



A GUIDE TO PROPERTY DAMAGE CLAIMS AFTER A MOTOR VEHICLE ACCIDENT

TRILBY
MISSE
LAWYERS

UPDATED NOVEMBER 2024

Understanding Your Rights After a Motor Vehicle Accident

We're here to help you through the confusion

Motor vehicle accidents are challenging experiences, especially when property damage is involved. Knowing how to manage a property damage claim can reduce stress and help you recover costs for repairs or replacements.

This guide provides practical steps for navigating the claim process, from communicating with insurers to pursuing legal options through QCAT or the Magistrates Court.



What is a Property Damage Claim?

A property damage claim is a request for compensation to cover the cost of repairs or replacement of damaged property resulting from a motor vehicle accident. This claim usually includes damage to your vehicle, but it can also cover other personal items that were damaged in the accident, such as mobile phones or other belongings inside the vehicle.

To make a property damage claim, you generally need to provide evidence of the damage, an estimate for repairs or replacement, and details about the accident. This process can involve dealing with your own insurance provider or, in cases where another driver is at fault, their insurance company. Understanding the property damage claim process is important to ensure you receive a fair outcome.



Types of Property Damage Covered

Property damage claims after a motor vehicle accident can cover various forms of loss. Generally, this includes:

- **Vehicle Damage:** The primary type of property damage, covering repair or replacement costs for your vehicle if it was damaged in the accident.
- **Personal Belongings:** Items inside the vehicle that were damaged as a result of the accident, such as mobile phones, laptops, child car seats, or other valuables.
- **Other Property:** In some cases, property damage claims can cover items outside of the vehicle, like damaged fences, gates, or structures, if the accident occurred on private property.

Understanding what can be claimed ensures you know your entitlements and helps you gather the necessary evidence to support your claim

Key Steps to Take Immediately After an Accident

Taking the right actions immediately after an accident strengthens your property damage claim. Here are the key steps to follow at the scene:

1. Ensure Safety First: Move vehicles out of traffic if possible, and check that everyone is safe.
2. Gather Information:
 - Record names, contact details, and registration numbers of all drivers involved.
 - Obtain contact information from any witnesses, as their statements can support your claim.
3. Take Photos:
 - Photograph the accident scene, the damage to each vehicle, and relevant road or weather conditions.
4. Report to Police if Required:
 - Report the accident to the police if there's an injury, significant damage, or if another party refuses to exchange details.

These steps provide essential documentation, helping to support your claim or legal action later.





Reporting the Accident

It's important to report the accident to both the police and your insurance provider:

- **Police Report:** Report the accident to the police if there is an injury, significant damage, or if the other driver refuses to exchange details. A police report can support your claim.
- **Notify Your Insurer:** Contact your insurer promptly, even if you don't plan to claim through them. This keeps your options open.
- **Be Accurate:** Provide truthful and accurate details, as misrepresentation can affect your claim.

Timely reporting helps avoid complications and ensures all parties are properly informed.



Dealing with Insurance Companies

When handling a property damage claim, communicating effectively with insurance companies is crucial. **Here are some tips:**

- **Keep Records:** Document every interaction with your insurer, including phone calls, emails, and letters. This record can be valuable if disputes arise.
- **Avoid Quick Settlements:** Don't feel pressured to accept a quick settlement if it doesn't cover your repair costs. Take time to assess the insurer's offer thoroughly.
- **Seek Clarity:** Ask questions if you're uncertain about any part of the claims process, and clarify what's covered under your policy.

A clear and proactive approach with your insurer can help you achieve a fair resolution for your property damage claim.



Understanding Your Insurance Policy

Knowing what your policy covers can prevent surprises during the claims process. **Review these key areas:**

- **Policy Terms and Conditions:** Each policy varies in terms of what's covered. Check if your policy allows you to choose your repairer, outlines limits on claim amounts, or excludes certain items.
- **Exclusions and Special Conditions:** Review any exclusions or conditions that may impact your claim, such as restrictions on unapproved repairs, accessory coverage limits, or deductible amounts.
- **Understanding Coverage Limits:** Some policies may have specific caps on certain types of claims, like towing or rental car fees. Being aware of these limits can help you make informed decisions.

