

Step 1. Should I claim when I am not at fault and insured?

When you might claim with your own insurer The factors that may lead you to claim with your own insurer may include:

- 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;
- you have a generous hire car benefit under your insurance policy;
- the other party:
 - is not insured;
 - cannot be found;
 - won't admit fault; or
 - won't tell you who their insurer is.

If you decide to claim with your own insurer you:

- may need to pay an excess (even if you are not at fault);
- may need to pay the remaining portion of your insurance premium if your car is a total loss and you have been paying monthly premiums;
- are subject to your contract of insurance about how the vehicle may be repaired or written off;
- are subject to the terms and conditions of your insurance, including any no claim bonuses; and
- may have higher premiums moving forward, and having too many claims can impact on your ability to get insurance

When you might pursue the other party

- the other party admits fault, is claiming on their insurance and tells you who their insurer is;
- their insurer agrees to pay you the repair cost or market value of your vehicle;
- you want to repair your car and if you claim on your insurance your insurer may write off the car; or
- there is only minor damage (which is possibly less than your excess).

You can start by trying to negotiate with the other party, and if that fails, make a claim

on your own insurance. However, in doing so, you must be careful not to breach your policy terms and conditions by delaying, or otherwise interfering with your insurer's rights. 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. When you are not claiming on your insurance and pursuing the other party directly, your claim is a claim for negligence and what you are entitled to is set out in the common law as to damages. If you have a problem or cannot negotiate with the other party or their insurer, you will need to take them to Court. Court proceedings are risky and you should get advice first, as you may be ordered to pay the other side's costs (e.g. if you lose).