



# Financial Rights

LEGAL CENTRE

## FACT SHEET



CALL THE  
INSURANCE  
LAW SERVICE  
ON  
1300 663 464

Financial Rights Legal Centre Inc.  
ABN 40 506 635 273

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## I'VE HAD A CAR ACCIDENT AND I'M UNINSURED!

This fact sheet is for information only. It is recommended that you get legal advice about your situation.

### CASE STUDY

Joe owned an old Holden. He was driving to visit a mate when he had an accident. He had been driving along happily listening to music when he suddenly saw a car appear in front of him. He could not stop in time and ran straight into the car in front. He exchanged details with the other driver.

Joe didn't have any insurance; he had only registered the car and paid the green slip.

Joe has now received a demand for \$5300 from BIG INSURANCE COMPANY for the accident. Joe is really annoyed. There is no way he can pay the money, as he is unemployed.

If you have had a car accident also look at the brochure from Legal Aid NSW "Have you crashed your car? What to do about property damage." Found at [www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au)

Also see [Factsheet: Getting Help](#) below for more information.

### WHO IS AT FAULT?

Generally, any driver who is negligent (does not take reasonable care) is at fault. This can sometimes mean both drivers are at fault. You need to work out whether:

- You are at fault (and can be made to pay for any damage you caused)
- You are not at fault
- You and the other driver are both at fault (and can be made to pay for any damage you caused to the extent you were at fault – for example if you contributed 50/50 to the accident you can only be made to pay for 50% of the damage, and can claim 50% of the cost of repairs to your car). Remember that the value of the cars will determine the outcome of an apportionment of liability i.e. if your car is not worth as much as the other car you may still lose, for example, you hit 2007 BMW in your 1994 Ford laser. 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. Therefore you owe \$6,250-1,300 = \$4950, in addition to paying to get your own car fixed!

[www.financialrights.org.au](http://www.financialrights.org.au)



## IF YOU ARE NOT AT FAULT OR ONLY PARTLY AT FAULT

You will need to make a claim or part claim on the other driver and/or owner of the other car. This will usually involve:

1. Sending a letter of demand and
2. Commencing a claim in Court (if the demand is not paid) OR
3. Making a claim in the General Insurance Division of the Financial Ombudsman Service Australia (FOS) if:
  - a. You are not at fault
  - b. The damage is less than \$5000
  - c. The other driver is insured (and claims on their insurance) (See below for more information)

As you will usually be claiming against an insurance company always get advice as insurance companies can be very intimidating. Also remember that if the case goes to Court it is unlikely that a legal centre or Legal Aid will represent you. The insurance company will be represented and will seek legal costs if they win the case. It may be worth trying to reach agreement with the insurance company rather than going to court.

## GETTING HELP WITH FILING A CLAIM AGAINST THE OTHER DRIVER/VEHICLE IN COURT

1. 1. Ring Law Access 1300 888 529
2. 2. Make an appointment to see your Local Court Chamber Registrar
3. 3. Check the brochure "Have you crashed your car?" at [www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au)

## IF THE OTHER PARTY IS AT FAULT

If the other party is at fault, the damage is under \$5000 (or you are prepared to accept this amount) and the party at fault is insured you can **make a claim in FOS**. As it is free, it is recommended that you do make a claim through FOS if you can. You can make a claim in FOS by going to the website at [www.fos.org.au](http://www.fos.org.au), or calling 1800 367 287 or 1800 FOS AUS.

## IF YOU ARE AT FAULT

You need to pay the reasonable costs of repairing the damage to the other car. As soon as you receive a claim you need to act promptly. The usual process is:

1. You receive a letter of demand
2. A debt collector may also contact you
3. You may receive a Statement of Claim/Summons from the Court.



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4. If you do not file a defence to the Statement of Claim/Summons issued by the other driver the (plaintiff), or their insurance company, will get judgment against you automatically (usually after 28 days).
5. Once it has judgment the insurer can use Court powers to get you to pay, for example, garnisheeing your wages, seizing property and/or making you bankrupt.

Ideally, you want to make an arrangement to pay when you receive a letter of demand so you can avoid Court action against you.

## I HAVE RECEIVED THE LETTER OF DEMAND, WHAT DO I DO NOW?

If you agree you owe it and the amount claimed seems reasonable, then you have two options:

### OPTION 1 – PAY THE AMOUNT CLAIMED

If you can pay the amount claimed then this is the quickest way to resolve the letter of demand.

If an insurance company is pursuing the money then it will often negotiate a discount if you can pay straight away. It is worth trying to offer less as a lump sum or offer to pay the full amount by instalments. If the insurance company agrees to a lesser amount you should confirm this in writing.

■ **See Sample Letter to an Insurer about motor accident debt: Paying the debt (available at [www.insurancelaw.org.au](http://www.insurancelaw.org.au))**

### OPTION 2 – MAKE A REPAYMENT ARRANGEMENT

If you cannot afford to pay the amount claimed all at once you will need to negotiate a repayment arrangement. Under Section 8 of the General Insurance Code of Practice the Insurance Company must offer you the opportunity to pay the debt by instalments if you are in financial hardship. Do not make a repayment arrangement you cannot afford!

If the repayment arrangement you are requesting is going to be difficult to afford and/or take a long time to repay (say over 3 years) get advice before offering the repayment arrangement. If you are on a low income such as Centrelink payments, get advice before you enter into any repayment arrangement. See below under the heading “What if I cannot afford to repay the debt claimed at all?”.

You should also consider seeing a free financial counsellor for assistance with making a repayment arrangement. Phone 1800 007 007 for a referral to your nearest free financial counsellor.

