

## Step 1. How do I get the other side to pay or leave me alone if they do not agree they are at fault?

**If you are not insured**, you are not at fault and have suffered any damage to your car, you may wish to make a demand to the at-fault driver or owner of the other car for your damages. We outline the steps for making such a demand below. **Note:** You will need to work out how to respond to the claim the other party (or their insurer) has made against you if:

- you are being chased for money
- believe are not at fault or only partly at fault, and
- decide not to claim on your insurance.

Do not ignore the demand! For more information see:

- [Responding to a claim](#) on the LawAccess NSW website.

**Outline of steps: making your own claim** Your **first step** is to 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 and model of the car

- condition of the car
- availability of car repairers in the area.

If you want to chase the other party to recover your losses, you have an obligation 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
2. if the demand is not paid by the demand date **commence a claim in Court**.

OR

3. **make a claim** in the Australian Financial Complaints Authority (AFCA) if (*and only if*):
  - You are not at fault (the other party caused the accident)
  - The damage is less than \$15,000 (or you are willing to accept \$15,000 as your maximum loss) and
  - The other party is insured (and claims on their insurance) or the other party has died or cannot reasonably be found.

If you do not meet the requirements for AFCA, you are limited to Options 1 and 2, that is send a letter of demand and commence a claim in court (if the demand is not paid). Note too that AFCA generally do not accept cases if the dispute is about fault unless there is strong objective evidence. If the other party's insurer is contacting you demanding payment, this means they think you are at fault for the damages and fault is disputed. You should go back a step to read more about fault disputes. If you are not sure, you should consider speaking to a lawyer. Start by contacting LawAccess NSW on 1300 888 529. To find a private solicitor, go to the [NSW Law Society](#) website. If you have limited means, you can also contact your local [Community Legal Centre](#).