

Step 1. I'm insured but don't want to claim, the other party or their insurer does not admit fault

If the other party denies your version of events or continues to deny liability then you are in a dispute about fault. *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 on the question of fault. 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.* 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 is contacting 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). It is possible for more than one person to be at fault – each person may have contributed to the accident. So it is possible for fault to be apportioned (split or divided up) in percentages. For instance, 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. Fault will be determined by a court if the parties to an accident cannot agree or there is conflicting evidence and versions of events. 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](#).

Gather your evidence 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 [NSW 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](#).

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

What if I need advice about fault? If you are not sure about fault you should get legal advice. 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. 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](#).

What happens if we cannot agree who is at fault? If the parties cannot agree on fault, then it is open for either party to commence legal proceedings, you would then need to file a defence to a claim against you or prove the claim against the other party. The LawAccess NSW website has more information about [representing yourself](#) after a car accident. 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. website here: The LawAccess NSW website has more information about [going to court](#). You may need to get legal advice from a private solicitor before commencing legal action. Start

by contacting LawAccess NSW on 1300 888 529. To find a private solicitor, go to the [NSW Law Society](#) website. If you have limited means, you can also contact your local [Community Legal Centre](#). Once you are satisfied the other party is at least partly at fault, you could look at: