Have you been in an accident?

A guide to help you work out who pays for the damage
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Disclaimer
This guide is intended to provide you with information only. If you have a legal problem, you should get legal advice from a lawyer. Legal Aid Queensland believes the information provided is accurate as at April 2016 and does not accept responsibility for any errors or omissions.

We are committed to providing accessible services to Queenslanders from all culturally and linguistically diverse backgrounds. If you would like this publication explained in your language, please telephone the Translating and Interpreting Service on 13 14 50 to speak to an interpreter. Ask them to connect you to Legal Aid Queensland. This is a free service.
How can this guide help me?

This guide can help you if there has been an accident and:

• your vehicle or other property was damaged and you want to claim for the damage
• you were involved and a claim is being made against you.

Is there a time limit?

Yes. You must make your claim within six years from the accident date. But it is usually easier to make a claim soon after the accident, while the evidence is fresh in the minds of your witnesses.

What if someone was injured in the accident?

If someone was injured in the accident and wants to claim compensation for injuries, you should talk to a lawyer quickly and get legal advice. This guide does not provide information on this topic.

Should I get legal advice?

Yes. This booklet contains general legal information, not legal advice. For legal advice about your problem, you need to talk to a lawyer. You can call Legal Aid Queensland on 1300 65 11 88 to get free legal information and advice.
My vehicle (or other property) was damaged in a car accident — what should I do?

Step 1. Gather information about the accident

You’ll need:

• the make, model, colour and registration details of the vehicles involved
• the full names and addresses of the owners and drivers of each vehicle involved (your claim is against the people responsible for the accident, usually the driver of the vehicle that caused the accident – if the driver is not the owner, get legal advice about whether to make a claim against the owner and the driver)
• details of any witnesses who saw the accident, including their full names, addresses and phone numbers
• photos of the accident scene taken before the vehicles are moved (if possible)
• a copy of the Traffic Accident Report (a report will only be available if police investigated the accident); to get this information you will have to fill out an application and pay a small fee – contact CITEC Confirm on (07) 3222 2700 or 1800 773 773 (toll free), or www.confirm.com.au
Step 2. Work out who caused the accident

Work out who is responsible for causing the accident. The person who caused the accident is liable to pay for the damage.

If you caused the accident, you or your insurance company should pay for the damage to your vehicle and the other person’s vehicle. If the other driver caused the accident, they or their insurance company should pay.

If someone or something else caused the accident (for example, a pedestrian or a dog running across the road), you should get legal advice about how to recover your costs. This guide only deals with accidents caused by one or both drivers.

What are my options if the other driver caused the accident?

1. If you have comprehensive insurance you can make a claim on your policy to cover the cost of the damage. The insurance company will then handle all negotiations with the other driver.

2. You can make a claim against the other driver and negotiate with them to pay for the costs (see page 10).

3. If negotiations don’t work you can take them to court (see page 16).

What are my options if I caused the accident?

If you have comprehensive insurance or third-party property insurance, you should notify your insurance company immediately. The insurance company will handle all the negotiations with the other driver.
What if I don’t have insurance?

1. If the other person asks you to pay and you believe their claim is fair and reasonable, you can go ahead and pay them.
2. If you do not believe their claim (for who caused the accident or the amount) is fair and reasonable, you can try to negotiate an agreement with them.
3. If negotiations don’t work, you should get legal advice about how to defend a claim against you.
4. Always try negotiating rather than going to court.

What if more than one driver caused the accident?

If both drivers were partly responsible for causing the accident, they should each pay for the portion of the damage they caused. For example, if there is an accident in which one driver fails to give way and the other driver is speeding, both drivers’ actions have contributed to causing the accident and the damage.

‘Contributory negligence’ is the term used when more than one person causes an accident. Let’s say driver Andrew Smith is 20 percent responsible and driver Anne Cremer is 80 percent responsible for causing the accident, and the cost of the damage to Andrew Smith’s car is $5000 and the cost of the damage to Anne Cremer’s car is $10,000.