■ **See Sample Letter to an Insurer about motor accident debt: Requesting a Repayment Arrangement**

(available at [www.insurancelaw.org.au](http://www.insurancelaw.org.au))

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## WHAT IF THEY DON'T AGREE?

Persist in trying to negotiate! Also get advice!

If the debt collector or the insurer unreasonably refuses your request you can ask for the repayment arrangement to be reviewed through the Internal Dispute Resolution process at the Insurance Company. If that request is refused you can also complain to:

Code Compliance – General Insurance  
Financial Ombudsman Service Australia  
GPO Box 3  
Melbourne VIC 3001  
Ph: 1800 367 287  
info@codecompliance.org.au

## WHAT IF I CANNOT AFFORD TO REPAY THE DEBT CLAIMED AT ALL?

Get advice from a financial counsellor or legal service. It may also be possible to get the debt waived by the insurance company if you are ill and/or in extreme financial difficulty. Try the sample letter below:

### ■ [Sample Letter to an Insurer about motor accident debt: Request to be released from debt](#) (available at [www.insurancelaw.org.au](http://www.insurancelaw.org.au))

If you do not get a response or your request is rejected get legal advice. Also make a complaint about the breach of the General Insurance Code of Practice.

### ■ [Letter to Financial Ombudsman Service: Complaint about Insurer's failure to respond to hardship request](#)

Attach copies of your previous correspondence with the insurer, and details of any phone conversations, including if possible the date, the name of the person you spoke to the what was said to the best of your recollection.

## WHAT IF I THINK THE AMOUNT BEING CLAIMED IS UNREASONABLE?

The general principle is that the party not at fault should be reasonably restored to the same position as before the accident

As a general guide, you would normally be responsible for:

**Repair cost of damage incurred OR market value of the car - whichever is the smaller amount**

**PLUS** towing costs

**PLUS** demurrage (hire car costs, lost wages or profits for income-earning cars)

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The costs that the insurer can recover is limited to what is reasonable given the circumstances – taking into account factors such as the age / make / model / condition of the other car, and the availability of car repairers in the area. These costs must also be reasonably connected to the accident itself.

The insurer has an obligation act reasonably to mitigate or minimise their losses. However they do not have to:

- get more than one quote
- allow you access to their customer's car to perform your own inspections or get your own quotes
- wait for your approval before their customer's car can be repaired
- contact you within so many days or months of the accident, or keep you informed. In most Australian jurisdictions, insurers have 6 years to chase you (except in the Northern Territory, where it is 3 years)

**Be realistic.** Remember fixing cars can be expensive! Also remember that the insurance company will also want to minimise the cost of repairs.

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**TIP:** Insurance companies will often agree to settle the debt claimed for a lesser amount if you pay in full straight away

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If the insurer pursues you for an amount you believe is excessive, you should gather as much evidence and research as you can to establish this. Ask the insurer for copies of itemised bills, photos, assessors reports etc. See [Sample Letter to an Insurer about motor accident debt: requesting documents](#)

When you get a reply, review the further information carefully. If you still believe it is excessive then you need to say why and provide evidence. For instance, your own mechanic may be able to give you a written opinion of what would fall within a reasonable range of repair costs based on any photos or quotes you have

If you still think the amount being claimed is unreasonable send a letter in reply, explaining your position and attaching any evidence to support your case: [Sample letter: Disputing amount being claimed](#)

You may want to request that the amount of repairs be reviewed by the Internal Dispute Resolution process at the Insurance company. You can search for these details here: [http://www.fos.org.au/centric/home\\_page/members/participating\\_financial\\_services\\_providers.jsp](http://www.fos.org.au/centric/home_page/members/participating_financial_services_providers.jsp)

It is always best to get the settlement confirmed in writing. Be clear on what it is you are settling – if it is the full amount, or just the cost of

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repairs, does it include hire car costs. If you only settle the repair cost, you can find yourself being chased later for other costs (eg. hire car) from the insurer, or the other driver directly.

Ultimately, if a negotiated outcome cannot be reached, the insurer can start court action for the amount they believe is justified. Legal costs and court costs will generally be added onto the amount claimed if this happens.

You can choose to lodge a defence, but you must be careful and get legal advice first. The court has a wide discretion to make orders that one party pay the other parties costs – for instance, the courts may order the losing party pay the reasonable legal costs of the winning party.

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**REMEMBER:** If you are arguing that the amount claimed is too much, this means you still owe some of it. Be prepared to pay, or start paying, the amount you know you owe.

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## WHAT IF I GET A STATEMENT OF CLAIM?

A Statement of Claim/Summons is a legal document and may have consequences for you if you fail to respond to it within the time specified. Time is of the essence, ring The Insurance Law Service on 1300 663 464 for advice.

## CAN I SETTLE A CLAIM AGAINST ME BY PAYING THE OTHER PARTY'S INSURANCE EXCESS?

The short answer is, NO. You may be approached by a third party who offers to settle a recovery they have against you on the condition that you pay for their "insurance excess". The insurance excess is the cost an insured person may incur if they choose to make a claim with their insurer.

You should be careful about accepting any settlement offers on this basis as:

- You usually will obtain no benefit from paying somebody else's insurance excess; and
- The insurer can still legally pursue you for the full cost of the claim.

Paying the third parties excess should not be confused with settling a dispute 'in full and final settlement' of the claims they may have against you.

Seek legal advice about what a full and final settlement should include for your matter.

## NEED SOME MORE HELP?

See [Fact Sheet: Getting Help](#) for a list of additional resources.

*Last Updated: December 2015*

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