

Car Accident when Uninsured

Description

This fact sheet is for information only. You should get professional advice about your personal situation from a financial counsellor or a lawyer.

Main ideas

- If you are uninsured and at fault in an accident
 - you must pay the reasonable cost of any damage
 - the other driver/owner or their insurer may chase you for money
 - you may be able to negotiate a payment plan, but don't agree to pay anything you cannot afford.
- If you are uninsured and NOT at fault in an accident
 - you can ask the other driver/owner to pay the reasonable cost of any damage
 - if the other driver/owner is insured, they will probably involve their insurer.
- The reasonable cost of damage includes
 - repair cost of damage OR market value of vehicle – whichever is less
 - towing and storage costs
 - hire car cost
 - lost wages or profits if the vehicle is used to earn income.
- Financial counsellors can help if you are in financial hardship. Their services are free.

In this fact sheet:

Figure out who is at fault

If you are not at fault, or only partly at fault

- If the other driver/owner is not insured
- If the other driver/owner is insured

If you are at fault, or partly at fault, or the other driver/owner claims you are at fault

- If you receive a Letter of Demand
- If you receive a Statement of Claim

Figure out who is at fault

Generally, the person who is negligent (does not take reasonable care) or who disobeys a road rule is at fault.

It could be:

- you are at fault
- the other person is at fault
- both you and the other person are at fault – maybe 50/50 or 80/20.

To help figure out who is at fault:

- Draw a diagram of the accident.
- Write down what happened.
- Get the contact details of anybody who saw the accident.
- Get photos of the damage to the vehicles and the scene.
- Get any dashcam or CCTV videos. Act quickly because CCTV videos are often overwritten.
- Know the road rules (rules differ in each state and territory).
- **Get legal advice** – you can [contact a community legal centre](#) or [private solicitor](#). The Insurance Law Service does not give legal advice about who is at fault.

If you are both at fault, you could consider an agreement where both parties ‘walk away’ and agree to cover their own repairs (get this in writing).

But sometimes you may still need to pay something. Suppose you crash into a new BMW with your old Ford, and both drivers are 50% at fault. The damage to the BMW is \$12,000 – you need to pay half of that, \$6,000. The damage to your Ford is \$4,000 – the other driver needs to pay half of that, \$2,000. You will end up paying \$6,000 – \$2,000 = \$4,000 to the BMW driver. Plus you also need to pay to get your car fixed.

If you are not at fault, or only partly at fault

You can chase the other driver/owner (or their insurer) to pay for the reasonable costs of damage. As a general principle, you should be put back in reasonably the same position you were in before the accident.

Usually you can claim for:

- repair cost OR market value – whichever is the smaller amount
- towing costs (if needed)
- hire car costs, lost wages or profits for income-earning cars.

You must act reasonably and minimise your loss – you can't spend \$5,000 to fix a car that's only worth \$3,000 and expect to get \$5,000 back from the other driver/owner. It is usually a good idea to:

- get 2 or 3 quotes for cost of repairs
- [research the value of your vehicle – try redbook.com.au](http://redbook.com.au). Car sales websites can also give you an idea of how much to replace your car.

If the other driver/owner is NOT insured

You can chase the other driver/owner directly, consider:

1. Send a letter of demand to the other driver/owner.
2. You can negotiate with the other driver/owner about the amount and timing of the payment.
3. If that doesn't work, you can go to court or a special car accident tribunal (available in some states).

Always get legal advice before going to court or tribunal, perhaps from your local community legal centre or Legal Aid (in some states only). [Visit our Useful Links page for contact details for legal advice and assistance.](#)

These organisations can give advice but are unlikely to represent you in court. You could end up paying the other side's legal costs if you lose or something else goes wrong. Try to

negotiate an agreement first.

Some Third Party Property insurance policies will let you claim a limited amount, usually \$3,000 or \$5,000, to pay for damage to your car if the other driver was at fault, uninsured, and you can identify the driver of that car. Check your insurance policy.

If the other driver/owner is insured

If the other driver/owner has made an insurance claim, ask for the contact details of their insurer and the claim number. Or you can [find contact details of the insurer on the AFCA website](#).

Contact the insurer and tell them you have a claim against their customer. You cannot 'claim' on the other driver/owner's insurance directly – their insurer has no contract with you. The insurer stands in their customer's place.