The claims the drivers would have against each other are:

- Andrew Smith claims 80 percent of his damage from Anne Cremer
  (80 percent of $5000) = $4000
- Anne Cremer claims 20 percent of her damage from Andrew Smith
  (20 percent of $10,000) = $2000

Therefore, they would settle the claim by Anne Cremer paying Andrew Smith $2000.
How is the percentage of responsibility for the accident worked out?

The two drivers can try to work out the percentage of responsibility for the accident, or if the case goes to court, the court can decide it. In most situations, it is better for everyone involved in the accident to negotiate and reach an agreement about how to pay the damage bill without going to court.

To work out the percentage of responsibility, think about your driving and the other person’s driving at the time of the accident, and ask yourself these questions:

- Would other reasonable drivers have done the same thing in the same situation?
- Did I and the other drivers give full attention to the road conditions and their driving?
- Did I and the other drivers break any road rules, like not stopping at a red light, speeding, drink driving or not giving way?
If someone claims against you

What if I am responsible for the accident but can’t pay for the repairs?

If the other driver’s insurance company is asking you to pay for the repairs but you can’t afford to, you may be able to negotiate a payment plan that suits your financial situation. The law says insurers have to give people options for paying repair costs after the accident if they are experiencing financial hardship.

Your options could include:

• paying the amount owed over a longer period of time
• reducing the amount you have to pay each fortnight or month to an amount you can afford
• putting payments off for an agreed period of time until you are back on your feet financially.

A financial counsellor can help you plan a payment schedule. For more information about free financial counselling services, call Legal Aid Queensland on 1300 65 11 88.

If the other driver does not have insurance, you can still try to negotiate to pay the amount over time.
If you want to claim against the other driver

**Step 1. Send a letter indicating your intention to claim**

It is a good idea to write a letter soon after the accident notifying the other driver of your intention to claim against them for the cost of the repairs. You should do this if it is going to take some time to get a repair quote. If the other driver has insurance they can pass the letter on to their insurance company.

**Step 2. Get a quote for repairs and work out your claim**

Get a quote—there is no need to get a second quote unless the amount is disputed. Photocopy the quote and keep the original. If you paid for towing, photocopy your receipts and keep the originals. You do not have to use a repairer suggested by the other person.

**How do I work out the total amount of my claim?**

The total amount of your claim should be the cost to repair your vehicle to the condition it was before the accident, plus any towing fees. If you were partly responsible for the accident (contributory negligence), you will claim the total less your percentage (see page 5).
**What if my vehicle was written-off?**

If your vehicle is written-off, it means the cost to repair it is more than the vehicle is worth at wholesale (dealer’s) value. The total amount of your claim should be the wholesale value of your vehicle, plus any towing fees.

To calculate the value of your vehicle, find out its value before the accident and subtract the value of the vehicle as a wreck. For a small fee, Red Book (www.redbook.com.au) or Glass’s Guide (www.glassguide.com.au) will give you a certificate of the value of your vehicle before the accident. A car wrecker will be able to tell you the value of the vehicle as a wreck.

You should also contact a Department of Transport and Main Roads customer service centre and ask about cancelling the car registration and getting a refund.

**What if other property (not a vehicle) was damaged?**

The total amount of your claim should be the cost to repair the property to the condition it was in before the accident. For example, if a driver lost control of their vehicle and damaged your brick fence, you need to get a quote showing how much it will cost to repair your fence to its condition before the accident.

*You can make a claim for damage to property such as a house or fence.*
Step 3. Contact the people responsible for the accident and try to negotiate an agreement

The aim of contacting the people responsible for the accident is to give them the chance to pay for the damage or negotiate with you to reach an agreement without having to go to court. Going to court should be a last resort as it is time consuming and can be costly and stressful.

When you have all your information ready, you should send a letter of demand to the other driver, outlining your claim for damages and including copies of quotes and towing receipts (see sample letter on page 11). The letter should be typed or neatly hand written.

If you know the people responsible for the accident have insurance, you should also send a letter to their insurance company outlining your claim (see sample letter on page 12). The insurance company will reply to your letter and either accept or deny they should pay for the accident. The insurer will probably want one of their assessors to inspect your vehicle.

Keep copies of all letters, quotes and receipts.

