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# MOTOR VEHICLE ACCIDENT KIT

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A comprehensive guide  
designed to help you handle your  
own claim for repairs.





MOTOR VEHICLE ACCIDENT KIT  
August 2016

Motor Vehicle Accident Kit  
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The booklet is published by Legal Services Commission and Westside Community Lawyers with support of the Royal Automobile Association of SA Inc.

**Disclaimer**

This booklet is a guide to assist people who have been involved in a motor vehicle accident to make a claim for property damage. The contents of this booklet do not constitute legal advice and readers are urged to seek formal legal advice about their particular circumstances. Whilst the information contained in this booklet has been prepared with all due care, the publishers do not accept any liability to any person relying on such information. Please note that monetary amounts referred to throughout this booklet are subject to change.

# CONTENTS

INTRODUCTION	4
AT THE SCENE OF AN ACCIDENT	5
Injuries / Knowing what to say and do / Towing and storage	5
Police report	6
INSURANCE - AM I COVERED?	7
Insurance	7
Types of Insurance	7
Compulsory Third Party (Personal Injury)	7
Third Party Property / Comprehensive Insurance	7
MAKING A CLAIM FOR DAMAGES	8
Introduction	8
Step 1: How much damage?	9
Step 2: Letters to write	10
Without prejudice	10
Checklist	11
Sample letters	12
Their reply	14
Step 3: The other driver's claim	15
Step 4: Whose fault?	16
Step 5: How much money?	17
Step 6: Reaching a settlement	18
Dealing with Insurance Companies	18
Step 7: The settlement	19
Sample agreement	20
LEGAL PROCEEDINGS – MINOR CIVIL ACTION	21
21 Days Notice of Claim / Filing a claim	22
Before you claim	22
What can be included in a claim?	23
Once the claim has been served / At the court stage	24
On the day of the trial	25
Hearing procedure / How can I recover my money?	26
ACCIDENT RECORD CARD	27
SKETCH OF ACCIDENT SCENE	28
GETTING HELP	30

If you are the driver in an accident where someone was injured you must report the accident to Allianz Australia SA CTP on 1300 137 331. If you have been injured you should get legal advice about a claim for compensation.

THIS KIT is to assist people who want to handle their own claim for the repairs to their vehicles as the result of an accident. You may need to handle your own claim if you don't have insurance to cover your loss or if the excess payable on your policy would make it uneconomical to make a claim.

## THIS KIT IS NOT FOR PERSONAL INJURIES

THIS KIT provides information on what to do at the scene of the accident and how to claim for damage to your motor vehicle and the things in your motor vehicle at the time of the accident.

THIS KIT is for claims under \$12,000. If your claim is for more than \$12,000, get legal advice. If the amount claimed is less than \$12,000 and you issue a claim in the Magistrates Court of SA, your claim is called a minor civil action. The amount claimed by you includes the damage to the vehicle and your costs reasonably incurred as a result of the accident. A minor civil action in the Magistrates Court does not involve lawyers unless both parties agree.

# AT THE SCENE OF AN ACCIDENT

## INJURIES

- If anyone has been injured you must stop and provide assistance.
- Call 000 for Police and ambulance attendance.
- Contact Allianz SA CTP on 1300 137 331 to report the accident if anyone has been injured (however minor).

## Knowing what to say and do

Use the Accident Record Card on page 27 of this kit to record the following information:

- Give your name, address and registration number to any other driver involved, any person injured or the owner of any damaged property. If the car does not belong to you, include the name and address of the owner.
- Obtain the same details from the other driver/s involved in the accident.
- Ask anyone who was a witness to the accident for their name, address and telephone number.
- Do not argue about whose fault it was.
- Do not admit that the accident was your fault.
- If possible, make 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.).
- Make notes about any damage to the vehicles.
- If possible, take photographs of the damage and the scene of the accident.

