

Step 1. Should I claim or not claim on my insurance?

Information about fault, partial liability and contribution If you accept you are partially liable in an accident, you may be responsible to pay the other party (or their insurer) money for the damage. You may not be able to recover all or any of the damage you have to your car. **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 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.

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. **Contributory percentage** If you and the other party are 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 2007 BMW in your 1994 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. Therefore you owe \$6,250-1,300 = \$4950, in addition to paying to get your own car fixed.* **Deciding whether to claim or not** Depending on your excess, you might want to consider making a claim on your insurance. You should consider:

1. How much damage is there to your car?
2. How much will it cost to fix?
3. How much damage is there to the other party's car?
4. Will you be able to negotiate with the other side?
5. Does the other party agree that both parties are at fault?
6. The terms of your own insurance policy.

You may consider not claiming where:

1. There is very minor damage to your car
2. The cost of repairing the total damage to all vehicles is less or just over the amount of your excess. Don't forget to consider towing, hire car, or other possible costs that may be claimed
3. The cost of repairing your car is close to the value of your car and you do not want the car to be "written off" - be mindful of how much the other party is claiming from you.
4. The other party agrees they contributed to the accident.

You may consider claiming where:

1. The other party does not agree they contributed, and believes you are completely liable
2. The question of fault proportions is disputed and unclear, and you would prefer your insurer to deal with responding to any letters of demand or court action.
3. The damage to both cars is extensive.
4. You have an Agreed Value policy, which means your insurer will pay you more than what you could pursue from the other party in damages.
5. You have generous hire car benefits under your policy.
6. The other party is not insured (or refuses to claim) and you have concerns whether they have the funds to pay for your damages.

If you don't claim and try and negotiate with the other party yourself you need to be careful. You may not be able to change your mind later and claim on your own insurance if you have:

- admitted fault or partial fault
- admitted to an amount of damage you are liable for
- delayed the resolution of the matter.

Under most insurance policies, your insurer has the right to negotiate and settle on the best terms they can. If you have interfered with or prejudiced (hurt) the insurer's interests your insurer may reject or reduce your claim. If you repair your car, this may also impact on your insurer's right to assess your car and repair it in accordance with your policy (for example, choice of repairer).