

## 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 other party and, if they agree, apply for an adjournment. If you don't turn up, the Court can make court orders in your absence.

## Pre-hearing

Claims under \$10,000 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, it will then be listed for a hearing.

**Hot tip!** Use the pre-trial review to negotiate a settlement.

Claims over \$10,000 are heard in the General Division. The first court date in this division is called a **callover date**.

If for some reason you are not able to attend on that date, contact the other party. If the other party agrees to postpone, write to the registrar. If you do not attend, an order can be made in your absence.

In the General Division, suitable matters (those that are not complex) can be referred to arbitration. An arbitration is less formal than a hearing before a magistrate.

If the matter is not referred to arbitration, it will be listed for a hearing.

The magistrate may also refer a matter to a Community Justice Centre.

## At the hearing

Magistrates must act fairly and give each party a proper opportunity to present their case. The usual way to present a case is with witnesses and documents. Witnesses have to be at court except in the Small Claims Division where evidence is usually allowed only in document form.

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 in evidence include photographs, sketches, quotes, invoices and diaries. If you wish to show any documents to the Court you must first show them to the other party.

## Giving evidence

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 call any witnesses. You can then ask your witnesses any questions. This is called examination. The defendant can then ask your witness questions. This is called cross-examination.

As **defendant** you then have the opportunity to give evidence and to call any witnesses. The plaintiff can then cross-examine you and your defence witnesses.

When all the evidence has been heard, each party has the opportunity to provide a summary of their case and to point out any weaknesses in the other party's case.

## Magistrate makes a decision

Most hearings start and finish on the same day and take a few hours. The magistrate will make a decision and explain the reasons for the decision. This is called a judgment. In complicated cases, the magistrate may reserve their decision.

The magistrate will also make orders for costs. Usually, the losing party has to pay the costs of the successful party.

## Appealing the decision

**Reviewing the arbitrator's decision**  
If you wish to challenge an arbitrator's decision, you should apply for a review within 28 days.

## Appealing the magistrate's decision

If you wish to challenge a magistrate's decision, you must apply to the Supreme Court within 28 days.

Appeals from the Small Claims Division can only succeed in very limited circumstances, involving certain types of errors of law. Appeals from the General Division also need to disclose an error of law.



## Enforcing the court order (getting the money)

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 'garnishee' the debtor's wages and/or bank account. This is a court order requiring an employer or bank manager to give the debtor's money to the creditor. Only a portion of wages can be garnisheered. Social security pensions cannot be garnisheered.

## Writ for Levy of Property

The judgment creditor can obtain a writ of execution. This is a court order that allows a sheriff into the debtor's home to remove and sell items by auction in order to pay the debt.

The sheriff may not take or sell:

- bedroom and kitchen furniture
- tools of trade to a certain value
- someone else's goods.

## Bankruptcy

If the judgment debt is over \$2000 the creditor can apply to the Federal Court to have the debtor declared bankrupt. Anyone who receives a Bankruptcy Notice should seek advice from either a financial counsellor (see back panel) or lawyer immediately.

## For more information and help

### Chamber Registrars/Local Courts

Contact your nearest local court (under 'Local Courts' in the telephone directory) for free legal assistance on court procedures.

### Community Justice Centres

Provide neutral mediators to help both parties find a solution to the conflict. Call 9790 0656 to find out about the centre closest to you.

### Community Legal Centres

Provide free legal advice and information. Call 9318 2355 or 1300 888 529 to locate the centre closest to you.

### Credit Help Line

Call 1800 808 488 for information about your nearest financial counsellor and advice on negotiating with creditors.

### Insurance Ombudsman Service (IOS)

Investigates complaints about insurers. If you believe an insurer is acting unfairly call 1300 78 08 08.

### LawAccess NSW

Call 1300 888 529 (1300 889 529 TTY) for legal information, referral or advice.

### Law Society of NSW (Community Referral Service)

Call 9926 0300 or 1800 422 713 for information or referral to a private lawyer in your area.

### Legal Aid NSW

Legal advice is free from all our offices. Contact your nearest Legal Aid Office (under L to Z in the phone directory) to make an appointment or call 1300 888 529.

### NSW Police Service

#### Police Assistance Line (PAL)

You can report anything that is not an emergency by calling 131 444 (24 hours, 7 days a week).

### Insurance Services Unit

Provides copies of the police incident report. Call 8835 8377.

### Motor Accidents Authority of NSW (Claims Advisory Service)

Call 1300 656 919 for advice on how to make a claim for personal injuries compensation or to obtain the name of the other driver's Greenslip insurance company.