## Towing and storage

- If your vehicle needs to be towed contact the Accident Towing Roster (metropolitan area: 8231 5555). For country areas, contact the local tow truck operator.
- You can decide where your vehicle will be taken: for example, you can have your car towed to your home.
- If you leave your vehicle at a crash repair yard, you could be charged storage fees. You should discuss this with the crash repairer as soon as possible after the accident.



# AT THE SCENE OF AN ACCIDENT

## Police report

You must report the accident to the police within 90 minutes if anyone is injured or killed. You must report the accident to police as soon as possible (or within 24 hours at the latest) if:

- a vehicle is towed away.
- you have not obtained the details of the other driver.
- a fair estimate of the cost of damage to property is more than \$3,000 (but you do not have to report an accident if the only property damaged is owned by the driver).

A report to police will include details about where and when the crash happened and the drivers and vehicles involved, including details of any injuries and property damage.

SA Police now have an Online Collision Reporting System (at [www.reportacrash.police.sa.gov.au](http://www.reportacrash.police.sa.gov.au)) to allow drivers to report crashes totalling less than \$3,000 in damage where no one has been injured.

A driver can object to providing details of vehicle speeds and the position of vehicles before and at the time of impact if this information may incriminate him or her of an offence.

## Remember...

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.



# INSURANCE - AM I COVERED?

Most insurance companies will not provide cover to the driver of a vehicle if, at the time of the accident, the car is 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 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 your insurer can refuse to pay for repairs.

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. You have a legal duty to tell your insurer about previous accidents and other things that may affect your policy. 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.

## Compulsory Third Party – CTP (Personal Injury)

This type of insurance is compulsory and comes with the payment of vehicle registration. It covers injury to people resulting from a motor vehicle accident.

To claim compensation, a person injured in a car accident must be able to show that the driver or owner of a vehicle was at fault. If an injured person (including a driver) was partly at fault, their claim may be reduced. A driver entirely at fault cannot get compensation.

Where someone makes a claim for personal injuries and a driver is more than 25% at fault for the accident, the driver must pay an excess of \$510 (increasing by CPI on 1 January each year) to the Motor Accident Commission.

## Comprehensive Insurance

This covers damage or loss to your own vehicle and also covers third party property damage if you are at fault. This is more expensive because it provides the widest cover.

## Third Party Property

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.

Although it 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.

This type of insurance is a good alternative for people who cannot afford comprehensive insurance or if the vehicle is not worth the cost of comprehensive insurance. Some policies provide limited protection for damage to your own vehicle in circumstances where another 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 between \$3,000 - \$5,000. (Check your policy or call your insurance company)

For an extra fee, Third Party Property insurance can also include cover for fire and theft.



# MAKING A CLAIM FOR DAMAGES

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

The information contained in this kit will assist you with the necessary steps to recover your damages/loss from the driver at fault.

If you do not understand any of the steps, please seek advice. See page 30 of this kit for further help.

- READ EACH STEP CAREFULLY
- TAKE ONE STEP AT A TIME
- DO NOT GO ON TO THE NEXT STEP UNTIL YOU HAVE DONE EVERYTHING IN THAT STEP.

## A NOTE ON WRITTEN-OFF VEHICLES

A vehicle is written-off if it is a total loss or has been wrecked for salvage or is to be sold for wrecking or salvage.

A total loss occurs where a vehicle has been damaged by accident, collision, fire, flood or other event, to the extent that its fair salvage value, when added to the cost of repairing it to a roadworthy state, would be more than its fair market value immediately before the event that caused the damage.

Written-off vehicles that are less than 15 years old must be notified to the Registrar of Motor Vehicles and cannot be registered or driven.

A vehicle may be declared a repairable write-off if it has the potential to be repaired even though significant rebuilding will be required. Repairable write-off vehicles must be notified to the Registrar of Motor Vehicles and can only be driven to or from a place of repair or inspection.



