

Step 1. The other party has admitted partial fault

If you have made or wish to make a claim on your insurance, you must allow your insurer to conduct negotiations with the other party or their insurer on the question of fault. The information below is to help you if you have decided not to claim, or are unable to claim, on your own insurance. If both parties agree they were partially at fault, you will need to negotiate a settlement. You can do this either:

1. over the phone, or
2. in writing.

A settlement may be:

- that you both “walk away” and agree to cover your own repairs, or
- you find out the value of the repairs you each need and agree on the contributory percentage.

You should always get any settlement confirmed in writing. You should also be clear on what it is you are settling – is it all losses arising from the accident, or just the cost of repairs, or just hire car costs. If you only settle the repair cost, you can be chased later for other costs (e.g. hire car) from the insurer, or the other party directly. To find out how to confirm a settlement, see:

- [Put it in writing](#) on the LawAccess NSW website
- [Sample terms of settlement](#) on the LawAccess NSW website.

Contributory percentage If you and the other party both contributed to the accident, 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. TIP: The amount of damage done to each vehicle is important in the apportionment (split up or division). *Example You hit a 2017 BMW in your 2004 Ford laser. You and the BMW driver each contributed 50/50 to the accident. The damage to your Laser is assessed at \$2,600 and the damage to the BMW at \$12,500. 50% of \$ 12,500 = \$6,250; 50% of \$ 2,600 = \$1,300. The BMW driver owes you \$1,300, but you owe the BMW driver \$6,250. Therefore you have to pay the BMW driver \$6,250-1,300 = \$4,950, in addition to paying to get your own car*

fixed.

To check the other party's costs are fair, you should take any photos or video you have, the quotes/invoices and any witness statements, to your own smash repairer and get an opinion about whether the items that have been repaired or the amount claimed is reasonable based on the nature of the accident. If the costs are too high, you should get this opinion in writing. **Get legal advice** If you are not sure about fault, including contributory percentage, you should get legal advice. 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. 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](#).