Their insurer may be willing to negotiate with you. They may offer to assess your vehicle, repair your vehicle, offer you a hire car. Check the terms of what they are offering – you do not need to accept their offer.

If you think the insurer might write-off your car, and you don't want that to happen, you can refuse to let them assess the vehicle. For details [read our Written-off Vehicles fact sheet](#).

Instead of agreeing to what the insurer suggests, you can send the insurance company a letter of demand quoting their customer's details and claim number.

Usually you can claim for:

- repair cost OR market value – whichever is the smaller amount
- towing costs (if needed)
- hire car costs, lost wages or profits for income-earning cars.

You must act reasonably and minimise your loss – you can't spend \$5,000 to fix a car that's only worth \$3,000 and expect to get \$5,000 back from the other driver/owner.

If you cannot reach an agreement with the insurer, you can [complain to the Australian Financial Complaints Authority \(AFCA\)](#). Making a complaint is free and you can do this if:

- you are not at fault
- you do not have comprehensive insurance
- the damage is less than \$19,000, and
- the other driver/owner has claimed on their insurance (or has passed away, or cannot be found).

You can also go to court or a special car accident tribunal (available in some states). Always get legal advice before going to court, perhaps from your [local community legal centre or Legal Aid](#)

. These organisations can give advice but are unlikely to represent you in court – the insurance company will usually be represented. You could end up paying the other side's legal costs if you lose or something else goes wrong. Try to negotiate an agreement first.

If the other driver/owner has made an insurance claim but has not paid their excess

If the other driver/owner has not paid their excess, your claim may be delayed. (The excess is an amount the insured person must pay when they make a claim.) You should talk to the other driver/owner to try to convince them to pay. If they are in financial hardship, the insurer must consider offering a payment arrangement so they can pay the excess over time.

If the other driver/owner cannot or will not pay the excess, you can ask the insurer to pay your damages minus the excess. You can explore whether to chase the other driver/owner yourself for the excess. [Read our Sample letter Deducting Excess From Damages \(Other Party Can't Pay Excess\)](#). For advice on chasing the other person, try your [local community legal centre](#).

If you are asked to pay the other driver/owner's insurance excess

The other driver or owner may ask you to pay their insurance excess for them. (The excess is an amount the insured person must pay when they make a claim).

You will usually get no benefit from paying somebody else's insurance excess, because the insurer can still chase you for the full cost of the claim.

Paying the excess is not the same as a 'full and final settlement' of the claim. Get legal advice about what a full and final settlement should include.

If the other driver/owner has made an insurance claim but something else is going wrong

The insurer may reject the other driver/owner's claim if there is an exclusion on the policy (for example, the driver was affected by drugs or alcohol). This means you will need to chase the other driver/owner as if they were not insured.

Or the other driver/owner may not be cooperating with the insurer, or there could be some other problem with the insurance policy. This can cause delays and the insurer may not be able to tell you what the problem is because of privacy laws. In this case, you can contact the insurer's complaints department or complain to AFCA – but AFCA will not be able to do anything unless there is a valid claim. You can also chase the other driver/owner yourself as if they were not insured.

If the other driver/owner has not made an insurance claim

You cannot force the other driver/owner to make an insurance claim. The insurer will not pay

your damages if a claim is not made. You cannot complain to AFCA if there is no insurance claim.

You can chase the other driver/owner yourself as if they were not insured.

However, if the driver/owner has died or disappeared, the insurer can be liable to the same extent as if the claim had been made. That is, they will usually pay damages less the excess.

If you are at fault, or partly at fault, or the other driver/owner claims you are at fault

The other driver/owner or their insurer will chase you for the reasonable costs of damage. The other driver/owner or the insurer may use a debt collector to do this. They have 6 years to go to court (except in the Northern Territory, where it is 3 years).

If you receive a Letter of Demand

Do not ignore a Letter of Demand. If you ignore a Letter of Demand, the other side may take the matter to court. This will add legal costs to the amount claimed against you.

If you do not agree you are at fault, get urgent advice from a [community legal centre](#), or a [private solicitor](#). Do this before the date stated on the Letter of Demand.

If you agree you are at fault and the amount is reasonable, pay the amount claimed. Sometimes insurers will agree to a lesser amount if you can pay straight away. Read our [Sample letter to an insurer offering to pay insurance debt](#).

