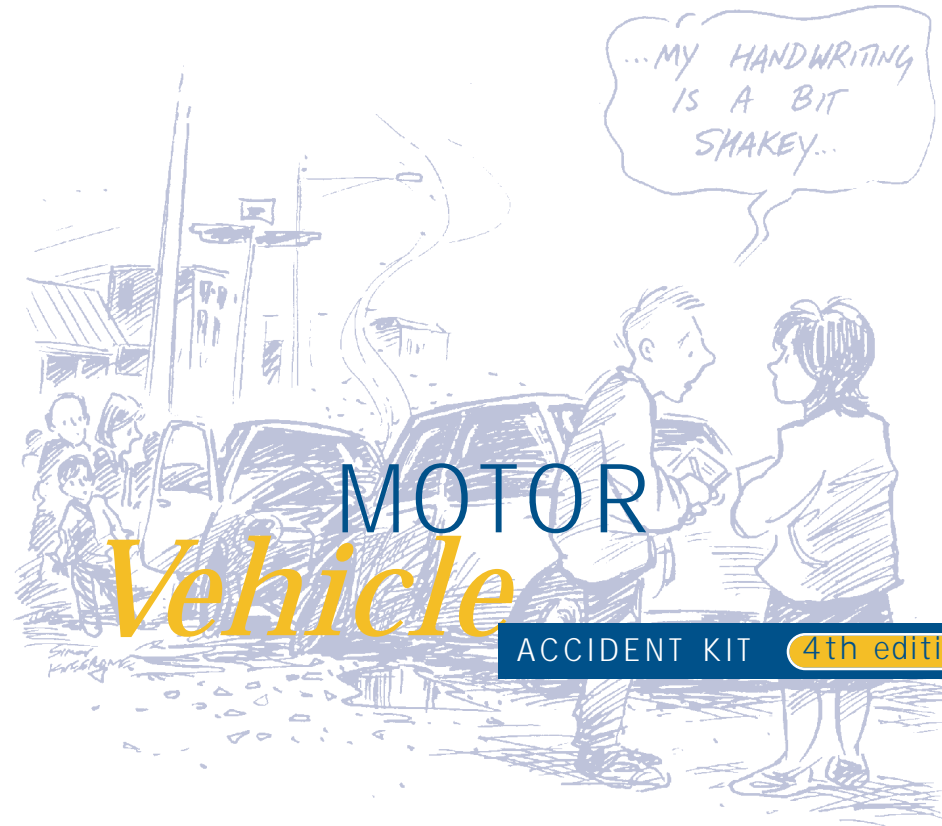


~ Motor Vehicle Accident Kit ~



Motor Vehicle Accident Kit ~ 4th edition



MOTOR Vehicle

ACCIDENT KIT 4th edition



AT THE SCENE OF THE ACCIDENT

WHAT TO REMEMBER IF INVOLVED IN A MOTOR VEHICLE ACCIDENT

INJURIES

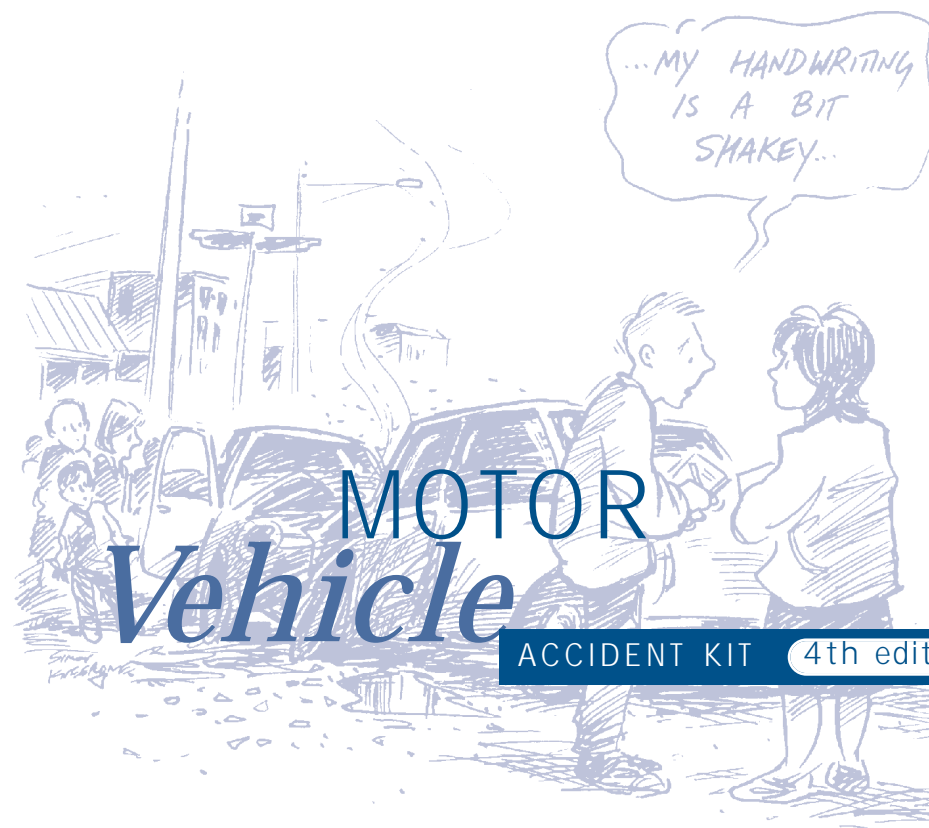
1. If anyone has injuries call Police and Ambulance on 000.

INFORMATION: KNOWING WHAT TO SAY AND DO

1. Refer to the Accident Record Card on page 34 of this kit.
2. Give your name, address and registration number of your vehicle to the other driver/s involved in the accident.
3. Obtain details from the other driver/s involved in the accident; name, address and registration number of the vehicle/s.
4. Ask anyone who was a witness to the accident for their name, address and telephone number.
5. Do not argue about whose fault it was.
6. Do not admit that the accident was your fault.
7. Make a sketch of the accident.
8. Make notes about any damage to the vehicles.

VEHICLE DAMAGE AND TOW TRUCKS

1. If the damage is serious, contact Police 131 444.
2. If your vehicle needs to be towed contact the Accident Towing Roster 8231 5555.
3. You can decide where your vehicle will be taken.



MOTOR Vehicle

ACCIDENT KIT 4th edition



WESTSIDE COMMUNITY LAWYERS INC.