Get a quote for repairs to show they are fair and reasonable.
21 October 2013

Mr George Getz
9 Norman Road
Redwood Qld 4350

Dear Mr Getz

**Accident on 1 October 2013 at Redwood, Queensland**

I am the owner of a red 2008 Mitsubishi Magna (registration ABC246) that was damaged in a collision involving your vehicle (registration XYZ890), at about 9.30am on 1 October 2013 at the intersection of Black and White Streets, Redwood.

At the time of the accident, I was driving my car on White Street towards the supermarket. Your car collided with mine when you sped up and ran a red light on Black Street, causing significant damage to my front bumper bar, left lights and indicator. After the accident you said you were entirely responsible for the accident. I have signed statements from two witnesses who agree you were at fault.

As a result, I am writing to you to organise the payment of repairs to my car. I have enclosed a photocopy of the quote for the cost of repairs. This covers the cost of a new bumper and repairs to the lights and indicators. I have also included copies of the receipts for towing my vehicle after the accident ($200).

If you are insured, please send the details to your insurer and let me know when they will contact me. If you are not insured, please send me a cheque or money order for $2700 within 14 days so I can repair the car. If you do not pay by this date I will look at my legal options to recover the cost of repairing my car.

My address is 200 Tenth Avenue, Redwood, 4350.
My contact number is (07) 3238 300.

Yours sincerely

Jane Wright

[Signature]

Jane Wright
Sample letter to other person’s insurer

21 October 2013

200 Tenth Avenue
Redwood Qld 4350

Redwood Insurance Company
GPO Box 55443
Redwood Qld 4350

Dear Sir or Madam

**Accident on 1 October 2013 at Redwood, Queensland**

I am the owner of a red 2008 Mitsubishi Magna (registration ABC246) that was damaged in a collision with a green Ford Falcon (registration XYZ890) owned by Mr George Getz who is insured with Redwood Insurance.

The accident happened at about 9.30am on 1 October 2013 at the intersection of Black and White Streets, Redwood.

I have enclosed for your records a copy of the letter of demand I have sent to Mr Getz, along with the quote to repair the damage to my car and receipts for towing my vehicle after the accident.

If one of your assessors needs to inspect my car, I am happy to make it available. My contact phone number is (07) 3238 300.

I look forward to hearing from you and resolving this issue as quickly as possible.

Yours sincerely

Jane Wright
Step 4. Reaching an agreement

Tips for negotiating

- The other driver may contact you or you can contact them to negotiate.
- You can negotiate over the phone.
- Discuss who is responsible for the accident and see if you can agree on a percentage of responsibility (see pages 5 to 6). This can be used to work out an amount to be paid.

Can anyone help me negotiate?

Financial Ombudsman Service

If you are having trouble reaching an agreement with another person’s insurer, you may be able to use the Financial Ombudsman Service (FOS).

Provided you are uninsured and the damage to your vehicle is less than $5000, the FOS may be able to help you resolve your dispute by mediating between you and the insurer.

They can also give you information about how they deal with complaints like yours and will refer you to free financial counselling services.

Contact the FOS on 1300 78 08 08 or www.fos.org.au.
The Department of Justice and Attorney-General’s Dispute Resolution Branch

If there is no insurance company involved, you could consider mediation.

The Department of Justice and Attorney-General offers a mediation service. Mediation is a way of settling a dispute without taking legal action.

It lets you and the other driver meet together with two neutral mediators who will help you discuss the dispute. The mediators do not take sides, give advice or make decisions for you.

They help you to make your own decisions and work out an agreement that is acceptable and workable for both of you. Mediation can be arranged in around two weeks and is free.

Contact the Dispute Resolution Branch on (07) 3239 6007 (Brisbane callers) or 1800 017 288 (toll free for regional and rural callers), or www.justice.qld.gov.au

If you reach agreement, you should confirm this in writing to make sure it is a final agreement (see the sample agreement on page 15).
Agreement between:

George Getz of 9 Norman Road,
Redwood, Queensland
and
Jane Wright of 200 Tenth Avenue,
Redwood, Queensland

On 1 October 2013, a collision happened at the intersection of Black and White Streets, Redwood, Queensland between a green Ford Focus (registration number XYZ890) driven and owned by George Getz and a Mitsubishi Magna sedan (registration number ABC246) driven and owned by Jane Wright.

