

Motor vehicle accidents – dealing with the damage

This infosheet covers claims for damage and injury including insurance claims after a motor vehicle accident. It includes the contact details of organisations where you may be able to get more help.

For more information about motor vehicle accidents, or about how the legal procedures apply to your own circumstances, you should seek legal advice.

Do I need legal advice to work out who is at fault for the accident?

It is important to seek legal advice about who is at fault. Sometimes the courts determine that both parties are partly at fault.

The fact that the police have charged one of the drivers with a traffic offence will not always mean that person is totally liable for the vehicle damage.

With motor vehicle accidents often more than one party may have contributed to the accident so the accident may not be solely one driver's fault. For example, if another car runs into your car on a roundabout at night and you do not have your lights on, or you are driving too fast/over the speed limit, you may be seen to have contributed to the accident. In this case you may have to accept you were responsible for some of the damage and, if so, the other driver will not have to pay for all the damage caused to your car. You may be responsible for damage to their car.

“ You should get legal advice on who is at fault before saying anything to the other driver/s or their insurance company about who is at fault. ”

Do I have to tell my insurance company?

It is important to let your insurance company know that you have been involved in an accident, even if you don't intend to make a claim.

Someone may make a claim against you or you may decide to make a claim later. If you did not inform the insurance company at the time of the accident, they may refuse your claim later.

Simply telling your insurance company about the accident will not affect your no claim bonus.

It is also important to report the accident to the police if you need to make an insurance claim.

“ If you have not reported the crash to police at the crash scene or at a police station shortly afterwards as required in certain circumstances, crashes can now be reported at the Online Crash Reporting Facility. This can be accessed at: <https://www.crashreport.co> ”

What insurance claim can I make?

Making a claim will depend on the type of insurance you have. There are three main types of insurance for motorists in Western Australia:

1. Compulsory motor injury insurance

This insurance provides cover for personal injuries you may cause to others in a motor vehicle crash anywhere in Australia. It also provides cover for catastrophic injuries you or any other person sustain in a motor vehicle crash in WA where either you are the driver at fault or you are unable to prove the fault of another driver.

It does *not* cover damage to vehicles or property.

The cost of compulsory motor injury insurance is set by the government and is paid as part of your car licence registration fee.

2. Comprehensive insurance

Comprehensive insurance covers damage to your car, damage to other cars and damage to property. Some policies also cover towing costs, medical expenses and even legal expenses.

Different policies offer different coverage. Check your own policy to see what it covers.

3. Third party property damage

This type of policy covers you only for damage to other vehicles and the property of other people unless you have an uninsured motorist's extension. Some third-party fire and theft, and third-party property insurance offers this extension. It covers damage to a car up to a set amount where the car is damaged by an uninsured car if you:

- are considered not to be at fault by your insurer, and
- you can provide the uninsured driver's name and address.

Property damage to other cars is the most common of all insurance claims.

People who own a car that is not valuable enough to be worth the cost of comprehensive insurance often choose this option.

What do I need to consider before making an insurance claim for property damage?

Before deciding to make a claim on your comprehensive insurance policy, it is important to check the following:

- Will you have to pay excess? The excess amount, if any, will vary between policies.
- Check with your insurance company whether you will lose your "no claim bonus" if you make a claim. Most insurance companies offer discounts on premiums if you have not made a claim before. Some companies allow you to keep your bonus under certain circumstances.

If you have third party property insurance only, this will cover you if the other party makes a claim against you for the damage done to their vehicle.

If you cannot pay your excess in full you can write to your insurer asking to have the excess deducted from the claim to be paid to you or offer to pay the excess in instalments. You can generate this letter on the [Insurance Law Service](#) website.

If you cannot pay your excess and the insurance company will not settle your claim until you do, get legal advice about making a complaint to the insurance company through its internal dispute resolution process. If that is unsuccessful and you are still in dispute you can go to the independent [Australian Financial Complaints Authority](#) (AFCA).

What if my insurance company refuses to pay?