LEGAL SERVICES COMMISSION OF SA



MOTOR ACCIDENT COMMISSION



Government of South Australia

MOTOR VEHICLE ACCIDENT KIT
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DISCLAIMER

It is intended that this publication be used as a guide for people who have been involved in a motor vehicle accident and for those wishing to pursue a property damage claim. While care has been taken to ensure the contents are accurate, no responsibility will be accepted for any errors or omissions.

Layout and Design by Butler Kemp Design

FOREWORD

Increasingly, and especially in recent times, the Government and the Courts have become very conscious of the need to ensure that people have a reasonable opportunity to seek access to justice.

One way of ensuring that people can get such access is to keep the costs of legal proceedings as low as possible. Another way is to ensure that people are aware of their rights and obligations. The Motor Vehicle Accident Kit prepared by the Parks Legal Service is one way of letting people know how to save costs and how to protect and exercise their rights.

A kit which expresses relevant ideas as simply as possible is always to be welcomed. As well, if the mysteries of the law and legal processes can be eliminated, then the kit will have served a great purpose because first and foremost the Magistrates Court is, and should be accessible to ordinary people.

Richard H Kleinig SM

Stipendiary Magistrate in and for the State of South Australia



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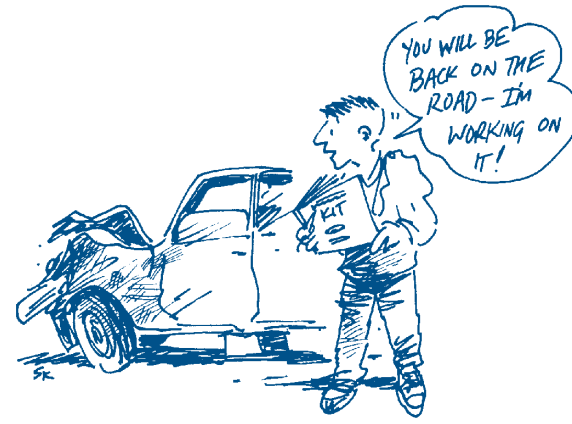
INTRODUCTION

The primary reason for writing this kit is to assist people who want to handle their own claim for the repairs to their vehicle as a result of an accident. This is especially important for people whose claim is under \$6,000 because if the claim goes to court, a lawyer cannot be present at the hearing, unless the court gives permission.

You may need to handle your own claim if you have no insurance or if the excess payable on your policy would make it uneconomical to claim through your insurance eg. if you have only had a minor accident and your claim is a simple one.

This kit provides information on what to do at the scene of the accident and then works through, step by step, on how to claim for damages from the other party.

Remember, this kit is designed to help you only with claims for damage to your motor vehicle and the things in your motor vehicle at the time of the accident.



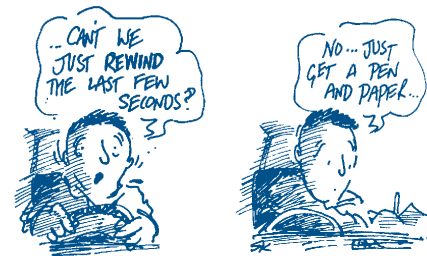
MOTOR VEHICLE ACCIDENT KIT

THIS KIT IS NOT FOR PERSONAL INJURIES.

If you were the driver in an accident where someone was injured you should report the accident to Allianz Australia SA - CTP. If you have been injured you may have a private lawyer represent you or you may settle your claim directly with Allianz CTP, the Motor Accident Commission's Claims Manager, SGIC.

AT THE SCENE OF THE ACCIDENT

By following the points listed on the inside front cover of this kit you should obtain all of the information you will require to help with your claim. The following pages contain more detailed information on the points covered.



INJURIES

INJURIES

1. If anyone has been injured you must stop your motor vehicle and provide assistance.
2. Call 000 for Police and ambulance attendance.
3. Contact Allianz CTP as soon as possible to report the matter if any person has sustained injury (however slight). Telephone 1300 137 331

INFORMATION

YOU MUST

1. Give your name, address and vehicle registration number to the other driver involved in the accident and also to any witness.
2. If you did not own the vehicle you were driving, you should also give the owner's name and address.

DO NOT

1. Argue about whose fault it was.
2. Admit it was your fault. Even if you think you were at fault, don't say so.

WRITE DOWN

Use the ACCIDENT RECORD CARD on page 34 of this kit to record the following information:

1. Ask anyone who might have seen the accident for their name, address and telephone number.
2. If possible, do a sketch of what happened and put on the sketch plan any measurements (such as length of skid marks, distance of the vehicle from the kerb, etc.).
3. Do it as soon as possible in case you forget.



REMEMBER TO...

If you are insured for damage to your own vehicle and/or Third Party Property damage you should notify your insurance company without delay. Even if you don't intend to make a claim on your insurance company let them know you have been involved in a crash.

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

AT THE SCENE OF THE ACCIDENT

VEHICLE DAMAGE AND TOWING

WHAT YOU NEED TO DO

1. Report the accident to the police as soon as possible. (NOTE: At the time of publication an accident does not have to be reported if no-one is injured and the cost of repairs would be less than \$1000. It would be a very minor collision where the damage was less than \$1000).
2. It has to be reported within 24 hours of the accident occurring.

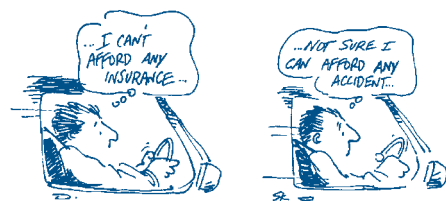
TOWING

1. If your vehicle needs to be towed away and is in the metropolitan area, it is necessary to telephone the Accident Towing Roster on 8231 5555.
2. You can decide where your vehicle is to be towed, for example, you can have your car towed to your home.

STORAGE FEES

1. If you leave your vehicle at a crash repair yard for any length of time, you could be charged storage fees.

You should discuss this with the crash repairer as soon as possible after the accident.



AM I COVERED?

INSURANCE

Most insurance companies will not provide cover to the driver of a car if the car is unregistered or unroadworthy or if the driver is unlicensed, disqualified from driving, or affected by drugs or alcohol.

There may be other special clauses in a policy so it is important that you understand what has been written into your policy to ensure that you do not lose your right to claim.

There may be an excess payable with an insurance claim and if this is not paid the insurer may refuse to pay compensation.

