

Step 1. The other party has not paid or cannot pay their excess

An excess is an insured person's contribution to a claim. Sometimes insured person notifies their insurer of an accident or claim, but then fails to pay the excess. This may be because it is a high excess and they cannot afford it, or for other reasons. The inability to pay a policy excess does not automatically allow an insurer to avoid liability for a claim which would otherwise fall within the policy terms. If the other party wants to claim but has not or cannot pay their excess, you can request that:

1. the other party come to an arrangement with their insurer (such as by paying the excess by instalments) so you can be paid out by their insurer in full; or
2. the other party's insurer pay your claim and deduct their customer's excess from the damages they pay you. You would then need to contact the at-fault party directly and negotiate with them to pay the remaining balance to you.

The risks are:

- if the excess is close to your claim amount (i.e. your claim is \$2,000 and the excess is \$1500 you will only receive \$500 from the insurer and you would need to pursue the balance from the other party directly); OR
- There may be other reasons (in addition to not paying their excess) why the insurer is not paying the claim. If the insurance policy has other exclusions the insurer can rely on to deny the claim, or the other party failed to pay his premiums, the insurer may not be liable under the contract (and so not pay you).

If you are not insured, you will need to pursue the driver yourself. **If you are not insured and the damages are under \$15,000 you may be able to go to AFCA** You can make a claim in the Australian Financial Complaints Authority (AFCA) if (**and only if**):

1. You are not at fault (the other party caused the accident)
2. The damage is less than \$15,000 (or you are willing to accept \$15,000 as your maximum loss) and
3. The other party is insured (and claims on their insurance) or the other party has died or cannot reasonably be found.

You can make a claim in AFCA by going to the [AFCA website](#), or calling 1800 931 678. AFCA is not a court. They cannot take evidence on oath. They are not experts on the interpretation of road rules. AFCA can exclude disputes if they believe there is a better jurisdiction, such as a Court. If your dispute is over who is at fault, AFCA may not be the best jurisdiction to hear your matter. You can always try to begin in AFCA and see if you can negotiate a resolution you are happy with it. But be prepared that you may still end up in Court! You must lodge any complaint in AFCA by the earlier of:

- 6 years of the date when you first became aware (or should reasonably have become aware) that you suffered the loss (usually the date of the accident); and
- 2 years of the date of any final written internal dispute resolution response from the insurer.

Tip: If you do not meet the requirements for AFCA, you are limited to sending a letter of demand and/or commencing a claim in court (if the demand is not paid); see below. If you need advice about dealing with the other insurer in AFCA, [email](#) or call the Insurance Law Service on 1300 663 464. **If AFCA does not work for you** If you do not meet the requirements for AFCA, and the insurer refuses to deduct the excess, you may have to try and recover all your losses directly from the other party. To get your damages paid, you will need to firstly work out how much your damage you have suffered by the collision. This means gathering evidence and quotes for repair, or if your car cannot be repaired, its market value. Generally in car accidents, the other party is entitled to recover damages caused by the at-fault party's negligence. The damage in a motor vehicle repair claim is usually made up as follows:

- The lesser of:
 - the cost of the repair; or
 - the market value of the vehicle LESS salvage value

If the car is cheaper to replace than to repair, then you are generally expected to act reasonably and minimise the loss by replacing the car.

- PLUS towing costs
- PLUS hire car costs, lost wages or profits (called "demurrage")

The costs you can recover are limited to what is 'reasonable' given the circumstances (such as the age / make / model / condition of the other car, and the availability of car repairers in the area). If you want to chase the other party to recover your losses, you need to mitigate or minimise those losses. You cannot recover compensation for losses which you ought reasonably have avoided following the accident. This means you must keep your costs reasonable. It is generally advisable to get more than one quote so that

you can show that your costs are reasonable. If you want to claim hire car costs, you need to consider what make/model of car would be reasonably comparable to the one that was damaged. If you are considering using a hire car management company (one that gives you a hire car then chases the other party for the cost) – see our [Should I get a courtesy car through a credit hire company? fact sheet](#). The **next steps** are to:

1. **send a letter of demand**, which outlines your damages and the date in which you want the money paid by; and then if the demand is not paid by the demand date,
2. **commence a claim in Court**.

Once you start enforcement action this may push the other party to pay their excess (and you will then be dealing with their insurer).