Most insurance policies have special rules about when they will or won't pay. It is important to read your policy carefully to understand what type of cover you have. Some common examples of situations where insurance companies will not pay include:

- Failing to report an accident to the police or to the insurance company.
- If the driver was under the influence of alcohol or drugs.
- If the driver was unlicensed.

- Poor car maintenance. For example, if it could be shown that your brakes were faulty and it was the brakes that caused the accident.
- If you gave false details about your claim or about your driving history when taking out the policy.

Also under the *Insurance Contracts Act 1984* (Cth) you must take reasonable care not to make a misrepresentation to the insurer when entering into your insurance contract or renewing or varying it. This means you should answer questions honestly, as completely as you can and accurately. Depending on the circumstances of any misrepresentation, the insurer can amongst other things, reject your claim, reduce a payout on your claim, or cancel your contract.

If your insurance company refuses to pay your claim you should get legal advice.

What if I have a complaint about how my insurance claim has been dealt with?

First you should make a complaint to the insurance company. Insurers should have an internal dispute resolution (IDR) process in place. Read your policy papers carefully. They should include information on your rights, options and how to lodge a complaint.

If the complaint cannot be resolved in this way, you should take it to AFCA. No fee is payable.

You may also be able to get advice on insurance law or on resolving a dispute with an insurer from the [Insurance Law Service](#)

What if I do not want to go through my insurance company?

You do not have to make a claim through your insurance company even if you have told them about the accident. You can pay for repairs yourself, or demand payment from the other driver, without using your insurance policy.

You should seek legal advice if you wish to demand payment without using your insurance company.

What if there is property damage and I don't have insurance?

Get legal advice

If you do not have insurance, or decide not to use your insurance company, it is important to seek legal advice about what to do.

Generally, the person who is at fault in the accident is liable to pay for all the damage. See above under the heading *Do I need legal advice to work out who is at fault for the accident?*

What if the other party is at fault?

If the other driver is at fault, you should send a letter of demand to either that person or their insurance company. You should get legal advice before sending your letter.

There are sample letters attached to this infosheet. Keep a copy of any letters you send. You should attach copies of quotes to the letter of demand. There are no rules about how many quotes you must obtain, but you should get at least two. Make sure the quotes are for the same work. The other person only has to pay for the lowest quote. If your car was towed following the collision you should obtain a receipt for the towing fee and attach a copy of it to the letter of demand.

The total amount of your claim should be the cost to repair your vehicle plus any towing (and storage) fees. The total amount of your claim may be reduced if you were partly responsible for causing the accident. You should get legal advice about who is at fault before determining the total amount of your claim and to check if there is anything else you should be claiming.

Try and reach an agreement without going to court. Court proceedings can be costly and time consuming. You also may not get the outcome you want. For example, if an offer of settlement is made and rejected by you, and the case then goes to a hearing at court, in some cases the magistrate may decide the other person owes you less than was offered.

Your case may not get listed for trial for several months or longer, so, you may not get any money

quickly even if you are successful at court. Also by the time of the trial the other person's financial situation may have changed and they may not be able to pay you anything straight away. For hints on how to negotiate to try to reach an agreement see the Legal Aid WA webpage [Negotiation](#).

If you reach an agreement with the other party you may be asked to sign a settlement agreement. This document releases the other party from further responsibility in relation to the property damage. You should get legal advice before signing this agreement. A sample settlement agreement is attached to this infosheet.

If the other party refuses:

- to pay, or
- to make arrangements to pay

you may need to apply for a court order.

If the damage is less than \$75,000 you start your court proceedings in the Magistrates Court of Western Australia.

“Always seek legal advice before starting court proceedings.”

What if I don't know the address of the other driver to send a letter of demand or for court purposes?

If the accident was reported to WA Police and the police formally investigated the crash, you can request a Record of Crash Incident from the police. This will include the names and addresses of drivers involved and vehicle details if known to the police. A fee is payable for this report. More information can be found at this website:

<https://www.police.wa.gov.au/Police-Direct/Apply-for-Information>.

