

Crashed your car?

Information on claims for
damage to your car, in
and out of court



This brochure will take you through important steps you need to take **if your car is damaged in a car accident.**

- After the accident
- Making a claim
- Collecting evidence
- Get quotes
- Negotiating who will pay
- Paying for damage
- Sending a letter of demand
- Responding to a letter of demand
- Going to court
- Enforcing a court order.

However, information in this brochure does not cover everything that can happen after a car accident. If you need further information, get legal advice.



Who this brochure is for

This brochure is NOT for personal injury claims.

All car owners in NSW must have Compulsory Third Party (CTP) personal injury (green slip) insurance. However, CTP only covers claims for personal injury, not claims for property damage.

If you have been injured in an accident, even if it was your fault, call the State Insurance Regulatory Authority (SIRA) on **1300 656 919 immediately** for help with making a claim, as **strict time limits apply**.



Car insurance

If you are insured for property damage

If you are insured, you can claim on your insurance.

However, **it is your choice** whether you claim on your insurance policy. If you make a claim, you may have to pay an excess if you are at fault and may lose your no-claim bonus.

There are two types of insurance for property damage.

1. **Comprehensive insurance** covers damage to your own car as well as damage to other cars and property, regardless of whether you caused the accident or not.
2. **Third party property insurance** usually only covers damage you do to another car or property. However, if the other driver is at fault and uninsured, you are also able to claim (often up to around \$5000) for damage to your car under the little known **Uninsured Motorist Extension (UME)** term of your third party property policy.



TIP

You should discuss the accident with your insurer before you admit responsibility or enter into any negotiations.

It is usually a term of your insurance not to admit any responsibility for either the accident or the extent of the damage caused.

AFCA: resolving your insurance dispute

Has your claim been rejected?

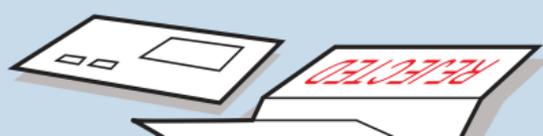
If your claim is rejected by your insurer (or the insurer delays in making a decision to pay your claim, or the insurer says 'you can't make a claim under this policy') you can seek an **internal review** of your insurer's decision with your insurer.

If you can't resolve the dispute with your insurer, you can lodge a complaint at the **Australian Financial Complaints Authority (AFCA)** at any time. For more information see www.afca.org.au or call **1800 931 678**.

What is the Australian Financial Complaints Authority (AFCA)?

AFCA is an independent dispute resolution scheme that is free for consumers. It was created to resolve these types of disputes with your insurer.

You have two years from the final rejection letter of the insurer, or six years from the date you first become aware of your loss – whichever is earlier – to lodge your complaint with AFCA. If you are in doubt about whether the time limit applies, it is best to just lodge your complaint with AFCA.



1

You've had an accident

Whose fault is it?

Any driver who fails to take reasonable care is responsible for damage caused in an accident. It is not always easy to decide; sometimes both drivers are responsible.

Even if the police do not charge you with a driving offence, it does not mean you are not responsible. There is a difference between a driving offence (criminal responsibility) and responsibility for damage (civil liability).

If you own the car but somebody else was driving it, you can still be responsible if the driver is your 'agent' and was at fault. (eg. a friend was driving while running an errand for you). In this situation, the driver is still equally responsible.



Calling police

You must call police if:

- a person is injured or trapped
- police are needed to direct traffic or deal with hazards
- a car needs to be towed
- anyone involved fails to exchange details or
- a driver appears affected by alcohol or drugs.

If none of the above applies, then police do not need to attend the crash site. If a car requires towing, then after leaving the crash site, report the crash to the Police Assistance Line (PAL) **131 444** as soon as possible.



Call Police

Report serious accidents, for example, when a person is injured or trapped, to the police immediately.

