

## Step 1. I am trying to figure out who is at fault

**Information about fault** All drivers and owners have a duty to other road users to take reasonable care. Generally, any person who is negligent (does not take reasonable care) in the driving, control or maintenance of a vehicle and causes damage as a result is at fault and will be responsible for the damage caused. For example, a driver may be negligent if they:

- drink drive;
- speed;
- don't obey a traffic light or sign; or
- don't keep a proper lookout.

If the insurer contacts you and demands money for the damage, they may believe you are at fault based on what the other party has told them. If you and other party (or their insurer) can't agree about who is fault or there is conflicting evidence and versions of events, fault will be decided by a court. The Court will make a decision about fault based on:

- the availability and credibility of witnesses
- physical evidence, for example photos, videos, damage reports, skid marks on roads
- interpretation of the [Road Rules](#).

It is possible for more than one person to be at fault. Each person may have contributed to the accident. If you and the other party contributed, fault may be apportioned (split or divided up) in percentages. For example, the first driver may be 25% at fault and need to pay 25% of the cost to repair the damage to the second car, while the second driver is 75% at fault and needs to pay 75% of the cost to repair the damage to the first car. If you own the car, but were not driving at the time of the accident, you should get legal advice about whether you are liable. The other party may choose (rightly or wrongly) to sue the driver, you or both: see the [Owners and Drivers fact sheet](#) on the LawAccess NSW website. If you had an accident while at work, you should get legal advice from an employment lawyer – this can be a tricky area: see the [Driving for work when you are an employee or independent contractor fact sheet](#) on the LawAccess NSW website. **Gather your evidence** As soon as possible,

while the accident is still fresh in your mind, you should:

- write a statement about what happened
- draw a diagram of where the accident took place.

Your statement should cover:

- **who** was driving (names and addresses of people, colour, make, model and plates of each vehicle)
- **where** (name of roads, direction of travel, relevant cross-streets )
- **when** (date and time)
- **what the conditions** were like (weather, lighting, road surface and condition and speed limit)
- **what happened** (before, during and after the incident, what you saw the other driver do and what you did, including:
  - speed of travel
  - lane of travel
  - action you took (e.g. sound your horn, brake, put on your blinkers, swerve – left or right?)
  - action the other driver took (what you saw and heard)
  - what you did after the accident, for example:
    - what did you observe about the scene (e.g. skid marks on the road) and the cars involved after the accident
    - what you and any other people involved or witnesses said (their names and contact details if possible)
    - did the police attend (what was the name, rank and station of the police officer and date and time reported?).

You should also:

- take photos of any damage to your car and the other car.
- take photos of the scene, for example showing the position of the cars, the condition of the road, or lines of sight.
- take video footage, for example, from a dashcam.
- get CCTV footage as soon as possible (footage is often recorded over after a set timeframe and may be lost)
- get signed statements from any independent witnesses to the accident, for example, people who have no reason to take sides in the dispute.
- read the [NSW Road Rules](#) on the [Roads and Maritime Service](#) website, and see

if they support your argument you are not at fault? Information about the NSW road rules is available from the [Roads and Maritime Road Rules page](#).

To read more about the [evidence](#) you could collect to show who was at fault, including example sketches of car accident diagrams and information about how to get witness contact details see:

- [Evidence](#) on the LawAccess NSW website

**Get advice** If you are not sure about fault you should get legal advice. Note: The Insurance Law Service is unable to give advice about whether you are at fault or not. You can start by contacting LawAccess NSW on 1300 888 529. You may be able to get free legal assistance from [Legal Aid NSW](#) or your local [Community Legal Centre](#). If you are unable to get free legal assistance, you may need to speak to a private lawyer. To find a private solicitor, contact the [NSW Law Society](#). **If you can't agree about who is at fault** If you can't agree on fault, either you or the party (or their insurer) can start court action. NOTE: Legal costs and Court costs may be added onto the amount claimed. If you start legal action, you need to prove your case. If action is started against you, you have 28 days to respond. You can file a Defence or a Defence and Cross Claim. You should get legal advice before you start or respond to court action. The Court will decide fault based on the evidence. The Court may also make order that one party pay the other party's costs, for example, the Court may order the losing party pay the reasonable legal costs of the winning party. Note: Both you and the other party (or their insurer) have six years to start a case in court. To find out more about going to court and self-representation, see

- [Going to court](#) on the LawAccess NSW website.

To respond to a claim following a car accident see:

- [Responding to a Statement of Claim](#) on the LawAccess NSW website.

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