Is there any other help I can get to resolve a dispute with an insurance company without going to court?

In some cases, yes. If you have been unsuccessful in resolving the matter with the other party's insurance company and:

- you are an uninsured driver
- the other party is at fault
- your claim for damage is under \$15,000 (or you are prepared to accept this amount) and
- the party at fault is insured (and a valid claim has been made and any relevant excess paid)

you can make a claim with AFCA. As this is a free service, it is recommended that you do make a complaint through AFCA if you can. You can make a complaint with AFCA online at its website at: <https://www.afca.org.au/make-a-complaint>.

What if I am at fault?

DO NOT IGNORE THE PROBLEM.

It is important to negotiate with the other party or their insurance company as soon as possible.

Ask for copies of all the quotes. If you think they are reasonable, arrange to pay the debt.

You should not pay any money before entering into a written settlement agreement with the other party. A settlement agreement releases you from further responsibility in relation to the property damage. This agreement may not stop the other party from taking subsequent action for physical injury arising out of the accident. You should get legal advice before signing this agreement. A sample settlement agreement is attached to this information sheet

You can offer to pay by instalments but the other party or their insurance company do not have to accept that. However, if you are in financial hardship because of illness, unemployment or other reasonable cause and the insurance company agrees, under the financial hardship provisions in Part 10 of the [General Insurance Code of Practice](#) the insurance company must offer you the opportunity to pay the debt by, for example:

- extending the time you have to repay
- paying by instalments
- paying a reduced lump sum
- putting off one or more instalment payments for an agreed period, or
- a combination of the above options.

If it is decided by the insurer that you are entitled to financial hardship support, then you may ask the insurance company to release, discharge, or waive a debt or obligation. However, you are not automatically entitled to this.

The *General Insurance Code of Practice* sets out standards for insurers in dealing with customers and third parties they are seeking to recover a debt from in case of financial hardship, and processes for resolving disputes.

If no agreement is reached, the other party or their insurance company may start court proceedings against you. This will increase your costs. The insurance company should give you information about its complaints handling procedures if no agreement is reached in a case of financial hardship.

Once a court judgment has been made against you it can be enforced. This means:

- the debt can be taken out of your wages or bank account
- your property can be seized and sold to pay the debt, or
- action may be taken to have you made bankrupt.

In some circumstances you can stop these procedures by applying to the court. You should get legal advice before applying to the court.

What if I cannot afford to pay any of the debt?

If you cannot afford to pay anything at all, and you have no assets to be seized or sold, you can:

- Write to the other party if they are uninsured setting out your financial situation. Point out that if they take you to court they are unlikely to obtain any money.
- If the other party has made a claim on their insurance, get legal advice about writing to the insurance company using the *General Insurance Code of Practice* to ask it to write off the debt because of financial hardship.
- In some circumstances, consider voluntary bankruptcy. However, there are negative consequences of going bankrupt. It is essential

that you seek advice from a financial counsellor or a lawyer if you are considering this option.

What if someone was injured in the accident?

Get legal advice if you have been injured in a motor vehicle accident, or if someone is making a claim against you for personal injury.

Every registered vehicle in Western Australia should be covered by compulsory third party insurance. It covers people injured in motor vehicle accidents where the driver is at fault or partially at fault.

Even if you don't know who caused the accident (for example, hit and run accident) a claim can still be made. Reasonable steps must have been taken to identify the vehicle.

Most claims will go through the [Insurance Commission of Western Australia](#) (ICWA).

If you have been injured in an accident, you are required to give ICWA notice of your claim as soon as possible.

If you are:

- the driver or owner of a vehicle, and
- are involved in an accident and
- someone suffers an injury,

you must report the accident to the ICWA as soon as possible.

Can I take court action if I have been injured?

Where you are the injured party you may, in some circumstances, wish to start an action in court for

You should always get legal advice before you:

- reach an agreement with ICWA about the amount of compensation you will receive, or
- start a claim in the courts.

personal injuries. For your action to be successful

you need to show that your injuries were caused by the negligence of the person that you are making a claim against. Get legal advice.