In some cases it is uneconomical to claim on your insurance if a large excess is payable (which often applies if the driver is under 25 years of age), and there is minor damage to both vehicles. You should discuss this with your insurer or get legal advice.

Even if you decide not to claim against your policy, you should still tell your insurer that you have been involved in an accident. Otherwise, if you later decide to make a claim, your insurer may refuse the claim because they were not notified at the time of the accident.

AM I COVERED?

TYPES OF INSURANCE

COMPULSORY THIRD PARTY BODILY INJURY INSURANCE

This type of insurance is compulsory and comes with the payment of registration on a car. It covers injuries to other people resulting from the liability of an owner, driver or passenger (insured person).

A person injured in a car accident must be able to show that an insured person was at fault to be eligible to claim compensation. If an injured person (including a driver) was partly at fault, their claim may be reduced. If entirely at fault, the claim will be rejected.

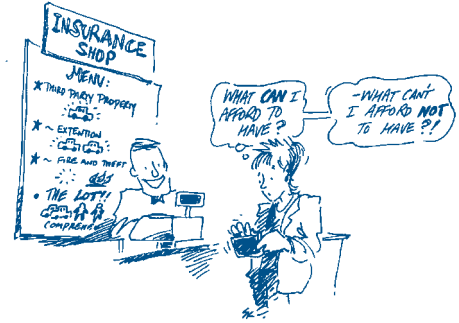
THIRD PARTY PROPERTY DAMAGE INSURANCE

Although is not compulsory, every car should have third party property damage insurance as minimum cover. This insurance does not come with the registration of a car and must be paid for separately. Even if your car is not worth much money, if you hit another vehicle or someone's property, you may have to pay for expensive repairs.

Third Party Property insurance covers damage caused to other vehicles or property when the driver of your vehicle is responsible for an accident. This insurance does not cover you for damage to your own vehicle.

This type of insurance is a good alternative for people who cannot afford comprehensive insurance or for people whose vehicle is not worth the costs of comprehensive insurance.

TYPES OF INSURANCE



THIRD PARTY PROPERTY DAMAGE EXTENSION

Many insurance policies now provide some protection for damage to your own vehicle in circumstances where the other person is at fault for an accident, can be identified, and is not insured at all. This extension to a Third Party Property Damage Policy is normally limited to a certain amount.

THIRD PARTY PROPERTY DAMAGE, FIRE AND THEFT

This is the same cover as Third Party Property Damage except that fire and theft of the insured vehicle are also covered.

COMPREHENSIVE INSURANCE

This covers damage or loss to your own vehicle and also covers third party property damage. This is more expensive because it provides the broadest cover.

Any questions about insurance cover involving personal injuries should be directed to SGIC. Questions about other types of insurance should be directed to your insurer.

MAKING A CLAIM FOR DAMAGES

INTRODUCTION

If you are not insured, or your policy does not cover the damage to your vehicle, or you decide to do your own claim, you will have to recover the repair costs from the other driver yourself.

The rest of the kit shows you the steps to take to get the other driver to pay for the damage to your vehicle.

READ EACH STEP CAREFULLY

TAKE ONE STEP AT A TIME

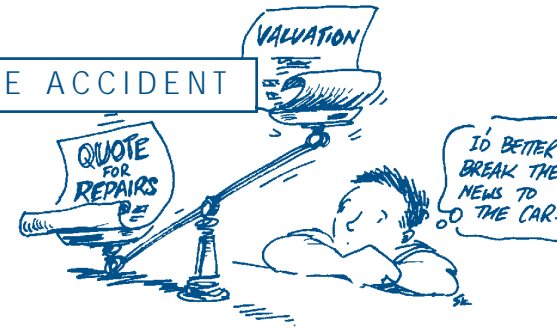
DON'T GO ON TO THE NEXT STEP UNTIL YOU'VE DONE EVERYTHING IN THAT STEP.

If you do not understand any of the steps, please contact one of the advice centres listed on page 37 of this kit.

STEP 1: AFTER THE ACCIDENT

HOW MUCH DAMAGE?

If your vehicle is damaged and you think the accident was the other driver's fault or partly his/her fault, the first thing you need to do is find out the cost of repairs to your vehicle.



WHAT TO DO

1. Obtain a written quotation from a reputable repairer of your own choice. Only one quote is necessary but it may be better to get two. The quote should list the cost of parts and labour.
2. If the quote for repairs seems high, decide if it is worth repairing the vehicle. If the cost of the repairs is more than what the vehicle is worth, the vehicle is not worth repairing and is defined as a "write-off".

Some internet sites such as www.redbook.com.au will provide a guide to the market value of your car. If there is a dispute about the value of your vehicle, you may have to get an automotive valuer to provide a written report at a cost of approximately \$120. (Names of Automotive Valuers are in the Yellow Pages under 'VALUERS-GENERAL' or contact the RAA, if a member) You must also obtain a written estimate from wreckers as to what you would get for the damaged vehicle for wrecking purposes.

In situations where the other party is saying that their car is a "write-off" it can be beneficial to obtain your own independent assessment as a comparison to that placed on the vehicle by the other party. However you must seek the other party's permission before your assessor can inspect their vehicle.

3. Take photographs of the car showing the damage. This will help if you have to go to court.

4. Once you have an itemised quote for repairs, you do not need the approval of the other party to have your car repaired. You will have to pay the account yourself and ask the other driver to pay you.

If the vehicle is not a 'write-off' but you cannot afford to get it repaired you should not let its condition deteriorate as this will increase the cost of repairs.

If your vehicle is a 'write-off', you can dispose of it if you wish, but first obtain a written estimate of its pre-accident value and its value as a wreck.

GO TO STEP TWO

MAKING A CLAIM FOR DAMAGES

STEP 2: LETTERS TO WRITE

REMEMBER

Your claim can only be to get your vehicle back to the same condition it was before the accident. You cannot claim for any other damage that was there before the accident.

CONTACTING THE OTHER DRIVER OR THE OTHER DRIVER'S INSURANCE COMPANY: WHAT TO DO

1. You will need to write a letter to the other driver saying that you hold him/her responsible for the damage and tell him/her how much it will cost.
2. You should send a copy of the cheapest crash repair quote (if you have more than one).
3. If your car is a write-off, you should also send a copy of the valuer's report and the wrecker's estimate (or receipt if you have sold it).
4. There is no obligation to allow the other party to have a look at the vehicle but you may do so if you wish.