Being familiar with your policy's details will prepare you for any questions or requirements from your insurer and help ensure you're fully covered where applicable.



Making a Claim with Your Insurance

Filing a property damage claim with your insurer may seem complex, but a few organised steps can make it easier. Start by gathering all relevant documents, like **accident evidence**, **repair estimates**, and any **police reports**, to streamline the process.

It's also important to submit your claim promptly, as insurers often have strict deadlines. Filing early helps avoid delays.

After submitting, your insurer may assess the damage or ask for more details. Review their assessment carefully, and don't hesitate to seek clarification if needed. **Staying proactive helps ensure a smoother resolution.**



Overview of Legal Action Options

If you're unable to reach a fair resolution through your insurer or if another driver refuses to cover damages, taking legal action may be an option. **Here are two common pathways for resolving property damage claims independently:**

- **Queensland Civil and Administrative Tribunal (QCAT):** For claims **under \$25,000**, QCAT provides a straightforward, low-cost option that allows you to handle disputes without legal representation. This pathway is suitable for cases that are simpler and don't require extensive legal argument.
- **Magistrates Court:** For claims **up to \$150,000**, the Magistrates Court offers a more formal process where legal representation is allowed, and more complex evidence can be presented. This option is generally suited to higher-value claims or those that involve complicated disputes.

Knowing which pathway is appropriate for your case can help you save time and manage costs. **If you're unsure, seeking legal advice before proceeding can clarify your options.**

Queensland Civil and Administrative Tribunal (QCAT)

QCAT offers a cost-effective, self-help option for resolving property damage claims under \$25,000. [Here's a breakdown of what to expect:](#)

- **Why Choose QCAT?:** QCAT is a flexible, do-it-yourself option for those looking to settle a dispute without needing a lawyer. It is ideal for smaller claims and straightforward cases.
- **Representation Rules:** Lawyers are generally not involved in QCAT hearings unless both parties agree or the tribunal permits it due to complex legal issues or one party being a government agency. You may seek legal advice beforehand to prepare but will usually represent yourself.
- **Fees and Documentation:** To file a claim, you'll need to complete an application form and pay a filing fee that varies based on the claim amount. You'll need documentation like repair estimates, photos, and a clear record of the accident details.

Understanding QCAT's process can help you determine if it's the right choice for your property damage claim.

Letter of demand

If you're not insured, you can still recover property damage costs by pursuing the at-fault driver or their insurer. **Preparing a Letter of Demand** is an important step **before lodging a claim with QCAT** (Queensland Civil and Administrative Tribunal). This letter formally outlines your claim, supporting evidence, and the amount you are seeking. **To prepare your letter:**

- **Repair Quote or Write-Off Proof:** Include a repair quote or confirmation that the vehicle is a write-off.
- **Receipts for Expenses:** Attach receipts for towing, storage, or other related costs.
- **Damaged Goods:** Provide quotes for damaged items like helmets or riding gear.
- **Vehicle Value Proof:** Use resources like Carsguide or Red Book to provide examples of similar vehicles.
- **Liability Evidence:** Include police reports, photos, or admissions of fault (e.g., text messages).

Once your letter is ready, send it to the other driver's insurer if you have their details, or to the driver's home address if you don't.

Letter of demand

After sending the Letter of Demand, the at-fault driver's insurer may agree to pay the requested amount. If so, they may ask you to sign a Release/Discharge. Make sure it only applies to property damage and does not restrict your right to claim for personal injuries.

If the insurer or driver disputes your claim:

- **Negotiate:** Attempt to reach a settlement with the other party or their insurer.
- **Legal Action:** Consider legal proceedings if no agreement is reached.

If you feel the insurer is acting unfairly or below standard, you can file a complaint with the relevant Ombudsman for assistance. This impartial body reviews complaints and may assist in resolving disputes. Seeking professional advice may also help you understand your options and improve your chances of recovering costs.