What can be covered in personal injury claims?

Personal injury claims can cover things like hospital and medical bills and compensation for injuries, disabilities and pain and suffering caused by the accident.

The money paid to a person who has been injured or suffered loss is called “damages” of which there are two categories:

Special damages, which includes specific items such as loss of wages, medical and surgical fees and various out of pocket expenses. It may also include the expenses arising from damage to clothing or other property.

General damages, which is monetary compensation for things like pain, suffering, loss of earning capacity and loss of enjoyment of life.

There are laws about the amount of damages that you can recover for certain kinds of claims. In some cases, the amount of damages may be limited or you may be unable to recover.

If there is evidence that you were responsible in some way for your injuries the amount of compensation you receive may be decreased.

You should get legal advice before making a personal injury claim.

Are there time limits for taking legal action?

There is a time limit within which you must start your court action for your claim.

If you are outside the time limit you may lose your right to get the court to make a decision about your matter.

The time limit may change depending on:

- the date of your claim
- what kind of claim you have
- your age (in some cases)

- whether, when your claim arose, you were unable to manage your own affairs as a result of:
 - mental illness, or
 - intellectual disability
- whether you are taking action against or for the estate of a deceased person
- whether you are a relative of a person who has died as a result of an accident.

In some cases, the court can extend a time limit.

Get legal advice as soon as possible about the time limit for your claim.

Where can I get more information?

- Contact Legal Aid WA’s Infoline on 1300 650 579 for information and referral.
- View the Legal Aid WA online *Car crash self-help guide* at: www.legalaid.wa.gov.au/resources.
- Contact the [Insurance Law Service](#) (Financial Rights Legal Centre) on 1300 663 464 (Monday to Friday 10.00 am– 1.00pm EST) for legal advice on motor vehicle insurance (other than compulsory third party insurance) and debts to insurance companies in relation to motor vehicle accidents. Fact sheets can be downloaded and letters generated from its website at: <http://insurancelaw.org.au/self-help-centre/get-started/>.
- Contact the [Insurance Commission of Western Australia](#) on (08) 9264 3333 or 1800 643 338 (free call from country areas) for information and a guide for people injured in a motor vehicle accident.
- Contact the [Australian Financial Complaints Authority](#) (<https://www.afca.org.au/>) on 1800 931 678 if you have a dispute about an insurance company that cannot be resolved internally.
- Contact the [Citizens Advice Bureau](#) (CAB) in Perth on (08) 9221 5711 or your local CAB for legal advice. A fee is payable for advice.

- Contact the [Law Society of WA](#) on (08) 9324 8600 for a referral to a lawyer who specialises in this area.
- For more information about the General Insurance Code of Conduct go to the [Insurance Council of Australia](#) website at: <https://insurancecouncil.com.au/cop/?playlist=94ebe71&video=611a424>.

Some sample letters are provided here. You should get legal advice before sending a letter of demand and agreeing to an offer of settlement.

SAMPLE LETTER OF DEMAND – OTHER PARTY INSURED

WITHOUT PREJUDICE

[Your address]

[Date]

[Name of other driver]

[Address]

Dear Mr/Ms [insert name]

Claim for damage from motor accident on [insert date of accident] at [insert location]

I am writing about this accident. I am the owner of the motor car with [insert registration details].

This car was damaged as a result of a collision with a car [insert make, model, registration details of the other driver's car] driven by you on the above date. This accident happened because [include a statement of how the accident occurred including why the other driver is at fault and whether you have any witnesses].

I hold you responsible for the damage to my car. The damage has been assessed at \$ [insert amount for repairs]. Copies of the quotations are enclosed. I am also claiming for [insert details of anything else you are claiming, for example, towing costs and send copies of any invoices, receipts].

If you are insured, please send this letter to your insurer and send me your claim number.