WITHOUT PREJUDICE

IMPORTANT: It is very important to remember to write the words 'Without Prejudice' on the top of every letter to the other party (or their insurance company) written for the purpose of negotiating a settlement. 'Without Prejudice' means that any statement that you make in the letter about who caused the accident cannot be used as evidence in court against you unless the other party obtains your consent. This is important in case the matter has to be decided in court.

ON THE NEXT PAGE THERE IS A SAMPLE LETTER WHICH YOU CAN USE AS A GUIDE IF YOU CONTACT THE OTHER DRIVER OR HIS/HER INSURANCE COMPANY FIRST.

USE THE SECOND SAMPLE LETTER IF THE OTHER DRIVER OR HIS/HER INSURANCE COMPANY CONTACTS YOU FIRST.

You don't have to follow the letters exactly but make sure you include the following details:

CHECKLIST

1. 'Without prejudice' on the top of the letter.
2. Date of the accident.
3. Make of your vehicle and the registered number.
4. Make of other driver's vehicle and the registered number.
5. Names of road/s or street/s where the accident happened.
6. Suburb in which the accident happened.
7. Time of day when the accident happened.
8. Total amount of quote or valuation.

ALWAYS KEEP A COPY OF ANY LETTER SENT AND MAKE SURE EVERY LETTER IS SIGNED AND DATED.

MAKING A CLAIM FOR DAMAGES

STEP 2: SAMPLE LETTERS

YOU CONTACT THE OTHER DRIVER

Without Prejudice Your Name
Your Address
Other Person's Name Date
Address
Dear

I refer to the motor vehicle accident as follows:

DATE: _____ MY VEHICLE: _____
LOCATION: _____
SUBURB: _____ YOUR VEHICLE: _____
TIME: _____ am/pm

The circumstances of the accident indicate that it was caused by you. Accordingly, you are legally liable to pay for the damage done to my vehicle.

*Please find enclosed a copy of a quote from a crash repairer for the cost of repairs to my vehicle in the sum of \$ _____

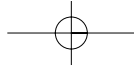
*My vehicle is now a 'write-off'. Please find enclosed a copy of a valuation of my vehicle before the accident \$ _____ and an estimation of the value of my vehicle as a wreck \$ _____. My loss is therefore the difference between the two values which amounts to \$ _____.

*(Use one of these paragraphs stated above).

Please advise whether you are insured and if you intend to claim through your insurance company. If so, please supply your insurance details.

If you are not insured, please contact me within 14 days and tell me how you wish to arrange to pay for the damage.

Yours sincerely



STEP 2: SAMPLE LETTERS

IF THE OTHER DRIVER OR HIS/HER INSURANCE COMPANY CONTACTS YOU

Without Prejudice Your Name
Your Address
*Other Person's Name/Insurance Company Date
*(One of the above)
Address
Dear

Motor Vehicle Accident

DATE: _____ MY VEHICLE: _____
LOCATION: _____
SUBURB: _____ YOUR VEHICLE: _____
TIME: _____ am/pm

I refer to your letter dated _____ regarding this accident.

I do not accept that the accident was entirely my fault. However, I am prepared to discuss a settlement in this case.

*Please find enclosed a copy of a quote from a crash repairer for the cost of repairs to my vehicle in the sum of \$ _____.

* My vehicle is now a 'write-off'. Please find enclosed a copy of a valuation of my vehicle before the accident \$ _____ and an estimation of the value of my vehicle as a wreck \$ _____. My loss is therefore the difference between these two values which amounts to \$ _____.

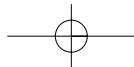
*(Use one of these paragraphs stated above.)

**Please advise whether you are insured and if you intend to claim through your insurance company. If so, please supply your insurance details.

** (Only use this paragraph if the letter you have received is from the other driver and not an insurance company.)

I look forward to hearing from you.

Yours sincerely



MAKING A CLAIM FOR DAMAGES

STEP 2: THE REPLY

FOUR POSSIBLE REPLIES TO YOUR LETTER

1. If the other driver agrees that he/she was at fault and will pay for your repairs.

[GOOD NEWS! Your case is just about fixed - GO TO STEP 7]

OR

2. If the other driver says that he/she was not at fault and that you were.

THEN GO TO STEP 3

OR

3. If the other driver says that he/she is insured and his/her insurance company will be handling the claim then you must deal with the insurance company. Send a copy of your letter to the insurance company.

THEN GO TO STEP 3

OR

4. IF YOU DON'T GET A REPLY, try again to make contact. Send another letter or telephone the other driver before you get legal advice. It may be that your first letter was lost in the post or the other driver forgot to reply.

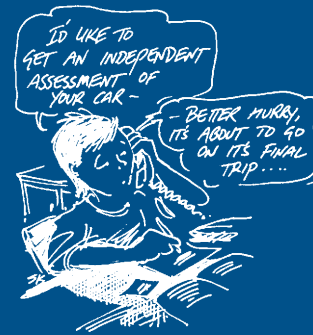
STEP 3: DO YOU AGREE WITH THE AMOUNT OF THE OTHER DRIVER'S CLAIM?

If you do, GO TO STEP 4.

IF YOU DON'T AGREE:

REMEMBER

The other driver or his/her insurance company can only get you to pay for the damage that was caused by the accident. You don't have to pay for any damage that was there before. However, any reasonable costs can also be claimed. For example: valuation fees, towing and storage fees, personal property damaged in the accident and, in some cases, the cost of a hire car can all be claimed (see "Minor Civil Action" in the section on legal proceedings on page 24).



WHAT TO DO IF YOU THINK THAT THE OTHER DRIVER OR THE INSURANCE COMPANY IS ASKING YOU TO PAY TOO MUCH.

If you haven't been given a copy of the other driver's crash repair quote or assessor's report write to the other driver or the insurance company and ask for it.

If an insurance assessor has checked the repair quote or the valuation of a vehicle, it may be difficult to dispute the amount claimed unless the other driver is claiming for work that is unnecessary. For example, you do not have to pay for new panels when second hand would do or for damage that you did not cause. In some cases, it may be worthwhile to get an independent assessment of the other party's loss but you must have their permission to do so, and you will have to pay for the assessment. If you are unsure about this, contact one of the advice centres on page 37.

MAKING A CLAIM FOR DAMAGES

STEP 4: WHOSE FAULT?

The next step is to work out who caused the accident.

