

Step 1. The other party has not or cannot pay their excess

An excess is an insured's contribution to a claim. Sometimes the insured notifies their insurer of an accident or claim, but then fails to pay the excess. This may be because it is a high excess and they cannot afford it, or for other reasons. The inability to pay a policy excess does not automatically allow an insurer to avoid liability for a claim which would otherwise fall within the policy terms. If the other party has not or cannot pay their excess you can request that the other party's insurer pay your claim and deduct their customer's excess from the damages they pay you. You would then need to contact the at-fault party directly and negotiate with them to pay the remaining balance to you. The risks are:

- if the excess is close to your claim amount (i.e. your claim is \$2,000 and the excess is \$1500 you will only receive \$500 from the insurer and you would need to pursue the balance from the other party directly); OR
- The insurer also must be liable to their insured, so if the insurer has exclusions or the other party failed to pay his premium they may not be liable under the contract.

If you are not insured, you will need to pursue the driver as an individual. **If you are not insured and the damages are under \$15,000 you may be able to go to AFCA** You can make a claim in the Australian Financial Complaints Authority (AFCA) if (**and only if**):

1. You are not at fault (The other drivers caused the accident)
2. The damage is less than \$15000 (or you are willing to accept \$15000 as your maximum loss)
3. The other driver is insured (and claims on their insurance)

You can make a claim in AFCA by going to the website at www.afca.org.au, or calling 1800 931 678. If you do not meet the requirements for AFCA, and the insurer refuses to deduct the excess it will be difficult to compel them to deduct the excess. To get your damages paid you will need to firstly work out how much your damage you have suffered by the collision. This means gathering evidence and quotes for repair or if your car cannot be repaired its market value. Generally in car accidents, the other party is entitled to recover damages caused by the at-fault's party negligence. The damage in a

motor vehicle repair claim is usually made up as follows:

- Repair cost of the damage caused or the market value of the vehicle, whichever the lesser;
- PLUS towing costs
- PLUS hire car costs, lost wages or profits (called “demurrage”)
- LESS salvage value (if market value of the car is claimed)

The costs you can recover are limited to what is ‘reasonable’ given the circumstances (such as the age / make / model / condition of the other car, and the availability of car repairers in the area). You have an obligation to mitigate or minimise their losses. This means you must keep your costs reasonable. It is generally advisable to get more than one quote so that you can show that your costs are reasonable. The **next steps** are to:

1. **send a letter of demand**, which outlines your damages and the date in which you want the money paid by; and then if the demand is not paid by the demand date,
2. **commence a claim in Court.**

Once you start enforcement action this may compel the other party to pay their excess.