

## Step 1. I am not insured and only partially at fault

You need to work out how to respond to the claim if:

- you being chased for money
- believe you are only partially at fault, and
- do not have insurance.

Do not ignore the demand! For more information see:

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

If you have suffered any damage to your car, you may want to make a demand.

**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](#).

If the other party or their insurer is contacting you and demanding payment, they may hold the belief you are 100% fault (in the case of an insurer, based on what their

insured has told them). If you do not believe you are 100% at fault, you can consider:

1. providing the other party or their insurer your version of events (including any supporting evidence, as described below; or
2. accepting that you are at fault or partially at fault and negotiating a settlement yourself.

The usual settlements where you agree you are partially at fault are either:

- both parties “walk away” and agree to cover their own repairs; or
- alternatively, you will need to determine the value of the repairs you require and the contributory percentage you both agree (see below).

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. **Supporting evidence for a dispute about fault** 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 [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](#).

LawAccess NSW has more detailed information about the [evidence](#) you could collect to show who was at fault in a motor vehicle accident, including example sketches of car accident diagrams and information about how to obtain witness contact details: see:

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

You also need to gather evidence about any damage or loss you are claiming was caused by the accident. To read more see

- [Evidence about damage and losses](#) on the LawAccess NSW website.

**Both at fault: About contributory percentage** Where you and the other party are both at fault you can both be made to pay for any damage you caused to the extent you were at fault. For example, if you contributed 50/50 to the accident you can only be made to pay for 50% of the damage to the other vehicle, and you can claim 50% of the cost of repairs to yours. 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. 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 determine whether the other party's repair costs are fair, you may want to look into approaching your local independent mechanic and provide them with a copy of the invoice/quote from the other party or their insurance company, any photos of the damage and any other evidence such as witness statements about what happened. Ask the mechanic whether they would be prepared to provide you with a written statement/opinion about whether the items that have been repaired or the amount claimed is reasonable based on the nature of the accident. A statement from an independent mechanic is preferable to you simply arguing that in your personal opinion the repairs or amount claimed are not reasonable

**What do I do if we reach a settlement?** 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.

**What if we can't agree on a settlement?** Ultimately, if a negotiated outcome cannot be reached, the other party (or their insurer acting in their name and on their behalf) can start court action for the amount they believe is justified. A court would then decide the correct assessment of damages based on the available evidence. Legal costs and Court costs will generally be added onto the amount claimed if this happens. You can choose to lodge a defence, but you must be careful and get legal advice first. The Court may make orders that one party pay the other party's costs – for instance, the Courts may order the losing party pay the reasonable legal costs of the winning party. If the claim is under \$20,000 and run in the Small Claims Division of the NSW Local Court, the amount of legal fees is capped according to a scale based on the amount being disputed. Information about court fees and legal fees in the Small Claims Division can be found on LawAccess NSW's [What can they claim?](#) page. REMEMBER: If you are arguing that the amount claimed is too much, this means you still owe some of it. Be prepared to pay, or start paying, the amount you agree you owe. Visit the LawAccess NSW website for information about how to respond to a claim following a car accident. You can also visit the [LawAccess NSW website](#) for practical guidance on how to

respond to a Statement of Claim in the Small Claims Division of the Local Court, which deals with claims for \$20,000 or less. If you need [legal advice](#), start by contacting LawAccess NSW on 1300 888 529. You may be able to obtain free legal assistance from [Legal Aid NSW](#) or your local [Community Legal Centre](#). If you are unable to obtain free legal assistance, you may need to speak to a private lawyer. To find a private solicitor, contact the [NSW Law Society](#). You can also visit the [LawAccess NSW website](#) for practical guidance on [how to respond to a Statement of Claim](#) in the Small Claims Division of the Local Court, which deals with claims for \$20,000 or less. Note: The Insurance Law Service is unable to give advice about whether you are at fault or not.