Although you might think that the accident was all the other driver's fault, cases where one driver is 100% at fault are rare. Some examples include:

- (a) someone runs into the rear end of another vehicle;
- (b) someone collides with a stationary vehicle.



USUALLY THE ACCIDENT IS BOTH DRIVERS' FAULT

WHAT TO DO

1. You need to be realistic about who caused the accident.
2. You should try to decide how much you were at fault. This can be anywhere from no fault (0%) to totally at fault (100%).

The courts look at all the circumstances of the accident to work out how much each side was at fault. This is called apportioning liability. There is no simple formula that can be applied.

The agencies listed on the inside back cover of this kit can help you work this out. See page 37.

STEP 5: HOW MUCH MONEY?

The percentage of fault lets you work out how much you and the other driver (or his/her insurance company) will have to pay.

YOU WILL BE PAID THAT PERCENTAGE OF YOUR DAMAGES WHICH IS NOT YOUR FAULT BUT YOU HAVE TO PAY THAT PERCENTAGE OF THE OTHER DRIVER'S DAMAGES WHICH IS YOUR FAULT.

Here are two examples:

EXAMPLE 1.

Driver A is held to be 50% to blame for the accident and the cost of repairs to his/her vehicle is \$1,500.

Driver B then is also 50% to blame and the cost of his/her repairs is \$1,000.

A is liable to B for 50% of \$1,000.

$$\frac{\$1,000}{1} \times \frac{50}{100} = \$500$$

B is liable to A for 50% of \$1,500.

$$\frac{\$1,500}{1} \times \frac{50}{100} = \$750$$

The difference between \$750 and \$500 is \$250 which is the sum B must pay to A.

In this case, B must pay the \$1,000 to repair the damage to his/her vehicle as well as paying \$250 towards A's damage.

EXAMPLE 2:

Driver A is held to be 85% to blame for the accident and the cost of repairs to his/her vehicle is \$3,000.

Driver B then is 15% to blame and the cost of his/her repairs is \$4,500.

A is liable to B for 85% of \$4,500.

$$\frac{\$4,500}{1} \times \frac{85}{100} = \$3,825$$

B is liable to A for 15% of \$3,000.

$$\frac{\$3,000}{1} \times \frac{15}{100} = \$450$$

The difference between \$3,825 and \$450 is \$3,375 which is the sum A must pay B.

In this case, A must pay for all the damage to his/her vehicle as well as paying \$3,375 towards B's damage.

B will have to pay the extra \$1,125 to have his/her vehicle repaired.

This is how the court works out how much each person must pay.

If you do not understand how to work out how much each person should pay seek advice from one of the agencies listed on the inside back cover of this kit.



MAKING A CLAIM FOR DAMAGES

STEP 6: REACHING A SETTLEMENT

It is much better to sort out your claim with the other driver by negotiation rather than by going to court.

It may cost you more money if you go to court.



REMEMBER

Even if you go to court and win, the other person cannot be forced to pay more than they can reasonably afford. If the other person is not employed and has no assets, it may be very difficult to recover the money owed to you.

Before you decide to take a claim to court you should consider the financial position of the other person. If the other person is offering part payment or payment by installments it may be better to accept this rather than take court action. You may have to take a smaller amount of money than you expected to get the other driver to pay.

WHAT TO DO

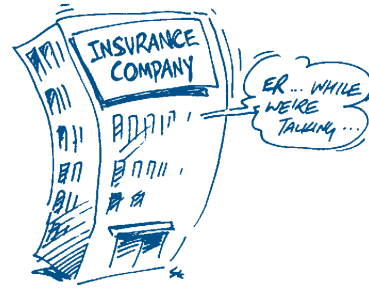
1. Once you have worked out the likely apportionment of liability, write to the other driver or the insurance company and tell them the percentage at which you would be prepared to settle.

You can start by offering a figure 10% or 20% higher and come down later if you want. For example, if you are advised that the other driver will ultimately be 50% liable, you may suggest they are 60% or 70% liable.

2. Tell the other driver how much he/she will have to pay you or how much you will pay him/her if he/she accepts your offer.
3. In your letter tell the other driver or the insurance company why you think the other driver is at fault. This will help them to understand your offer.

Remember to put 'WITHOUT PREJUDICE' at the top of your letter. A 'without prejudice' offer cannot be shown to the court unless the person who wrote the letter agrees.

STEP 6: DEALING WITH INSURANCE COMPANIES



Insurance companies may refuse to negotiate at first. They might say that they are not willing to pay you anything. Don't give up. Keep trying to make offers. Insurance companies don't like their cases going to court either and will usually try to settle.

Insurance companies prefer to settle disputes out of court. They find it time consuming and more expensive to take a dispute to court and they will usually negotiate a settlement.

It is important to maintain contact with the insurance company. Always notify them if you change your address or phone number because if they do not hear from you they will assume that you don't want to negotiate. Always keep notes of any conversations you have with insurance company employees and ask for the name of the person you speak to. You should also record the date of the conversation. Be polite – they are only doing their job.

You should get legal advice about the extent of your liability before you start negotiating and keep copies of all letters you send.

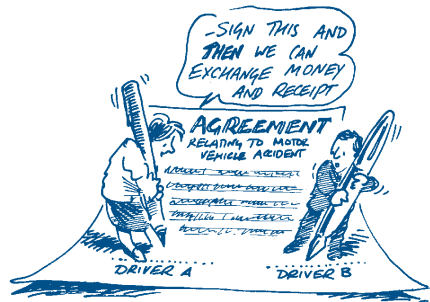


MAKING A CLAIM FOR DAMAGES

STEP 7: THE SETTLEMENT

REMEMBER

Don't pay any money to the other driver or the insurance company until that person has signed an agreement in writing. Also, get a signed receipt when you pay.



WHAT TO DO

1. You should write an agreement which says all the things you have agreed upon.
2. The agreement should contain a statement saying that the agreement is "a full and final settlement" of both your claims.
3. The agreement should refer to the date and location of the accident and the vehicle(s) involved in the accident.
4. The agreement will normally be between the owners of the motor vehicles, who are usually the drivers as well.

A sample agreement follows.

STEP 7: THE SETTLEMENT

AGREEMENT RELATING TO MOTOR VEHICLE ACCIDENT

Date of Accident: _____

Time of Accident: _____

Place of Accident: _____

Vehicles Involved: _____

1. In consideration of (Driver/Owner A - insert name) of (insert address) paying the sum of \$ (amount) to (Owner B - insert name) of (insert address), (Owner B - insert name) hereby agrees not to bring any legal proceedings what-so-ever against (Driver/Owner A - insert name) to recover any sum for the damage to his/her motor vehicle in this accident.