George Getz and Jane Wright have agreed to full and final settlement of all claims for property damage they may have against each other arising from the collision. George Getz will pay Jane Wright $2700.

Jane Wright acknowledges receipt of $2700.

Date: 17 December 2013
Signed: G Getz Jane Wright
Step 5. Consider legal action

If you don’t get a response from the people responsible for the accident, or their insurance company writes back refusing to accept their client was responsible for the accident, you have the option of taking legal action.

Before you decide to take people to court or the tribunal, ask yourself these questions:

- Is the person I am taking legal action against able to pay me if I win?
- If I go to the magistrates court, can I pay the other people’s legal costs if the case goes to trial and I lose?

If the answer to these questions is no, it may not be worth the effort and expense of taking legal action.

Should I get my car repaired before or after I take legal action?

You should go ahead and get your car repaired if your claim cannot be settled quickly. You should take photos of the damage to your car and keep any quotes, invoices and receipts you receive.
Step 6. Prepare written statements

It is important to be prepared before starting your claim. Write and date your statement explaining what happened in the accident. If anyone witnessed the accident and is willing to make a statement, ask them to write a statement explaining what they saw (see the sample witness statement on page 18).

The person making the statement should include these details:

- their name, age, address and occupation
- how they came to witness or be involved in the accident
- what happened just before the accident, how it happened and what happened just after the accident
- the date, time and location of the accident
- the condition of the road, weather conditions and how dark or light it was at the time of the accident
- an estimate of how fast the vehicle was travelling and any skid marks
- where the vehicle was damaged
- if drivers used (or should have used) indicators, headlights or brake lights and if they obeyed traffic signals or other traffic markings
- any conversations they heard or were involved in at the accident scene
- their signature and the date.

You may also want to gather other evidence to help your claim in court. You can take photographs or video footage of where the accident took place and the damage to your vehicle.
Sample witness statement

Witness statement

I, Tina Andrews (25 years old) of 68 Chrysler Street North Redwood, Queensland, sales consultant, say:

(1) I was travelling on Black Street on 1 October 2013 at about 9.30am.

(2) The weather was sunny with no cloud cover and I was travelling behind a green Ford (registration XYZ890) towards the intersection with White Street.

(3) I was travelling at the speed limit (60km/h) when I saw the lights change from orange to red.

(4) As I started to brake, I saw the green Ford increase speed and run the red light.

(5) I watched the Ford as it hit a red Mitsubishi Magna (registration ABC246) front-on at the intersection of Black and White Streets, Redwood.

(6) I then pulled over to see that everyone was all right. I heard George Getz, driver of the Ford, say to Jane Wright, driver of the Magna, that the accident was his fault.

(7) I saw the Magna had front-end damage to the left hand side lights and bumper bar.

(8) I believe the green Ford running a red light caused the accident.

Signed: T Andrews
Dated: 30 October 2013
How do I take legal action?

Queensland Civil and Administrative Tribunal

If the damage to your vehicle is $25,000 or less and you are only claiming damage to a motor vehicle or expenses directly associated with the accident such as towing fees, you can go to the Queensland Civil and Administrative Tribunal. For more information about this process see pages 20 to 35.

Once a case is heard and resolved by the tribunal you cannot take it to the magistrates court other than for enforcement. The tribunal has appeal processes; see page 33 for more information. You should get legal advice if you are considering appealing a tribunal decision.

Magistrates court

If your damage is less than $150,000, you can go to the magistrates court. For more information on this process, see pages 36 to 50.

You should get legal advice to make sure you have selected the right court for your legal action.
Making a claim in the Queensland Civil and Administrative Tribunal

The Queensland Civil and Administrative Tribunal (QCAT) provides a flexible, do-it-yourself, low-cost way to resolve a motor vehicle property damage dispute up to $25,000.

Lawyers are not allowed to participate unless both sides agree or unless the tribunal agrees to you being represented.

The tribunal may agree if:

• the other party is being represented or
• the process is likely to involve complex questions of fact or law or
• one party is a government agency.