2

After the accident

At the scene

- All drivers must give their name, contact details, and licence and car registration numbers to the other driver. Write down information about the other car.
- Get details from any witnesses.
- Take notes about the circumstances of the accident and any damage to property.
- Take a photograph (eg. of skidmarks or debris on the road) or draw a diagram of the accident scene.
- Note the time of the accident, place, street lighting, traffic conditions, weather and anything else you think may have contributed to the crash.
- If police attend, they will speak to each driver and witnesses. They may issue an infringement notice. Ask the police for their name and contact details. Later, if required, you can get a copy of the police report (see **More information and help**).

Get the other driver's details

Get details from witnesses

Record scene and vehicle damage

Collect evidence

If you did not get this information at the scene of the accident, you should collect it as early as possible afterwards. Ask witnesses to write a statement about what they saw.

Draw a diagram of the accident. Take photographs of the damage to your car, which can be useful if the case ends up in court.

Collect evidence



TIP

Ask witnesses to write their statements before they forget the details.

See the list above for more detail.

Get a quote (or quotes) from a smash repairer to prove the amount of damage to your car. You can claim the reasonable cost of repairs.

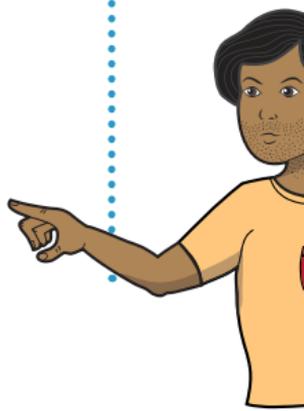
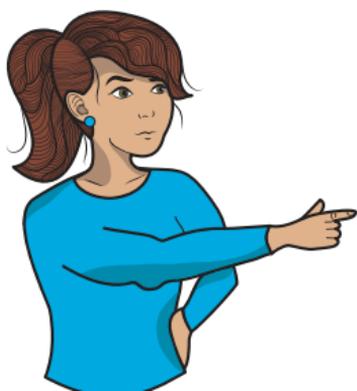
If the cost of repairs is more than the cost of replacing your car, then your car will be considered a write-off. If your car is a write-off, get a report on the pre-accident value of the car, minus any salvage value. Some motoring organisations provide write-off valuation reports to members for a fee, otherwise, contact a loss adjuster or valuer.

TIP

Get more than one quote on the damage to your car to assist in negotiations.

You may also be entitled to compensation for other expenses or loss, such as towing fees, loss of personal belongings and hire of a replacement vehicle. You can also claim interest if the matter goes to court.

Get quotes



3

Negotiating who will pay

If you choose not to claim on your insurance or do not have insurance and you think the other driver is at fault, then you can negotiate about whose fault it was, how much damage was caused and when payment will be made.

If you think the other driver was at fault, write a **letter of demand**. Ask the other driver to pay for the repairs to your car and any other losses. Attach a copy of the quote. Ask the other driver to respond within a specific time, eg. 14 days. Keep your original quote and a copy of the letter.

If you receive a claim or **letter of demand**, it is usually best to respond. If the other driver is insured, you may get a letter from their insurer. If you believe you are not at fault, write and explain. If you disagree with the cost of repairs, you can get an independent quote. If you believe you are partly at fault, offer to pay a reasonable cost.

Write '**without prejudice**' on the top of any letter so it cannot be used as evidence in a later court case.

You can negotiate directly with the other driver or through an independent mediator. If you do settle, make sure the agreement is written down and signed by both parties. The agreement should be recorded as full and final settlement of the claim, otherwise, the payment you make could later be regarded as part payment only.

Send a letter of demand

Respond to a letter of demand

Negotiating

Try negotiating the matter yourself or use a mediator.



4

Going to court

If negotiations fail, your next option is court action. Think carefully before taking court action. If you lose, you may have to pay the other side's legal costs. Even if you win, you may not be able to recover any money. Court action takes time and can be stressful. If you do start court action, you will need to know the name and address of the other party or parties. This is usually the driver but can also include the owner.

Usually court action for property damage must start within six years of the date of the accident. Drivers under 18 must claim within six years from when they turn 18.