Following these steps can help you recover your property damage costs even if you're uninsured. **Below is an example of a blank letter of demand.**

[Date of letter]

[Address of person being served]

Dear Sir/Madam,

CLAIM FOR PROPERTY DAMAGE AGAINST [NAME OF OTHER DRIVER]

I write to you regarding a property damage claim arising out of a motor vehicle accident which occurred on [DATE OF ACCIDENT] at [LOCATION OF ACCIDENT], involving your/your insured's vehicle.

Circumstances of Accident

On [DATE OF ACCIDENT] I was driving/riding a [YEAR, MAKE AND MODEL OF YOUR VEHICLE] bearing registration number [YOUR REGISTRATION] on [ROAD WHERE ACCIDENT OCCURRED].

You/Your insured driver was driving a [YEAR, MAKE AND MODEL OF THEIR VEHICLE] bearing registration number [THEIR REGISTRATION]. You/Your insured is responsible for the accident as they [EXPLAIN HOW THE ACCIDENT OCCURRED AND WHY THEY ARE AT FAULT].

I **enclose** a copy of the Queensland Police Traffic Incident Report that shows that you/your insured is at fault for this accident.

I therefore hold you liable for the damage to my vehicle and the associated costs.

Claim for Property Damage

As a result of your/your insured's actions, I have suffered the following loss:

- [list expenses, including repair costs or value of vehicle if a write-off]

I **enclose** a copy of the following documentation in support of my claim:

- [list documents, including receipts, quotes, photographs, examples of similar vehicles.]

I seek reimbursement in respect of these losses arising from the accident and request that you forward this letter to your insurance company.

If you are insured, please provide details of your insurer and forward a copy of this correspondence to them.

If you are not insured, i ask that you forward payment to me in the sum of \$[TOTAL SUM CLAIMED].

I request your response within 14 days of receipt of this letter.

Yours faithfully,

NAME OF CLAIMANT

[CLAIMANT'S CONTACT DETAILS]

ADDRESS:

EMAIL:

PHONE NUMBER:

Step-by-Step Process for Filing a QCAT Claim

To start a claim in QCAT, follow these steps:

1. Prepare Your Documents:

- Complete the Application for Minor Civil Dispute – Property Damage form, available from QCAT or online. Be sure to include all relevant details, such as the date, time, and location of the accident, and a description of the damages.
- Gather supporting evidence, including repair estimates, photos of the damage, witness statements, and any police reports.

2. Lodge the Application:

- Submit the original application form and two copies to the QCAT registry, along with the filing fee (the fee depends on the claim amount).
- You will receive two stamped copies back: one for your records and one to serve on the respondent (the other party involved in the dispute).

3. Serve the Respondent:

- Arrange for one of the stamped copies of the application to be served on the respondent within seven days. Service can be done by hand, by post, or through a process server.

Completing these steps accurately can help ensure your claim proceeds smoothly through the QCAT process.

Notifying the Other Party and Preparing for Mediation

Once you've lodged your claim with QCAT, the next steps involve formally notifying the respondent and preparing for mediation:

- **Serving the Respondent:** One of the stamped copies of your application must be served on the respondent within seven days to officially notify them of your claim. Service can be completed in person, by registered post, or through a process server. Timely service is essential to keep your claim on track, as this gives the respondent notice to attend mediation or a hearing and the chance to prepare their response.
- **Preparing for Mediation:** Mediation is typically the first step in QCAT's process, offering a chance for both parties to reach an agreement without a formal hearing. During mediation, a neutral mediator will help guide discussions and explore potential resolutions. Bring all relevant documents, including repair quotes, photos, witness statements, police reports, and any correspondence with the respondent or insurer. Having everything prepared helps present your case clearly and supports your claim.

Be ready to discuss specifics of your claim, the compensation you're seeking, and your willingness to negotiate if it leads to a fair outcome.

Tip: Mediation can save time and resources, so approach it with an open mind focused on fair resolution, but stay firm on reasonable compensation for your damages.