2. The parties agree that this Agreement is a full and final settlement of any claim they may have for the damage to their respective motor vehicles arising out of this accident.

DATED: _____ DATED: _____

Signed _____ Signed _____

LEGAL PROCEEDINGS

MINOR CIVIL ACTION

If you cannot come to a satisfactory agreement and you want the other party to pay for your damage you must go to the Magistrates Court nearest to where the accident took place and fill out the appropriate forms for the matter to be decided in court (see below).

For the address of the nearest Magistrates Court, look under 'Courts' in the White Pages. The Courts Administration Authority website contains helpful information (www.courts.sa.gov.au)

If the amount claimed does not exceed \$6000, the claim is called a minor civil action. The "claim", or "the amount claimed" includes the damage to the vehicle and costs reasonably incurred as a result of the accident. This kit is for people making a minor civil action claim. If your claim is for more than \$6000, seek legal advice.

21 DAYS NOTICE OF CLAIM

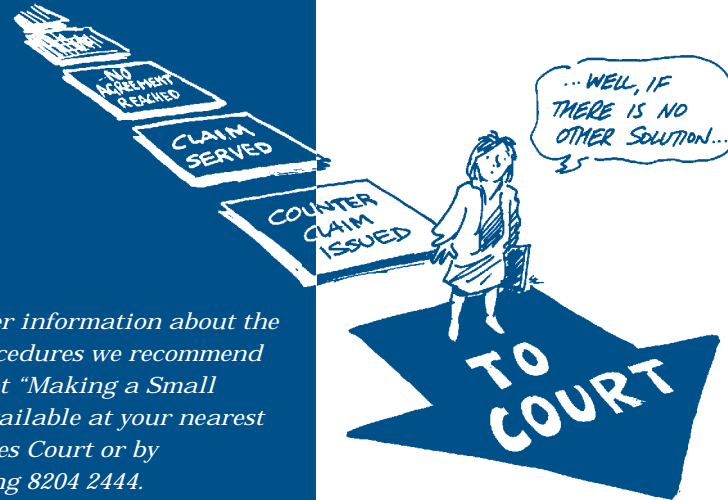
Before you commence court action you should give 21 days notice by sending a letter or by using a 'Final Notice of Claim', available for \$10 at the Magistrates Court or via the Internet www.claims.courts.sa.gov.au. If you do not do this the court may not allow you to claim the cost of taking legal action, such as the filing fee.

A Final Notice of Claim may help to reach a settlement without further court action.

FILING A CLAIM

The claim is commenced by filing a claim form (Form 3) at the Magistrates Court. There is a filing fee, which is \$56.00 at the time of publication.

You (the person commencing the claim) are known as the PLAINTIFF and the person(s) against whom you have issued the claim is/are referred to as the DEFENDANT.



For further information about the Court procedures we recommend the booklet "Making a Small Claim" available at your nearest Magistrates Court or by telephoning 8204 2444.

LEGAL PROCEEDINGS

MINOR CIVIL ACTION

BEFORE YOU MAKE A CLAIM YOU MUST KNOW THE FOLLOWING:

- the amount you want to claim
- the name and address of the person you want to make the claim against
- the date of the accident
- the reasons why the defendant was at fault
- If you are filing a claim against a company you need to know its registered office. To obtain this information you should contact the Australian Securities and Investments Commission. If you are filing a claim against a business that is not a company you need to know its proprietors. The Office of Consumer and Business Affairs may be able to provide this information.

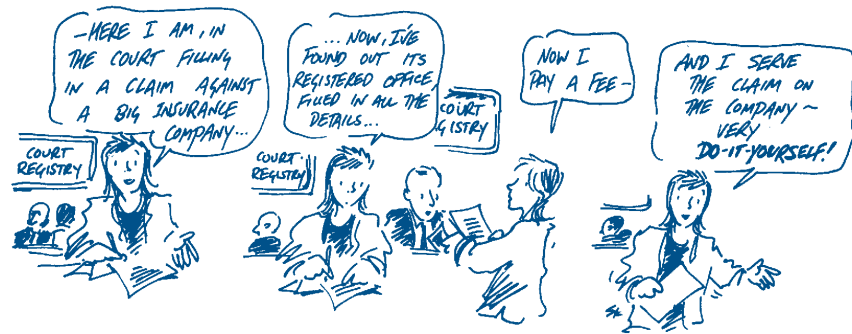
The amount you want to claim and the name and address of the other driver are written into the appropriate places on the forms. When you write in the basis of your claim, you do not have to use technical or legal words. State the basic facts simply and clearly. For example;

On the 1st of January 1996 at approximately 1pm, I was driving my Mazda sedan (reg. no. UXB 007) south along Hanson Road, Mansfield Park when the defendant drove his Holden sedan (reg. no. VPU 293) west out of Gateshead Street onto Hanson Road and collided with my vehicle. The accident was caused by the negligent driving of the defendant.

It is a good idea to attach copies of all receipts, quotations for repairs and valuations.

WHAT CAN BE INCLUDED IN A CLAIM?

- The cost of the filing fee can be included in the claim.
- The cost of repairs to your vehicle.
- If your car is a write-off, you claim the pre-accident value of the car less the value as a wreck.



- Often when a motor cyclist is involved in a collision, his or her clothing or other personal property carried on the motor cycle at the time may be damaged. This can be claimed.
- If a valuer's report is required, the cost of that report can be claimed by the party responsible for payment.
- The towing and reasonable storage fees can also be claimed.
- If the damaged vehicle was used to earn your income, the cost of hiring a car can be claimed - but - you must ensure your costs are only necessary costs and that they are kept to a minimum, and the damaged vehicle is repaired promptly. You may have lost some income. If so, the amount would have to be quantified (preferably by your accountant) and financial records produced to justify the claim. You should seek legal advice before hiring a replacement vehicle or claiming lost income.
- The court requires written evidence of what is claimed. You should keep copies of all receipts, quotations for repairs and valuations. Damaged property should also be photographed or retained in case you need to show it to court.

Once you have filed your claim and paid your fee, you will be given a copy of the claim. You should retain this for your reference whenever you make any inquiries. You are now in charge of the matter yourself. The court will not begin any proceedings unless you request it to do so.