If you can't afford the full amount right now

You can:

- Offer to pay a lesser amount as a lump sum. If the other driver/owner or insurer agree to this, make sure you get it in writing.
- Negotiate a payment arrangement. If you are in financial hardship, the insurer must consider letting you pay by instalments. Don't agree to a payment arrangement you cannot afford.

See [Sample Letter to an insurer offering to pay insurance debt](#).

Always keep copies of any letters or emails you have sent or received. Also keep records of any phone conversations, including the date and time, the name of the person you spoke with, and what was said.

If the insurer does not agree, [complain to the internal dispute resolution section of the insurance company](#).

If they refuse, you can also complain to the General Insurance Code of Practice Code Compliance Team – but they can't force the insurer into an arrangement. See our [sample letter making an Insurance Code complaint](#).

You can also get free advice from a financial counsellor by calling the National Debt Helpline on 1800 007 007.

If you can't afford to pay anything

If you are in extreme financial difficulty, you can ask for the debt to be waived. See [Sample letter to an insurer requesting release from debt](#).

Call the National Debt Helpline on 1800 007 007 for free financial counselling help.

Always keep copies of any letters or emails you have sent or received. Also keep records of any phone conversations, including the date and time, the name of the person you spoke with, and what was said.

If an insurer does not respond to your request or they reject it, you can complain to the General Insurance Code of Practice Code Compliance Team – but they can't force the insurer to waive your debt. Use our [Sample letter making an Insurance Code complaint](#).

If you think the amount claimed is unreasonable

If you are arguing the amount claimed is too much, you are agreeing you owe some of it. Be prepared to pay, or start paying, the amount you agree you owe.

As a general principle, the other driver/owner should be placed in the same position they were in before the accident, as far as is reasonably possible. Generally, you are responsible for:

- repair cost OR market value– whichever is the smaller amount
- towing costs
- hire car costs, lost wages or profits for income-earning cars.

Fixing vehicles can be expensive! The insurer can only ask you for what is reasonable given the circumstances. They consider the age / make / model / condition of the other vehicle, and the repairers in the area.

All costs must be reasonably connected to the accident, and the insurer must mitigate or minimise their losses. However, they do not have to:

- get more than one quote
- allow you to inspect their customer's vehicle, or get your own quotes, or use your repairer
- wait for your approval before their customer's car can be repaired
- contact you within a fixed time of the accident, or keep you informed
- give you any evidence (such as photos, quotes, assessor's reports or witness statements). Many insurers will provide these if you ask. You cannot force them as part of negotiations, but you may be able to compel this evidence if it goes to court. But going to court can be very costly – get legal advice first.

If you believe the amount is unreasonable, get evidence to show this. Your photos of damage taken after the accident, or observations of a witness may be helpful. Ask the insurer for copies of itemised bills, photos, assessor's reports etc. Review their reply, and if you still believe the amount is unreasonable, you need to say why and provide evidence. For example, ask your mechanic to give a written opinion of a reasonable range of repair costs based on the photos or quotes you have.

If you still think the amount being claimed is unreasonable, explain your position and attach evidence to support your case. Ask the insurance company for an internal review of the repair costs. [Sample letter: Disputing amount claimed.](#)

Get any revised settlement amount in writing from the insurer. Be clear what you are paying for – the full amount, or just the cost of repairs, and whether it includes hire car costs. If you only pay for the repair cost, the insurer or other driver/owner may continue to chase you for other costs (for example, hire car).

If you cannot negotiate an agreed amount, the insurer can start court action for the amount they believe is justified. Legal costs and court costs can be added to the amount claimed. You can defend the claim in court, but get legal advice first.

If you receive a Statement of Claim

Don't ignore a Statement of Claim. Get legal advice immediately.

A Statement of Claim is a legal document and means the court process has started and additional costs are added to the claim.

There are fixed timeframes for responding (different in each state and territory, but **often only 21 or 28 days**)

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If you don't file a defence within the timeframe, the court will make a judgment against you. The other driver/owner can then use court powers to make you pay, like garnisheeing your wages or bank accounts, or seizing items or property.

Need more help?

[Visit our Motor Vehicle Accidents Problem Solver](#)
[For a list of additional resources visit our Useful Links page](#)

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