## STEP 1 – 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.

- A Obtain a written quotation from a reputable repairer of your own choice.
- B 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".

A website such as [www.redbook.com.au](http://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 \$275 (for most average cars). (Names of Automotive Valuers are in the Yellow Pages under 'VALUERS GENERAL'. Alternatively, if you are an RAA member, contact the RAA Legal Advisory Service on 8202 4570 for further advice.)

You must also obtain a written quote from wreckers as to what you would get for the damaged vehicle for wrecking purposes. Your claim in a write-off situation is the market value of the vehicle less the salvage value from the wrecker.

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

- C Take photographs of the car showing the damage. This will help if you have to go to court.
- D Once you have an itemized quote for repairs, you do not need the approval of the other party to have your car repaired. You can pay the account yourself and ask the other driver to pay you.

If your car 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, after obtaining a written estimate of its pre-accident value and its value as a wreck.

> **GO TO STEP 2**

# MAKING A CLAIM FOR DAMAGES

## STEP 2 – LETTERS TO WRITE

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

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Contacting the other driver or the other driver's insurance company:

- A 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.
- B You should send them a copy of the repair quote.
- C If your car is a write-off, you should also send a copy of Redbook estimate (or valuer's report) and the wrecker's estimate (or receipt if you have sold it).
- D Whether your car is repairable or a 'write-off', you can claim towing fees from the accident scene. To do so you should send a copy of the authority to tow.
- E 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...

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.

## CHECKLIST

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

- 'Without Prejudice' on the top of the letter.
- Date of the accident.
- Make of your vehicle and the registered number.
- Make of other driver's vehicle and the registered number.
- Names of road/s or street/s where the accident happened.
- Suburb in which the accident happened.
- Time of day when the accident happened.
- Total amount of quote or valuation.

On page 12 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 sample letter on page 13 if the other driver or his/her insurance company contacts you first.

Always keep a copy of any letter sent and make sure every letter is signed and dated.



## STEP 2 – SAMPLE LETTERS

### Example: You contact the other driver

Without Prejudice

Your Name  
Your Address  
Date

Other Person's Name  
Address

Dear .....

I refer to the motor vehicle accident as follows:

DATE:..... MY VEHICLE:.....

LOCATION:.....

SUBURB:..... YOUR VEHICLE: .....

TIME:..... am/pm

I consider that you are responsible for this accident and as such are liable to pay for the damage caused by the accident 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 \$..... (plus towing fee if applicable).

**OR**

\*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 \$..... (plus towing fee if applicable).

**\*Use one of these paragraphs stated above.**

If you intend to claim through your insurance company, please provide me with your insurance details and please ask your insurance company to contact me regarding my claim.

If you are not covered by, or claiming on insurance, I shall expect you to pay for the damage to my vehicle.

Unless the matter is settled to my satisfaction within the next 21 days I intend to take legal action to recover this amount from you.

Yours sincerely

## STEP 2 – SAMPLE LETTERS

### Example: The other driver or his/her insurance company contacts you

Without Prejudice

Your Name  
Your Address  
Date

\*Other Person's Name/Insurance Company  
Address (*\*of one of the above*)

Dear.....

I refer to the motor vehicle accident as follows:

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 \$..... (plus towing fee if applicable).

**OR**

\*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 \$..... (plus towing fee if applicable).

***\*Use one of these paragraphs stated above.***

\*\*If you intend to claim through your insurance company, please provide me with your insurance details and ask your insurance company to contact me regarding settlement of the claim.

***\*\* (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 – THEIR REPLY

### Four possible replies to your letter

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- 1 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**

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

**GO TO STEP 3.**

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- 3 The other driver says that he/she is insured and his/her insurance company will be handling the claim.

**GO TO STEP 6**

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- 4 If you don't get a reply, send a reminder letter or start Legal Proceedings, see page 21.
- 



## STEP 3 – THE OTHER DRIVER'S CLAIM

Do you agree with the amount of the other driver's claim? If yes, go to step 4.