The court registry staff are not lawyers; they cannot give you legal advice. Although they can inform you of available options, you must make the final decision on what action to take.

Your claim must then be served on the defendant either by post or in person. You can ask the court to serve the claim by post, post it yourself, or hire a process server to serve it personally at your own cost. Process servers can be found in the Yellow Pages.

ONCE THE CLAIM HAS BEEN SERVED, THE DEFENDANT HAS 21 DAYS TO DO THE FOLLOWING:

- pay the full amount of the claim or come to some "out of court" agreement with you to settle the matter;
- defend the claim
- defend the claim and make a "counter claim". A "counter claim" is an independent action which is raised by the defendant but is heard as part of the existing claim and not as a separate action.

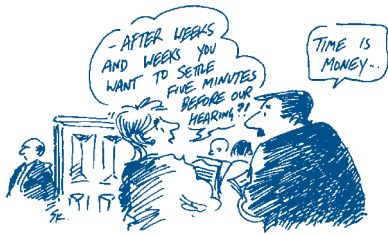
If the other party has not responded within 21 days of the claim being served, you should go to the Magistrates Court and ask for judgment to be entered in your favour (FORM 18). This is called "judgment by default".

If the defendant wants to defend or make a counter claim they must go to the Magistrates Court and fill out a form, a copy of which must be given to you.

If the defendant does make a counter claim and you have insurance, you should notify your insurance company. But in some cases the insurer will not assist you at this stage if you did not discuss it with them before you made the claim.

LEGAL PROCEEDINGS

MINOR CIVIL ACTION



AT THE COURT STAGE

If the case goes to court a Directions Hearing is usually held before the trial to sort out the main issues and see if the matter can be resolved informally. Wherever possible you should try to work out a settlement before trial.

You will receive a written notice from the Court if a Directions Hearing has been scheduled.

You should check the date and the time of the hearing and ensure you are present at least 15 minutes before the stated time.

You should take with you all the evidence including witness accounts of the accident and any other information which may support your case. You can ask the other party to let you see any documents which are relevant to the case and if they refuse the court can order them to do so. You do not need to have your witnesses at Court for a Directions Hearing.

You can agree to a settlement with the other party or you can agree to any part of the case being settled (for example, you can agree that the quotes for the damages are accurate). If you settle the case completely you will have to notify the court.

ON THE DAY OF THE TRIAL

You will receive notification of the day of your trial (also called a Hearing). Prepare for this by ensuring that you have all of the following:

1. You should have all your witnesses available on the day.
2. You should have all relevant documents (statements, photographs of damages, crash repair quotations etc.)
3. You should arrive at the court at least fifteen minutes before the hearing and check the court notice board for the correct time and place.

All parties and cases to be heard will be called into the one court room. A court official will call each case and allocate the case to a particular court room to be heard before a magistrate. If the matter has already settled "out of court" the parties must inform the magistrate when their case is called.

Once the case has been allocated the parties will be asked to consider settling the matter or coming to some agreement before the matter is actually heard in court. If this last "out of court" settlement is successful then the magistrate will be informed and an appropriate order will be recorded when the matter is brought before the court. If it is unsuccessful then the hearing will proceed.

- All parties must stand when the magistrate enters or leaves the court.
- All parties and their witnesses must be present in court and the magistrate's clerk will verify all the details of the hearing.

- The court orderly will direct you when and where to sit or stand during the hearing.
- The witnesses will then be asked to wait outside the court room.

HEARING PROCEDURE

Minor civil actions are not handled in the same way as trials in the superior courts. In the traditional or adversarial court procedure used in the superior courts (and often seen in television drama) the lawyers present their case through the evidence of their witnesses and they cross-examine the witnesses of the other party. The judge appears to play a fairly passive role.

In a minor civil action the magistrate conducts the hearing more like an inquiry. He or she will ask questions of the parties and can call witnesses and also ask them questions. The court does not have to follow the rules of evidence that are strictly applied in the superior courts but, the court "must act according to equity, good conscience and the substantial merits of the case"[Section 38(f) Magistrates Court Act].

The hearings are heard in an informal manner and neither party is allowed to have a lawyer present, unless the court permits. You can seek advice from a lawyer on how to prepare and present your case but a lawyer cannot be present at the hearing, unless;

- another party at the hearing is a legal practitioner
- all parties agree, or
- the court gives permission (usually on the grounds that without legal representation the party concerned would be unfairly disadvantaged).

If the other party is insured, their insurance company will send someone to court, to handle their case at the hearing. This person is not a lawyer, but an employee or agent of the insurance company who is experienced in this area of the law. They have the legal right to represent the insurer and this is one of the advantages of being insured.

The Magistrate will guide the proceedings and the parties are very much in the hands of the Magistrate as to how the hearing progresses.

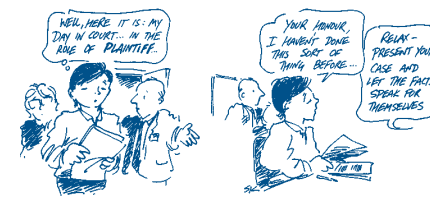
You do not need to stand when asking questions or giving answers. But you should speak clearly and slowly as the Magistrate and his/her clerk need to take down details of the hearing.

If you are uncertain about any of the procedure, do not hesitate to ask the Magistrate or other court officers who will try to assist both parties as best they can.

The Magistrate should be addressed as "Sir/Madam" or "Your Honour".

HOW CAN I RECOVER MY MONEY?

At the conclusion of the hearing each party is given a document. One side is addressed to the successful party explaining how they can recover their money. The other side is addressed to the unsuccessful party explaining their obligations and their right to have the decision reviewed. This document is reproduced below.



TO THE UNSUCCESSFUL PARTY

TO THE SUCCESSFUL PARTY



Notice Pursuant to Section 38(3) Magistrates Court Act, 1991

To the Successful Party

Please read BOTH SIDES of this notice carefully

You now have a judgment in your favour.

If the judgment is not complied with by the other party you may apply to the Court to enforce the judgment.

JUDGMENT FOR MONEY

If the judgment is for a sum of money, you may apply to the Court:

- to investigate the other party's means to pay it
- to get an order for payments by instalments
- to get a garnishee order (eg the other party has a bank account)
- to seize and sell land or goods on the other party
- to register a charge on property of the other party
- to appoint a receiver

INTEREST

Pursuant to Section 35(1) of the Magistrates Court Act and Rule 124 of the Magistrates Court (Civil) Rules a judgment debt bears interest at the rate of 10% per annum.