The **Local Court** is divided into two divisions:

- **Small Claims Division** for claims up to **\$20,000**.
- **General Division** for claims over **\$20,000** and up to **\$100,000**.

The person who starts legal proceedings is called the **plaintiff**. The person who is being sued is called the **defendant**.



TIP

Start your action promptly.

AFCA: for uninsured drivers

Are you uninsured and being contacted by the other driver's insurance company?

The following information may assist if you are **uninsured** and you have had an accident with a car that is insured.

If the insured driver caused the damage to your car (or part of the damage) and you are claiming up to \$15,000 for the damage, then you can lodge an **uninsured motor vehicle complaint** with the **Australian Financial Complaints Authority (AFCA)** against the insured driver's insurance company.

To lodge your complaint with AFCA, go to the website: www.afca.org.au or call **1800 931 678**. You can lodge after a statement of claim has been served on you or after you have filed a Defence.

The court proceedings are put on hold until AFCA investigates the dispute.

The Australian Financial Complaints Authority (AFCA) is an alternative to court action in some circumstances.



Filing in court

Filing claims and cross claims

If you are the **plaintiff**, fill out a **statement of claim**, setting out the details of your claim. If you are claiming for more than repairs, like the cost of hiring a replacement car, you may need legal advice.

File your claim at the court. You have six years from the date of the accident to file your claim. Serve your claim on the defendant personally or by post. The court can assist with this. Your claim must be served within six months of being filed.

If you are the **defendant** who has been served with a statement of claim and you disagree with the claim against you, you should **lodge a defence within 28 days**.

A defence to a claim is usually on the basis that the other driver is at fault (wholly or partly) and/or damages claimed are too high.

If you miss the deadline to file a defence, the plaintiff can apply for default judgment. The court may allow you to set aside the default judgment if you provide good reasons for the delay and the grounds of your defence.

If you are served with a statement of claim and you think the other party was at fault, you can **file a cross claim within 28 days**.

If you are going to court

1. If you are the plaintiff, file a Statement of Claim and serve it on the defendant.
2. If you are the defendant, lodge a defence and/or a Statement of Cross-Claim within 28 days.



TIP

Check out LawAssist for help with writing your court documents.

5

At court

You can represent yourself or have a lawyer. People usually represent themselves in the Small Claims Division. The court does not provide an interpreter for civil claims so you will need to make your own arrangements.

If you cannot attend court, contact the court as soon as possible to ask for an adjournment. You should also tell the other party. If you don't get an adjournment and don't turn up, the court can make court orders in your absence.

Pre-trial in Small Claims

Claims under \$20,000 are usually heard in the Small Claims Division. At a pre-trial review the registrar at the court will help both parties identify the issues and explore possible settlement. Bring along witness statements and other documents. If the matter is not settled, the registrar may refer the matter to mediation or list it for hearing.

Attend the Pre-Trial Review



TIP

Use the pre-trial review to negotiate a settlement.

Pre-trial in General Division

Claims over \$20,000 are heard in the General Division. The first court date in this division is called a callover date. If you are not able to attend on that date, remember to apply for an adjournment (see above). If you don't get an adjournment and don't attend, an order can be made in your absence.

If the cost of repairs is disputed between the parties, at the callover the court will require the parties to attend a conference and exchange expert evidence.

Straight-forward cases can be referred to arbitration, which is less formal than a hearing before a magistrate. The magistrate may also refer a matter to a community justice centre for mediation.

If your case is not referred to arbitration or mediation, then it will be listed for a hearing.

At the hearing

The court must act fairly and give each party a chance to present their case.

Small claims are heard by a magistrate or an assessor. Small claims are informal and people often represent themselves. Evidence is usually only allowed in document form. Witnesses usually provide written statements.

General Division proceedings are heard by a magistrate or an arbitrator. The usual way to present a case in the General Division is with documents and with witnesses giving oral evidence.

Giving evidence

Witnesses can only give evidence in relation to relevant facts. Facts are what people directly hear or see and are not mere opinions. The court will only hear opinions from experts.

