CHOOSE MY OWN REPAIRER OR DO I HAVE TO GO WITH MY INSURANCE COMPANY'S REPAIRER?

You should check your own policy to be sure, but in most Home and Contents insurance policies, the insurance company reserves a right to decide which repairer they want you to go to.

If you are not too concerned either way, there is one main advantage of going with your insurer's chosen repairer. Under the General Insurance Code of Practice, if your insurance company chooses the repairer, they will be responsible for the quality of the repairs and the materials used, and handle any complaints about the timelines and conduct or behaviour of the repairer. If you choose your own repairer, your insurer may not accept responsibility for the quality of the repairs and materials used by your chosen repairer. It will then be up to you to dispute any unsatisfactory or inadequate repair issues with the repairer yourself.

Some insurance companies claim to allow you the choice of your own repairer although it is not uncommon for these insurance companies to make the ultimate decision about which quote they will go with, your repairer's or theirs. Usually the lower quote will be there's and they will give you a cash settlement for the lower amount leaving you out of pocket if you still go ahead with your own repairer. So you may not really have a choice of repairers if you don't want to be out of pocket.

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