JUDGMENT NOT FOR MONEY

If the judgment is not for a sum of money you may apply to the Court:

- to take possession of property that was recovered by you
- to deal with the other party for a contempt of Court (which may result in the other party going to prison)
- to make any other necessary order of enforcement

COSTS

If you incur any Court costs in enforcing the judgment, the other party will be liable to pay you for them.

ADVICE

You may get advice or help from a solicitor or the Legal Services Commission. You may get assistance from the counter staff of the Court.

AGREEMENT

To save both parties a lot of trouble, time and expense, you may come to an arrangement between you to satisfy the judgment.



Notice Pursuant to Section 38(3) Magistrates Court Act, 1991

To the Unsuccessful Party

Please read BOTH SIDES of this notice carefully

You now have a judgment against you.

RIGHT OF REVIEW

- You have the right to apply for a review of the judgment of the District Court.
- You must make an application for review at the Registry of the District Court, Sir Samuel Way Building, Victoria Square, Adelaide (not the Adelaide Magistrates Court) within 21 days of this judgment.
- If you are unsuccessful on the review you may be liable to pay more costs to the other party.

ENFORCEMENT OF THE JUDGMENT AGAINST YOU

You must read carefully the OTHER SIDE of this notice. If you have any financial hardship you should let the other party know and try to come to some arrangement.

ADVICE

- You should get advice or help from a solicitor or the Legal Services Commission.
- You may get assistance from the counter staff of the Court.
- You may get budgeting advice from Family and Community Services Budgetary advice

DO NOT IGNORE THIS JUDGMENT BECAUSE YOU WILL HAVE TO PAY MORE COSTS.

MINOR CIVIL ACTION EXHIBITS

The exhibits tendered by you in the trial of your matter must be collected by you from the Counter Staff at this office after the expiration of twenty one (21) days from the date of judgment unless an application for review has been lodged with the District Court.

After the expiration of six (6) months from the trial or review date, all unclaimed exhibits may be destroyed.

DRINKING AND DRIVING

Alcohol is one of the most significant factors in traffic accidents. The risk of being involved in an accident increases as the blood alcohol concentration (BAC) increases.

On average:

- .05 doubles the risk
- .08 increases the risk 4 times
- .15 increases the risk 25 times

Driving with the prescribed concentration of alcohol (PCA) in the blood.

This offence is committed when the amount of alcohol detected in the blood is .05 or more, unless a zero limit applies.

A zero limit applies to:

- "L" and "P" drivers
- "Heavy vehicle" drivers
- "Bus/Taxi" drivers
- "Unlicensed/disqualified" drivers
- "Vehicles carrying dangerous substances" drivers.

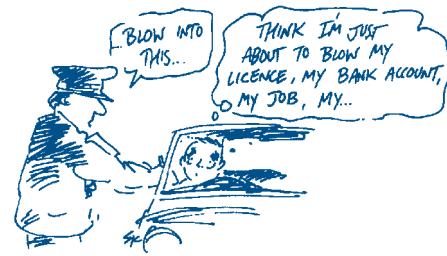
Only one drink could put drivers in these categories over the (PCA) limit.

PENALTIES (For a first offence)

.05 - .079: \$122 + \$7 levy Traffic infringement notice plus 3 demerit points.

.08 - .149: \$500 - \$900 fine plus loss of licence for six months minimum plus 5 demerit points.

.150 and above: \$700 - \$1200 fine plus loss of licence for twelve months minimum plus 6 demerit points.



DRIVING UNDER THE INFLUENCE (DUI)

This offence is committed where, because of alcohol and/or drugs, one or more of a driver's mental or physical faculties are lost or appreciably impaired, for example, slurred speech, lack of co-ordination. You don't have to be over .05 to be convicted of this offence.

PENALTIES: (for a first offence)

\$700 - \$1200 fine OR not more than 3 months imprisonment plus loss of licence for a minimum of 12 months plus 6 demerit points.

REFUSING TO COMPLY

It is an offence to refuse or fail to comply with the lawful directions of a police officer in relation to a breath test or the taking of a blood sample following an accident.

PENALTY (For first offence)

\$700 - \$1200 fine plus loss of licence for 12 months plus 6 demerit points.

AN IMPORTANT NOTE ON PENALTIES

Second and subsequent offences attract higher penalties.

Drivers convicted of 2 or more offences over .08 committed within a 3 year period must attend the Driver Assessment Clinic. If found to be drug or alcohol dependent they must be re-assessed and cleared before regaining a licence.

NOTE: In addition to any fine, there are court costs associated with drink driving offences.

When the licence holder's period of disqualification ends, the driver reverts to "P" plates for a minimum of 12 months.

Where your blood alcohol reading is .15 or more, and you are the driver of a motor vehicle and are responsible for causing or contributing to bodily injury, Allianz CTP has the legal right to take action against you to recover amounts paid, or costs incurred, in the settlement of any bodily injury claim.

For more information on penalties contact one of the organisations listed in the back of this kit.



ACCIDENT RECORD CARD

FILL OUT THIS CARD AT THE SCENE OF THE ACCIDENT
THIS INFORMATION IS IMPORTANT TO CLAIM FOR DAMAGES

ACCIDENT TOWING ROSTER - 8231 5555

OTHER DRIVER DETAILS

Full name: _____

Address: _____

Phone: (Home) _____ (Work) _____

Licence No. _____

OTHER CAR DETAILS

Owner's Name (if not the driver): _____

Address: _____

Registration No.: _____ Make: _____

Model: _____ Year: _____ Colour: _____

Description of Damage: _____

Name of insurance company: _____

Policy number: _____

Type of insurance (Third party property / Comprehensive): _____

WITNESS(ES)

Full Name: _____

Address: _____

Phone: (Home) _____ (Work) _____

Full Name: _____

Address: _____

Phone: (Home) _____ (Work) _____

SKETCH

Include:

- The streets and intersections at the scene of the accident
- The location of traffic lights and signs, the traffic lanes and marked lines
- Positions of cars at rest after the impact
- Arrows indicating the direction the vehicles were travelling just prior to the accident
- Mark the point of impact
- Identify each car
- Length of skid marks
- Note estimations of speed of vehicle
- Note road conditions, weather and lighting conditions

SKETCH OF THE SCENE OF THE ACCIDENT