What to Expect in Mediation and at a Hearing

If mediation doesn't lead to a settlement, your claim may proceed to a hearing. Here's what to expect:

- **Mediation:**

- Mediation is a private session with only the parties and a mediator, who will guide the discussion to explore possible resolutions. Bring all evidence, explain your claim, and aim for constructive dialogue.

- **Preparing for a Hearing:**

- If unresolved in mediation, a QCAT hearing will be scheduled. At the hearing, an adjudicator reviews evidence, hears both sides, and issues a binding decision.
- Organise documents like repair quotes, photos, and witness statements. Practice summarising key points to keep your presentation focused.
- Remember basic hearing etiquette: speak clearly, stay respectful, and follow the adjudicator's instructions.

Tip: Being prepared for both mediation and a hearing strengthens your position and helps you present a clear case.





Responding to a Claim and Filing a Counterclaim

If you're served with a QCAT claim, you can defend yourself or file a counterclaim if you believe the other party was at fault:

- **Defending a Claim:**
 - Submit a written response with evidence (photos, witness statements, repair estimates) that supports your version of events and challenges the claim if necessary.
- **Filing a Counterclaim:**
 - If you suffered property damage due to the other party, complete a Counter Application to claim compensation. Submit the form to QCAT and serve it on the claimant.

Tip: A clear, well-documented defence or counterclaim can improve your chances of a fair outcome.

Magistrates Court Process for Property Damage Claims

For property damage claims up to \$150,000, the Magistrates Court provides a structured legal process. [Here's how to file your claim and prepare for the hearing:](#)

- **Filing Your Claim:**

- Complete a Claim and Statement of Claim form, detailing the accident, damages, and the amount you're seeking. Submit the form to the Magistrates Court registry with the required filing fee, and keep copies for your records.

- **Serving the Defendant:**

- Serve the claim documents on the other party (the defendant) via registered post, in person, or with a process server to formally notify them of the court proceedings.

- **Preparing for the Hearing:**

- Gather all evidence, including repair quotes, photos, and witness statements. Confirm that any witnesses can attend and support your case.
- Practice presenting your case clearly, focusing on key points and keeping your argument organised. A well-prepared case can strengthen your position in court.

The Magistrates Court process is more formal than QCAT, allowing for legal representation and detailed evidence presentation, which is helpful for higher-value or complex claims.

Frequently Asked Questions

1. What if the other driver is uninsured?

If the at-fault driver doesn't have insurance, you may need to claim through your own insurance if you have comprehensive coverage or pursue the driver directly for compensation.

2. Can I claim for personal items damaged in the accident?

Yes, personal belongings like phones or laptops damaged in the accident may be included in your claim. Check with your insurer for specifics on coverage.

3. Do I have to use the insurer's recommended repairer?

Some policies require you to use their approved repairers, while others may allow you to choose. Confirm with your insurer before proceeding.

4. How long do I have to lodge a property damage claim?

In Queensland, you generally have six years from the date of the accident to lodge a property damage claim, though starting sooner is often easier while evidence is fresh.

5. What can I do if I disagree with the insurer's decision?

If you're unsatisfied with the insurer's assessment, you can request a review or provide additional evidence. Seeking legal advice may also help if further assistance is needed.

Final Steps and Key Takeaways

Navigating a property damage claim after a motor vehicle accident can feel overwhelming, but understanding your options and being prepared makes a significant difference. This guide has covered essential steps, from collecting evidence and communicating with insurers to pursuing legal action through QCAT or the Magistrates Court if necessary.

Taking a proactive approach and staying organised throughout the claims process can help protect your rights and increase your chances of a fair outcome. Remember, if you need assistance or are unsure about your next steps, seeking legal advice is always an option to ensure your claim is handled effectively.



Thank you for downloading our guide.

We hope this guide has been helpful to you. If you have any questions please direct them to clientcare@trilbymisso.com.au or call us on 07 3910 5450.

TRILBY
MISSE
LAWYERS

