

Step 1. The other party has not admitted partial 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. 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. **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 insurer contacts you and demands money for the damage, they may believe you are at fault based on what the other party 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. *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 \$6,250-1,300 = \$4,950, in addition to paying to get your own car fixed!* **What should I do?** *Step 1: Gather your own 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

You also need to gather evidence about any damage or loss you are claiming was caused by the accident. To read more see

- [Evidence about damage and losses](#) on the LawAccess NSW website.

Step 2: Seek further information from the other party if necessary If you have received a letter of demand but not an itemised statement of damages, it is advisable to ask the other party or their insurer for copies of itemised bills, photos, assessor's reports etc. See:

- [Example of a request for more information from another party](#) on the LawAccess NSW website.

Be careful about what you write in your response to a letter of demand, as it could be used against you later if the case goes to court.

Be realistic! Remember fixing cars can be expensive! Once you have the itemised invoice/quote of damages claimed you should check:

1. Did you cause the damage claimed?
2. Is the repair method reasonable given the age, make and model of the car?
3. Are the repair costs reasonable?

You may want to consider seeking the opinion of a professional (like a smash repairer) as to whether the amount is right. This will be more convincing than your opinion

alone. If you still believe the amount claimed is excessive, you should gather as much evidence and research as you can to prove this. Repair costs vary, so the question is **not** whether the repairs could have been done cheaper, rather it is whether the repairs fall within a reasonable range. *Step 3: Read the road rules and get advice if necessary* You should read the [NSW Road Rules](#). Based on the evidence you have gathered, have any road rules been broken? If so, by whom and how? Information about the [NSW Road Rules](#) is available from the [Roads and Maritime Service](#). 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](#). *Step 4: Make your own demand* If you are claiming for damage to your own car, the first step will be to make a demand against the other party, to set the scene for the negotiations. See:

- [Letters of demand](#) on the LawAccess NSW website.

Your letter of demand to the other party will ask them to pay you the cost of repairing the damage to your vehicle (or market value if it is a total loss), as well as any other losses that resulted from the accident. Attach your itemised quote/s and invoices (it is generally a good idea to get more than one quote). The letter should tell the other person how much you are claiming in total, and when you would like the money to be paid to you. *Step 5: Negotiate!* If, after gathering your evidence, reading the road rules and getting advice, you believe you and the other party were both partly at fault, you can negotiate. In short, you will be seeking to get to a position where they are only entitled to claim a reduced amount, while also make a claim against them if your car was damaged in the accident (see the example above). You will likely need to write to the other party, setting out:

- Your best case as to why the other party was at fault, including any evidence or road rules on which you rely. Note: While your assessment that you were partially at fault will inform the sorts of offer you put forward (or are willing to accept), be careful not to actually admit fault in your negotiations. Admissions made during negotiations can be used as evidence against you if the case has to go to court. You can mark your negotiations “without prejudice”, if your correspondence contains a clear offer of a negotiated outcome (such as a full and final settlement offer of a reduced amount).
- Your claim for damages to fix your car and your demand for payment.
- Any dispute you wish to raise about any claims made against you for damage

to the other car (e.g. you don't agree they can claim for damage to their left-hand door when your car only made contact with the right side of their car, or their repair costs are much higher than the attached costs quoted by your smash repairer) – make sure you include any evidence you have.

- Your settlement proposal.

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, or that both parties “walk away” and agree to cover their own repairs). *Step 6: What do I do if we reach a settlement?* If you reach a settlement, try and get it in writing and in full and final settlement of all claims arising from the accident. 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.

Step 7: What happens if we cannot agree? If the parties cannot agree, then it is open for either party to commence legal proceedings (go to court). You would then need to file a defence to a claim against you and/or prove your claim against the other party. The LawAccess NSW website has more information about [representing yourself](#) after a car accident. The Court may also 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 . 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 or filing a defence. To find a private solicitor, contact the [NSW Law Society](#). If you have limited means, contact your local [Community Legal Centre](#) for advice.