### IF YOU DON'T AGREE:

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, see page 30 for further advice.

### 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 do not have to pay for any damage that was there before. However, any reasonable costs can also be claimed. For example: valuation fees, towing 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 21).



# MAKING A CLAIM FOR DAMAGES

## STEP 4 – WHOSE FAULT?

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

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

Some examples include:

- someone runs into the rear end of another vehicle.
- someone collides with a stationary vehicle.

USUALLY THE ACCIDENT IS BOTH DRIVERS' FAULT.

- A You need to be realistic about who caused the accident.
- B 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.

Some common driving errors include:

- Failing to keep a proper lookout.
- Driving at an excessive speed.
- Failing to obey road signs or traffic signals.
- Failing to apply brakes.
- Driving without due care.
- Turning across the path of oncoming traffic.
- Failing to give way.

Get advice about how to work out who is to blame for the accident – see Getting Help on page 30.

## 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 = \$500

B is liable to A for 50% of \$1,500 = \$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 is 15% to blame and the cost of his/her repairs is \$4,500.

A is liable to B for 85% of \$4,500 = \$3,825

B is liable to A for 15% of \$3,000 = \$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, you should get advice – see Getting Help on page 30.

# MAKING A CLAIM FOR DAMAGES

## STEP 6 – REACHING A SETTLEMENT

It is much better to sort out your claim with the other driver by negotiating 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 quickly.

If an agreement is reached on a settlement it should be recorded in writing and signed by the person or people agreeing to pay.

- A You are entitled to claim 100% of your loss. But remember that the other driver (or their insurance company) may come back with a percentage offer, such as 80/20%. Their offer can then be negotiated.
- B In your letter tell the other driver or the insurance company why you think the other driver is at fault.
- C Similarly, if the other party is claiming 100% from you, your response would be in most cases an offer to settle on a percentage basis.

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.

# MAKING A CLAIM FOR DAMAGES

## STEP 6 – REACHING A SETTLEMENT (CONT.)

### Dealing with insurance companies

Insurance companies may refuse to negotiate at first. They might say that they are not willing to pay you anything. Do not give up. Keep trying to make offers.

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 do not 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.

If an insurance company makes a verbal offer, ask that the offer be put in writing for your consideration.

If you are uninsured and you have not been able to reach an agreement with the other driver's insurance company, you may be able to use the Financial Ombudsman Service to resolve the claim. The Financial Ombudsman Service ([www.fos.org.au](http://www.fos.org.au)) is free to use but the amount it can award in these cases is limited to \$3,000.

## STEP 7 – THE SETTLEMENT SAMPLE AGREEMENT

- A You should write an agreement which says all the things you have agreed upon.
- B The agreement should contain a statement saying that the agreement is “full and final settlement” of both your claims.
- C The agreement should refer to the date and location of the accident and the vehicle(s) involved in the accident.
- D The agreement will normally be between the driver who is at fault and the owner of the other vehicle.

### Remember...

Do not 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.

# MAKING A CLAIM FOR DAMAGES

## STEP 7 – THE SETTLEMENT SAMPLE AGREEMENT (CONT.)

### 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 whatsoever 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. If your damage and costs are less than \$12,000, your claim will be a minor civil action and lawyers are not involved. Get legal advice if you are unsure.

For the address of the nearest Magistrates Court, see [www.courts.sa.gov.au](http://www.courts.sa.gov.au)

# LEGAL PROCEEDINGS

## 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' (called a Form 1A) available at the Magistrates Court or via the internet at: [www.courts.sa.gov.au/community/going\\_to\\_court](http://www.courts.sa.gov.au/community/going_to_court)

If you want the court to post the Form 1A, you will need to pay \$20.60\*

\*correct at the time of publication

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 minor civil action claim form (Form 3) at the Magistrates Court. You must pay a filing fee of \$140\*, which is added to your claim. You (the person commencing the claim) are known as the PLAINTIFF and the person against whom you have issued the claim is referred to as the DEFENDANT.

