Step 1. I am not at fault, the other party has admitted partial fault, and I am insured

If the other party or their insurer thinks you contributed to the accident they may continue to demand part-payment of their damages claim and/or not agree to pay any or all your loss leaving you out of pocket. Your options are:

1. agree with the settlement;
2. make a claim with your own insurer;
3. deal with the other party yourself.

If you are insured, consider making a claim. If you are insured (comprehensive or third party property insurance), you should consider lodging a claim with your insurer immediately. This is often the simplest option for you, but you may need to pay an excess, and this may affect your premiums or no-claim bonuses. Your insurer should then sort it out with the other parties/insurer. If you choose this option, you should lodge a claim as soon as possible. What follows between you and your insurer will be determined largely by the terms of your insurance policy. Note that most policies require you to pay an excess if you have contributed to the accident. If your insurer agrees with the other party's assessment that you contributed to the accident, your policy may require you to pay an excess. If you have a problem with your insurer during this process you should make a complaint to insurer's Internal Dispute Resolution department. You can find their details using the Australian Financial Complaints Authority (AFCA's) [member search function](). You can use our ["Raising a Dispute" sample letter generator]() on our website to help you in this process. **If you have 3rd party property insurance only,** the insurer will accept your claim if they think you are at fault. Your insurer may explain to you if they think you are at fault and why. A third party property insurer won't cover the damages to your vehicle where you are at fault. However, if the other party is not insured and at fault some 3rd party property insurance policies may cover some damage to your car – this cover is called "Uninsured Motorist Extension." If this is you click on **"I have third party property insurance and am pursuing the other party under UME"** box below The alternative is not to make a claim and "handle it yourself." **How to proceed if you don't make a claim on your own insurance** 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 prejudice or harm your actions have caused them. If you decide not to make a claim on your own insurance, and 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 both parties "walk away" and agree to cover their own repairs.

Alternatively, you will need to determine the value of the repairs you require and the contributory percentage (see below) you both agree. 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.

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 v 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 = $4950, 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 if I need advice about fault?** If you are not sure about fault, including contributory percentage, you should get legal advice. 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](#).