You should get legal advice about whether you should get legal representation. You must complete and lodge an Application for leave to be represented (Form 56) if you want to be legally represented. This form can be downloaded from the QCAT website www.qcat.qld.gov.au. The form includes instructions for completing.

If you are legally represented, the tribunal makes orders about legal costs at the end of the hearing. Each person usually pays their own legal costs, but in some circumstances where the tribunal considers it is appropriate, the tribunal can order that one person contribute to the other person’s legal costs.

The person who makes the claim is called the ‘claimant’, the other person is called ‘the respondent’.

Motor vehicle property damage disputes before the tribunal are decided by adjudicators who are lawyers.
You prepare your own case and pay a fee to lodge your claim. The fee depends on the amount of your claim. In special circumstances the tribunal may approve an application to waive the fees.

It is possible you may be both a claimant and a respondent. For example, if someone makes a claim against you, but your car is also damaged and you believe they are wholly or partly responsible for it, you can also lodge a counter application against them. It is best to get advice from a lawyer before doing this.

How do I make a claim?

Step 1. Prepare the claim documents

To start a claim in the QCAT complete an Application for minor civil dispute – consumer dispute (Form 1) (see sample on pages 53 to 59).

Application for minor civil dispute – consumer dispute forms are available from the QCAT, your local courthouse or the QCAT website. Read the information at the beginning of these forms and follow all the instructions so you complete your claim accurately.

On your application form, in the space where you give full particulars of your claim, remember to include:

- time, date and place of accident
- make, model and registration number of your vehicle and the other vehicle
- correct name and address of the other driver
- details of how the accident happened (use a diagram if it helps)
- the total amount of your claim and how it is made up.
Step 2. Lodge your claim

Make two copies of everything. Photocopies are acceptable, but you must sign the form before you copy it. Submit the original and two copies of your claim to the QCAT registry along with the filing fee. You will be given back two stamped copies. One is for serving on the respondent to notify them of the claim and the other is for your records. You can file your documents by posting them to the registry, but you must enclose a stamped self-addressed envelope. If you win, the tribunal may direct the other person to pay back your filing fee.

The tribunal will then send you a Notice of mediation, which will include the date, time and location you and the respondent need to attend mediation.

Step 3. Notify the other person about your claim

Arrange to have one of the stamped copies of the Application for minor civil dispute – consumer dispute forms delivered to the person or business you are claiming against as soon as possible. This should be delivered to the respondent in person or can be delivered to a business in person or by post. This is called ‘serving’ the documents.

You can do this yourself, but it is often better to pay a private process server (someone who does this for a living) or enforcement officer from the magistrates court to do it for you. You can find a process server by asking the magistrates court registry or looking in the Yellow Pages or other business directory.

The QCAT published a Tribunal Practice Direction number 2009/08 (updated November 2013) about service of documents in person. Visit the QCAT website to download an up-to-date copy of the directions for service. You should get legal advice if you intend to serve the documents on the respondent yourself.

Once the documents have been served on the respondent, you need to fill in an Affidavit of service (Form 9), which is available on the QCAT website. See the sample completed form on pages 62 to 67.
Step 4. Attend mediation

Once your application and forms have been received the QCAT will review the information you provided. The tribunal will then contact you about the next step in settling your dispute. This will usually involve you and the respondent attending mediation either in person, or via phone or videoconference.

The aim of mediation is to find a solution to the dispute without having to hold a hearing.

Disputes up to $3000 will be listed for hearing and no mediation will occur.

How should I prepare for the mediation?

You need to bring every document, invoice, receipt, quotation or other piece of evidence you are relying on and give them to the mediator at the mediation. Make sure you are organised and have evidence to support your argument’s main points.

If you’re attending mediation via phone or videoconference, a tribunal staff member will contact you either the day before or on the day of the mediation to explain the process to you.

If you’re attending the mediation in person, you should:

- arrive at least 15 minutes before the start time outlined in the Notice of mediation; the other person will be there too
- find your name or case number and room on the electronic listing board or list displayed in the registry
- go to the room that has been set aside for your case and wait outside until the mediator (the person responsible for conducting the mediation) invites you into the room.
What happens during the mediation?