If payment of the total amount claimed of \$ [insert total amount you are claiming] is not made within 21 days I may commence legal action against you to recover the amount. Legal costs may be added to the debt.

My contact details for payment are: [insert address or method of payment, for example bank details if online transfer sought].

Yours faithfully

.....
[Name and signature]

SAMPLE LETTER TO INSURANCE COMPANY

WITHOUT PREJUDICE

[Your address]

[Date]

[Name of insurance company]

[Address]

Dear Mr/Ms [insert name]

Accident on..... [date]..... at..... [place of accident]

I am the owner of the motor car.... [make, model, registration number].

This car was involved in the above accident with the car ... [make, model, registration number].... owned by your insured, Mr/Ms of..... [address].....

I enclose a copy of the letter of demand sent to him/her together with quotations for damage.

Please let me know your response as soon as possible.

Yours faithfully

.....

[Name and signature]

SAMPLE LETTER OF DEMAND – OTHER PARTY NOT INSURED

WITHOUT PREJUDICE

[Your address]

[Date]

[Name of other driver]

[Address]

Dear Mr/Ms [insert name]

Claim for damage from motor car accident on [insert date of accident] at [insert location]

I am writing about this accident.

I am the owner of the motor car.... [make, model, registration number]. This car was damaged as a result of a collision with a car ... [insert make, model, registration number of the other car]... driven by you on the above date. This accident happened because [include a statement of how the accident occurred including why the other driver is at fault and whether you have any witnesses].

I hold you responsible for the damage done to my car. The damage has been assessed at \$..... Copies of the quotations are enclosed. I am also claiming for [insert details of anything else you are claiming, for example, towing costs and send copies of any invoices, receipts].

If payment of the total amount claimed of \$ [insert total amount you are claiming] is not made within 21 days I may commence legal action against you to recover the amount. Legal costs may be added to the debt.

My contact details for payment are: [insert address or method of payment, for example bank details if online transfer sought].

Yours faithfully

.....

[Name and signature]

SAMPLE SETTLEMENT AGREEMENT

Between [insert name of driver making the claim/claimant] of [insert address]

and

[insert name of the other driver] of [insert address]

On [insert date] a collision occurred between [insert car colour, type and registration number] driven and owned by [insert name of claimant] and a [insert car colour, type and registration number] driven and owned by [insert name of other driver].

[Insert name of claimant] agrees to accept \$ [insert amount] paid by [insert name of other driver] in full and final settlement of all claims for property damage arising out of this collision.

[insert name of claimant] acknowledges receipt of [insert claim amount] \$.....

Signed [insert name of claimant]

Dated

Signed [insert name of other driver]

Dated.....

LEGAL AID WA OFFICES



Infoline: 1300 650 579



Translating & Interpreting Service:
131 450



Website/InfoChat:
www.legalaid.wa.gov.au



National Relay Service: 133 677
(for hearing and speech impaired)

Perth Office

32 St Georges Terrace,
Perth, WA 6000
1300 650 579
(08) 9261 6222

Midwest & Gascoyne Office

Unit 8, The Boardwalk,
273 Foreshore Drive,
Geraldton, WA 6530
(08) 9921 0200

West Kimberley Office

Upper Level, Woody's Arcade,
15-17 Dampier Terrace,
Broome, WA 6725
(08) 9195 5888

Great Southern Office

Unit 3, 43-47 Duke Street,
Albany, WA 6330
(08) 9892 9700

Goldfields Office

Suite 3, 120 Egan Street,
Kalgoorlie, WA 6430
(08) 9025 1300

East Kimberley Office

98 Konkerberry Drive,
Kununurra, WA 6743
(08) 9166 5800

Southwest Office

7th Floor, Bunbury Tower,
61 Victoria Street,
Bunbury, WA 6230
(08) 9721 2277

Pilbara Office

28 Throssell Road,
South Hedland, WA 6722
(08) 9172 3733

Indian Ocean Office

Administration Building,
20 Jalan Pantai, Christmas Island,
Indian Ocean, WA 6798
(08) 9164 7529

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