

## Step 1. The other party has admitted fault and I am insured and not claiming

The information on this page is only relevant were the other party or their insurer has withdrawn their demand for payment from you, and the only outstanding issue is the damage to **your** car. If the other party or their insurer is still demanding payment, they believe you were (at least partly) at fault. You need to go back a step and select either “The other party has admitted partial fault” or “the other party has not admitted fault”.

**Recovering your losses** 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. The information below is to help you if you have decided not to claim, or are unable to claim, on your own insurance. **If you decide not to claim, you may not be able to change your mind later.** If you are insured, your insurer has the right to handle negotiations and act on your behalf, and to assess your car and repair it in accordance with your policy (for example, choice of repairer). If you repair your own car and/or pursue the other party, who then disputes liability, your insurer may decline or reduce your claim depending on how much you hurt your insurer’s interests. If you decide not to make a claim on your own insurance, you will need to negotiate a settlement yourself. You can do this either:

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

You can send a letter of demand, seeking your full loss and attaching an itemised quote. Generally, it is a good idea to get more than one quote to show the amount you are claiming is reasonable. The letter should tell the other person how much you are claiming in total, when you would like the money to be paid to you and that legal action may be started if the claim is not paid by the time specified in the letter. Read:

- [letters of demand](#) on the LawAccess NSW website.
- [Sample Insurance Letter of Demand](#) on our website

A letter of demand must be sent before legal action, but you can make other

settlement offers if you are willing to settle for less than your full loss. You should mark any negotiations “without prejudice” so you can argue that they cannot be used as admissions in litigation in the future but can be used in relation to any dispute about the costs of proceedings – this correspondence must also have a clear offer of a negotiated outcome (such as a full and final settlement offer of a reduced amount). If the demand is not met, you will need to consider whether to commence a claim in court. See:

- [Should you go to court](#) on the Law Access NSW website.

If you are going to commence a claim in Court you should get legal advice. Note: if the case goes to Court it is unlikely that a Community Legal Centre or Legal Aid will represent you. The other party may be represented (and will be represented if an insurer is involved) and will seek that you pay their legal costs if they win the case. It may be worth trying to reach agreement rather than going to court. To get help with filing a claim against the other party in court:

1. Start by calling LawAccess NSW on 1300 888 529. You can also read their information about [making a claim](#) following a car accident.
2. Seek assistance with court forms at your [Local Court](#). You may need to make a “chamber service” appointment. The chamber service does not provide legal advice and cannot represent you in court.
3. Contact your local [Community Legal Centre](#).
4. Consider engaging a private solicitor. To find a private solicitor, go to the [NSW Law Society](#) website.

The time limit to commence action in Court is usually 6 years from the date of the accident.