\*correct at the time of publication

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 driver are written into 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:

### Particulars of Claim

The plaintiff's claim against the defendant is for the sum of \$..... Being the estimated cost of repairs to the plaintiff's motor vehicle as a result of damage to that vehicle arising out of a motor vehicle collision caused by the negligence of the defendant on [date of accident] at approximately 1pm.

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 of a wreck.
- Often when a motorcyclist 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.
- The towing fee can also be claimed.
- If the damaged vehicle was used to earn your income, the cost of hiring a car may 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 (given to) 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.

# LEGAL PROCEEDINGS

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

- A Pay the full amount of the claim or come to some "out of court" agreement with you to settle the matter.
- B Defend the claim.
- C 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 judgement 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. In some cases your insurer will not assist you at this stage if you did not discuss it with them before you made the claim.

#### 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. If you are more than 15 minutes late for your hearing, your case may be decided without you, including being dismissed. Contact the court if you cannot attend.

You should take with you all the evidence including witness accounts of the accident and any other information (such as photos) which may support your case. A map of the accident site to help illustrate where the collision occurred is also useful (for example Google maps). 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:

- A You should have all your witnesses available on the day.
- B You should have all relevant documents (statements, photographs of damages, crash repair quotations etc.)
- C You should arrive at the court at least 15 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 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.

# LEGAL PROCEEDINGS

## Hearing procedure

Minor civil actions are not handled in the same way as trials in the superior courts. In the traditional 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 1991].

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.
- 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 part 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?

If you win your case, the court will give judgment in your favour. This means you will get a court order that the defendant owes you a sum of money. There are several ways to enforce the judgment. If you have trouble in getting the other side to pay the judgment sum, seek legal advice.

# 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):	PHONE (WORK):
PHONE (MOBILE):	LICENCE NO.:

## OTHER CAR DETAILS

OWNER'S NAME (IF NOT THE DRIVER):		
ADDRESS:		
REGISTRATION NO.:	MAKE:	
MODEL:	YEAR:	COLOUR:
DESCRIPTION OF DAMAGE:		
INSURANCE COMPANY:	POLICY NUMBER:	
TYPE OF INSURANCE:	<input type="checkbox"/> THIRD PARTY PROPERTY	<input type="checkbox"/> COMPREHENSIVE

## WITNESS 1

FULL NAME:
ADDRESS:
PHONE:

## WITNESS 2

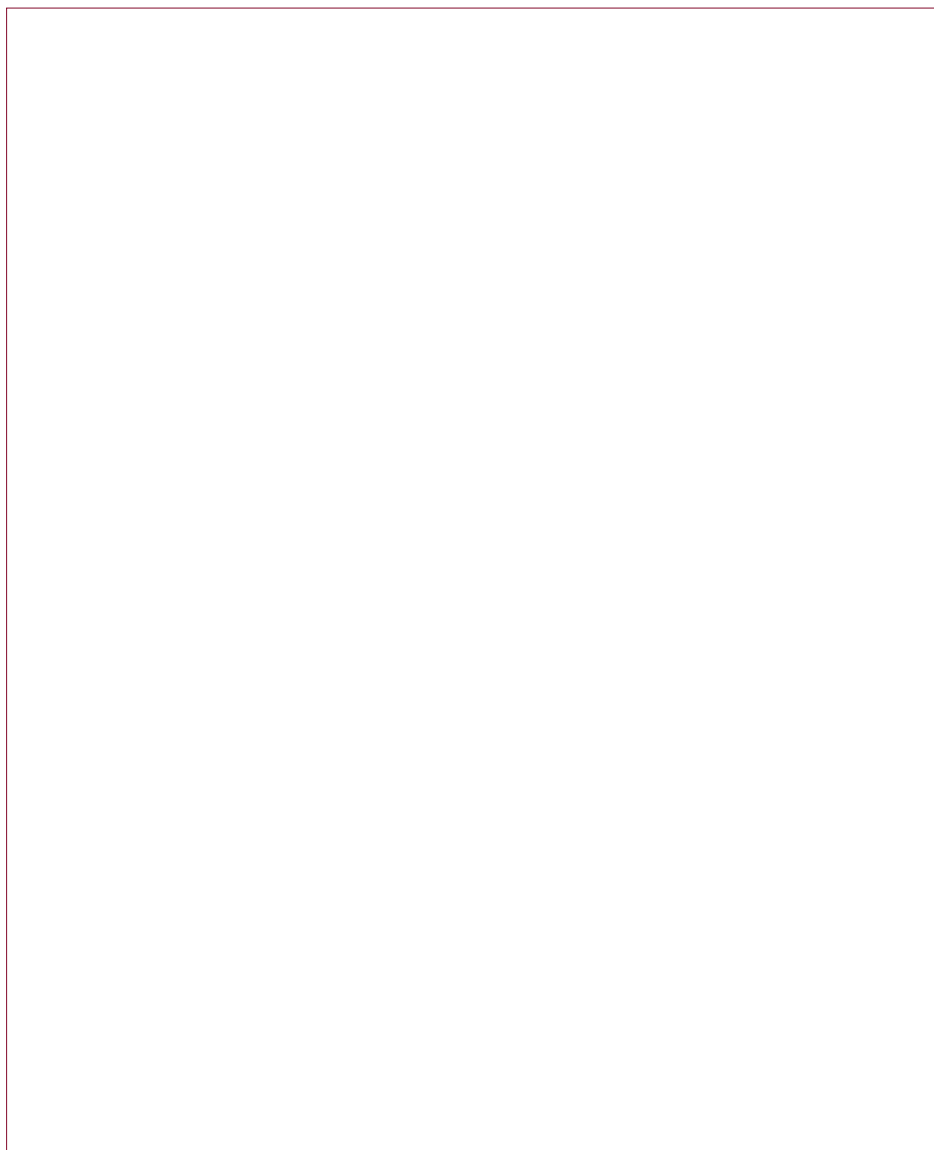
FULL NAME:
ADDRESS:
PHONE:

# SKETCH OF ACCIDENT SCENE

Be sure to 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 ACCIDENT SCENE





# GETTING HELP

YOU SHOULD SEEK LEGAL ADVICE BEFORE SETTling  
ANY CLAIM

## LEGAL SERVICES COMMISSION

[www.lsc.sa.gov.au](http://www.lsc.sa.gov.au)

[www.lawhandbook.sa.gov.au](http://www.lawhandbook.sa.gov.au)

Legal Help Line - Ph 1300 366 424

Monday to Friday 9:00-4:30

159 Gawler Place, Adelaide 5000

Ph 8111 5555

Offices in Elizabeth, Mt Barker, Noarlunga, Port  
Adelaide, Port Augusta and Whyalla

## WESTSIDE COMMUNITY LAWYERS INC.

[www.westsidelawyers.net](http://www.westsidelawyers.net)

Ph 08 8243 5521

184 Port Road, Hindmarsh 5007

Flinders Arcade

72 Ellen Street, Port Pirie 5540

For details of other community legal services  
in metropolitan and country areas,  
see [www.saccls.org.au](http://www.saccls.org.au)

## RAA

[www.raa.com.au](http://www.raa.com.au)

General Enquiries - Ph 8202 4600

RAA Legal Advisory Service

(Members only\*) Ph 8202 4570

101 Richmond Road, Mile End SA 5031

\*The staff providing the service are not lawyers, but are trained to assist with vehicle and traffic related matters. Where necessary, a referral to a lawyer is available.