### Roads and Traffic Authority (NSW)

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

For more information about the law, see the Legal Aid website:

[www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au)

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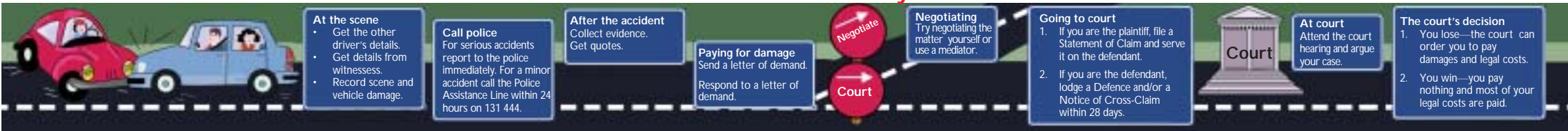
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# HAVE YOU CRASHED YOUR CAR?



## What to do about property damage

## After a car accident: What you should do



### How will this brochure help you?

This brochure will help you if are **not**:

- insured for motor vehicle property damage; or
- claiming on your insurance.

It will assist you to sort out your claim in or out of court. However, information in this brochure does not cover everything that can happen after a car accident. If you need further information, seek legal advice.

### This brochure is **not** for personal injury claims.

The information in this brochure does not deal with personal injury claims. If you have been injured in an accident call the Motor Accidents Authority (MAA) Claims Advisory Service on 1300 656 919 for help in making a claim.

You should do this as soon as possible as time limits apply.

For example, the accident must usually be reported to police within 28 days. The personal injury claim to the insurer must usually be made within 6 months.

**Hot tip!** Make sure you comply with all the time limits.

### If you are insured

If you are insured you can claim on your insurance. 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.
- 2) Third party property insurance usually only covers damage to another car or property. However, some policies cover damage to your car as well, if the other driver is at fault, and is uninsured.

All car owners in NSW must have compulsory third Party (CTP) or 'greenslip' insurance. However, CTP does not cover claims for property damage. It only covers claims for personal injury.

It is your choice whether you claim on your insurance policy. If you make a claim, you may have to pay an excess and may lose your no-claim bonus.

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.

If your claim is rejected by your insurer, you can appeal that decision to the Insurance Ombudsman Service (IOS). You have 90 days to make that appeal.

### 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 that 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
- a car needs to be towed away
- a driver fails to stop or fails to exchange details or
- a driver is believed to be under the influence of alcohol or other drugs.

If police do not attend you should report the accident. Call the Police Assistance Line (PAL) within 24 hours on 131 444.

### After the accident

#### At the scene

- All drivers must provide their name, contact details, licence and vehicle registration numbers to the other driver. If you get the registration number, you can find out the details of the car owner through the Roads and Traffic Authority of NSW (see back panel).
- 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, location, 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 back panel).



### 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. These can be useful if the case ends up in court. See the list in previous panel for more detail.

**Hot tip!** Ask witnesses to write their statements before they forget the details.

Get a quote (or quotes) 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, less any salvage value.

**Hot 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.

### 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.

If you receive a claim or **letter of demand** it is usually best to respond. If the other driver is insured, you may receive 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 obtain an independent quote. If you believe that 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 any later court case.

You can negotiate directly with the other driver or through an independent mediator (see back panel).

If you do settle, make sure the agreement is written down and signed by both parties. The agreement should be recorded as full settlement of the claim, otherwise the payment you make could later be regarded as part payment only.

### Going to court

If negotiations fail, your next resort 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. Also, court action takes time and can be stressful.

An alternative to court action, where the claim is for \$3,000 or less and the other party has property insurance, is to make a claim with the Insurance Ombudsman Service (IOS) on 1300 78 08 08.

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.

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

**Hot tip!** Start your action promptly.

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

- 1) **Small Claims Division** for matters under \$10,000
- 2) **General Division** for claims of up to \$60,000.

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

**Hot tip!** Local Court Chamber Registrars can assist you with drafting court documents.

### 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 also claiming for more than repairs eg. the cost of hiring a replacement vehicle, complete an ordinary Statement of Claim. You will need legal advice for this.

File your claim at the court. Serve it on the defendant. Court fees are added to the amount of the claim and should be returned to you if you win your claim. Your claim must be served within 6 months of being filed.

If you are the defendant who is being served with a Statement of Claim and you disagree with it, you should **lodge a Defence within 28 days** of the date that it was served. If you miss the deadline, the plaintiff can apply for **default judgment**. The Court may allow you to set aside the default judgment if you have a good enough reason for the delay.

If you are served with a Statement of Claim and you think that the other party was at fault, you can file a cross claim. File a **Notice of Cross-Claim within 28 days**.

The defendant can also add another party to the proceedings where the other party may also be responsible (eg. employer or owner of the car). This is also done by filing a Notice of Cross-Claim.