The mediation may be conducted by a tribunal staff member, an adjudicator, principal registrar or an independent mediator.

The mediator will introduce themself and ask the parties attending to introduce themselves. Generally the mediation is held in private and the mediation length will depend on the matter’s complexity.

When presenting your argument, you should be clear and to the point. Do not interrupt the other party or the tribunal representative. If you do not behave appropriately, you may be removed from the mediation or punished for contempt.

The discussions held during the mediation cannot be used or referred to at any further hearing unless both people agree.

What happens if we reach an agreement?

If the parties reach an agreement the mediator may record the agreement’s terms in writing and make the orders necessary to give effect to the agreement. An order is a decision made by the court that requires someone to do something (for example, it may require a person to pay damages). Each party will then sign the mediation agreement and receive a copy.

Either party may ask the tribunal to make the agreement into an order.

What if we cannot reach an agreement?

If you cannot reach an agreement, the mediator will work with you to set out what issues are still in dispute and what issues have been resolved. They will then give this information to the tribunal. The tribunal will then set a date for the hearing.
How do I defend a claim against me?

You do not need to prepare a formal response if someone files a claim against you for motor vehicle property damage.

If your own car was also damaged in the accident, you may believe the applicant is wholly or partly responsible for the accident. In this case, you can lodge a counter application against the applicant. You can download the *Minor civil dispute – counter application (Form 8)* from the QCAT website. The form contains instructions for completing. A counterclaim means you are going to claim damages from the other person to recover the costs of repairs to your vehicle or other property as a result of the accident.

You must lodge the counter application in the registry where the application was lodged. The counter claim must be provided to all parties to the proceedings no later then seven days after filing.

The tribunal will arrange for your counter application to be mediated at the same time as the application. It is best to get advice from a lawyer before doing this.

Submit the original and one copy of your claim to the Queensland Civil and Administrative Tribunal along with the filing fee.
How do I prepare for the hearing?

Prepare facts and evidence

You will need to present to the tribunal the facts about what happened in the accident. It will help your case if you are organised and present the facts and evidence clearly. It may help to draw a large map of the accident site showing the position of the cars at time of impact, especially if there are more than two cars involved.

To prepare your evidence, it may help to draw a line down the middle of a sheet of paper. On the left side, write the facts and on the right side, write the evidence that supports the facts.

Sample facts and evidence

<table>
<thead>
<tr>
<th>Facts to tell adjudicator</th>
<th>Evidence to support facts</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Ford collided with my Mitsubishi. Ford sped up and ran a</td>
<td>a) own sworn evidence</td>
</tr>
<tr>
<td>red light on Black St, Redwood.</td>
<td>b) evidence of any witnesses</td>
</tr>
<tr>
<td></td>
<td>c) map of accident scene</td>
</tr>
<tr>
<td>2. Mitsubishi had damage to the front bumper and lights.</td>
<td>a) photograph of damage to car</td>
</tr>
<tr>
<td>3. Had Mitsubishi towed ($200) and received quote to repair</td>
<td>a) own sworn evidence</td>
</tr>
<tr>
<td>car ($2500).</td>
<td>b) written quote</td>
</tr>
<tr>
<td></td>
<td>c) affidavit of repairer</td>
</tr>
<tr>
<td></td>
<td>d) receipts for towing</td>
</tr>
<tr>
<td>4. Sent letter of demand on 21 October 2013.</td>
<td>a) copy of letter of demand</td>
</tr>
</tbody>
</table>
It can help to practise what you want to say in front of family and friends. You can also take notes into court and read from them or refer to them.

**Organise your witnesses**

You can also prepare for the hearing by organising your witnesses. Ask them if they would be willing to attend the hearing. If they can, ask them to prepare a list of points they will tell the adjudicator and ask them to meet you at the tribunal at least 15 minutes before the hearing starts.

If a witness can’t come to the hearing but is willing to give evidence, they can prepare an affidavit that outlines what they would have said to support your claim. In car accident claims, it is common to use a repairer’s affidavit if the car has been or is being fixed. You would use a loss adjustor’s affidavit if the car was written off. Remember an affidavit must be signed under oath or affirmed and witnessed by a justice of the peace, commissioner of declarations or a lawyer. See samples on pages 60 to 61.