Documents that can be used as evidence include witness statements, photographs, sketches, repair quotes, invoices and diaries.



**Attend
the court
hearing
and argue
your case**

As plaintiff, you must prove:

- you own the vehicle
- who the other party is
- that the other party was negligent and
- how much damage you suffered.

To do this, you need to briefly describe your claim and provide your evidence. In the General Division, you can ask your witnesses questions (called examination). The defendant can then ask your witnesses questions (called cross examination).

As defendant, you can then give your evidence. In the General Division, you can examine your witnesses. The plaintiff can then cross-examine you and your witnesses.

When all the evidence has been given, each side can provide a summary of their case and point out any weaknesses in the other side's case.

The court decides

Most hearings start and finish on the same day and take a few hours. The court will make a decision and explain the reasons for the decision. This is called a judgment.

In complicated cases, the court may reserve its decision.

The court may also make orders for costs. Usually, the losing party has to pay the costs of the successful party. In the Small Claims Division of the Local Court, there is a limit on the amount of costs that can be claimed.



Appealing the decision

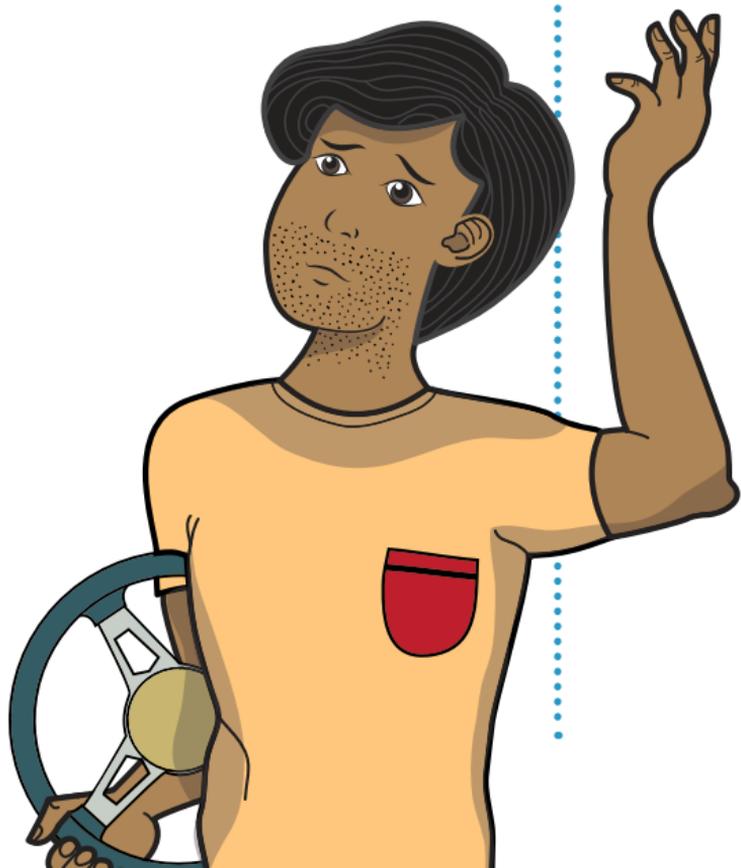
Small Claims decision

If you want to challenge an assessor or magistrate's decision, you should apply to the District Court within 28 days. Appeals from the Small Claims Division can only succeed in very limited circumstances (involving lack of jurisdiction or denial of procedural fairness). **Before proceeding to an appeal, you should get legal advice.**

General Division decision

If you want to challenge a magistrate's decision, you should apply to the Supreme Court within 28 days. Appeals need to disclose an error of law or require permission to proceed.

If you want to challenge an arbitrator's decision, you should apply to the registrar within 28 days for a rehearing in front of a magistrate.



6

Enforcing a court order

The person who is owed money by the court order is the judgment creditor. The person who owes money is the judgment debtor.

The court will only enforce an order if requested to do so. Orders can usually only be enforced within a 12-year period.

