

Step 1. I don't know if I am at fault

****Note: The Insurance Law Service is unable to give advice about whether you are at fault or not**** **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 other party (or their insurer) contacts you and demands money for the damage, they may believe you are at fault (in the case of an insurer, based on what their insured 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](#).

It is possible for more than one person to be at fault. Each person may have contributed to the accident. If you and the other party contributed, 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. More information about this topic can be found by clicking **“I think I am partially at fault”** below. **What should I do?** You need to form a preliminary view about fault to continue using this portal. That is because the advice which follows varies depending on whether:

1. You are at fault, partially at fault or not at fault, and

2. You have, and are claiming on, insurance.

Of course, if at any point you change your mind about fault, you can always come back and use this portal again in light of that change. 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
- take photos of damage to your car or the other party's car.

To read more about the [evidence](#) you could collect to show who was at fault, including example sketches of car accident diagrams and information about how to get witness contact details see:

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

You should read the [NSW Road Rules](#) . Do the rules support your argument you are not at fault? Information about the NSW road rules is available from the [Roads and Maritime Service](#) website. **What if I need advice about fault?** If you are insured and are being pursued by the other party, and want your insurer to handle matters, you will need to make a claim, pay your excess and comply with the terms and conditions of your policy. Your insurer will form its own view as to whether you were wholly, partially or not at all at fault. If the view your insurer takes negatively affects you, you can try and dispute it. If you are uninsured, you will need to form your own view as to fault, which will then inform how you respond to the other party. 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. If you are still not sure about fault, you should consider speaking to a lawyer. ***The Insurance Law Service is unable to give advice about whether you are at fault or not.*** In NSW, Legal Aid is also unable to advise about fault. You should contact your local Community Legal Centre to see if they are able to advise you about fault. To find your nearest Community Legal Centre, use the Community Legal Centre NSW's [directory](#). If your local Community Legal Centre cannot advise about fault, you may need to speak to a private lawyer. To find a private solicitor, contact the [NSW Law Society](#).