Examination Notice

The judgment creditor can have the court issue an examination notice requiring the judgment debtor to go to court.

At court, the debtor must tell the creditor all about their income and assets. A debtor who does not attend can be brought to court by a sheriff.

Garnishee order

The judgment creditor can ask the court to 'garnish' the debtor's wages and/or bank account. This is a court order requiring an employer or bank manager, for example, to give the debtor's money to the creditor.

Rules govern how much of a debtor's wage can be garnished.



TIP

Check out LawAssist for help with the court forms for enforcing a court order.



Writ for levy of property

The judgment creditor can get a writ for levy of property. This is a court order that allows a sheriff to remove and sell personal property by auction in order to pay the debt.

The sheriff may not take or sell:

- essential household items
- tools of trade to a certain value
- someone else's goods
- a car valued under a prescribed amount.

If the judgment is for more than \$10,000, real property (for example, your home) can be sold.

Bankruptcy

If the judgment debt is over \$10,000, the creditor can apply to the Federal Court to have the debtor declared bankrupt.

If you receive a bankruptcy notice get legal advice as soon as possible.



More information and help

LawAccess NSW www.lawaccess.nsw.gov.au

Call **1300 888 529** for legal information, referrals or in some cases advice.

LawAssist www.lawaccess.nsw.gov.au/lawassist

LawAssist has more information about car accidents and property damage, such as sample letters and help with writing court documents.

Community Justice Centres www.cjc.nsw.gov.au

Provides neutral mediators to help both parties find a solution to a conflict. Call **1800 990 777** to find your closest centre.

Community Legal Centres www.clcnsw.org.au

Provides free legal advice and information. Call LawAccess NSW on **1300 888 529** to locate the centre closest to you.

National Debt Helpline www.ndh.org.au

Call **1800 007 007** for information about your nearest financial counsellor and advice on negotiating with creditors.

Australian Financial Complaints Authority

www.afca.org.au

Resolves disputes between people and their insurers, and disputes between third party uninsured drivers and insured drivers. Lodge a complaint online or by phone on **1800 931 678**.

Insurance Law Service (ILS) www.insurancelaw.org.au

Call **1300 663 464** for help with insurance disputes.

Law Society of NSW www.lawsociety.com.au

Call **9926 0300** for information or referral to a private lawyer.

Legal Aid NSW www.legalaid.nsw.gov.au

Legal Aid NSW can provide free legal help and advice. Call LawAccess NSW on **1300 888 529**.

State Insurance Regulatory Authority (SIRA)

www.sira.nsw.gov.au

Call the SIRA on **1300 656 919** for advice on how to make a claim for personal injury compensation or to obtain the name of the other driver's green slip insurance company.

NSW Police Force www.police.nsw.gov.au

Call the Police Assistance Line (PAL) on **131 444** to report non-emergencies.

The Insurance Services Unit can provide copies of the police incident report. Call **8835 8377**.

Transport for NSW

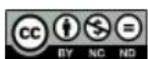
<https://roads-waterways.transport.nsw.gov.au>

For information about registration and licensing of cars and insurer details call **13 22 13**.

This publication is a general guide to the law. You should not rely on it as legal advice, and we recommend that you talk to a lawyer about your situation.

The information is correct at the time of printing, however it may change. For more information contact LawAccess NSW on **1300 888 529**.

The brochure is also available in Arabic, Dari/Farsi, Simplified Chinese and Vietnamese.



© Legal Aid Commission of NSW 2021

Order brochures online at:

www.legalaid.nsw.gov.au/publications

For more information about Legal Aid NSW services:



Do you need help to contact us?



If you need an interpreter, call the Translating and Interpreting Service (TIS National) on **131 450** (9am – 5pm) and ask for LawAccess NSW.

Do you find it hard to hear or speak?



If you find it hard to hear or speak, call us through the National Relay Service (NRS) on **133 677** and ask for LawAccess NSW or visit:

www.relayservice.gov.au