If a witness does not want to provide evidence, you cannot force them to attend or write an affidavit.

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**Evidence can include:**

- verbal evidence from you or your witnesses
- affidavits from you, your witnesses, an assessor or repairer; affidavits are sworn statements signed in the presence of a justice of the peace, commissioner of declarations or a lawyer
- documents like repair bills, receipts and quotes
- photographs (eg of your car after the accident).
The hearing

What should I do on the day of the hearing?

Before you arrive

- Find out the tribunal’s address and check the location on a map.
- Organise transport to the tribunal, allowing time to arrive half an hour before the hearing starts.
- Dress neatly.
- Bring all of your documents about the case including affidavits, quotes or receipts for repairs, photos etc.
- Bring a pen and note paper.

When you arrive

- Meet any witnesses who are coming to the tribunal to provide evidence for you.
- Wait with your witnesses for your hearing outside the adjudicator’s room.
  When the adjudicator is ready to start, they will call the claimant and respondent into the hearing room. Witnesses wait outside the room until they are called.

Arrive half an hour before the hearing starts to make sure you are on time and ready to discuss your case with the adjudicator.
When you are called

- Speak clearly and follow the member or adjudicator’s instructions.
- Address the member or adjudicator in the following way:

<table>
<thead>
<tr>
<th>Member</th>
<th>Guideline</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judge</td>
<td>Refer to the judge as “Your Honour”</td>
<td>“Yes, your Honour”</td>
</tr>
<tr>
<td>Senior Member</td>
<td>Refer to the member as “Senior Member”</td>
<td>“Yes, Senior Member”</td>
</tr>
<tr>
<td>Member (including ordinary members and judicial members)</td>
<td>Refer to the member as “Member” followed by their surname</td>
<td>“Yes, Member Smith”</td>
</tr>
<tr>
<td>Adjudicator</td>
<td>Refer to the Adjudicator as “Mr/Ms/Mrs”</td>
<td>“Yes, Mr Jones”</td>
</tr>
<tr>
<td>Justices of the Peace</td>
<td>Refer to the Justices of the Peace as “Mr/Ms/Mrs”</td>
<td>“Yes, Mr Jones”</td>
</tr>
</tbody>
</table>

Source: QCAT Practice Direction No 1 of 2014

- The member or adjudicator will ask if there is any chance you and the other person could reach an agreement about the dispute. If there is a chance, you will be left to negotiate privately.
- If you reach an agreement, the member or adjudicator will record the terms of the agreement.
- If you can’t reach an agreement, the hearing will continue in front of the member or adjudicator.
- If the member or adjudicator considers the matter should be dealt with by a court or another tribunal, the member or adjudicator may transfer the matter.
What happens at the hearing?

Before anyone provides evidence to the tribunal, they will be asked to swear an oath on a holy book or affirm (promise) to tell the truth. It is a crime to give false evidence before the Queensland Civil and Administrative Tribunal (QCAT).

When giving evidence, it is important to make sure what you say is relevant and to the point. Present your case in a business-like manner. Even though you might be upset or nervous about the situation, emotional outbursts will not help your case so try to keep calm.

What if I can’t come to the hearing?

The tribunal may continue with a hearing in your absence so if you cannot attend you have several options which are listed below.

- If you or any of your witnesses can’t come to the tribunal on the set date, write to the tribunal as soon as possible, telling them why your witnesses can’t attend (you must have a good reason) and ask for another date for the hearing.

- You may apply to the tribunal to attend the hearing by remote conferencing. You will need to complete and lodge an Application for attendance at hearing, compulsory conference or mediation by remote conferencing, which is available on the QCAT website. The application contains instructions for completing. You will need to explain why you cannot attend the tribunal in person and whether you intend to attend by videoconferencing or teleconferencing.

- You can ask the tribunal to allow a person of your choice to represent you at the hearing. To do this, lodge an Application for leave to be represented (Form 56), which is available on the QCAT website. The application contains instructions for completing. Even when someone represents you, you still need to send your affidavit to the hearing.
1. The claimant tells their story and gives their evidence

The adjudicator will invite the claimant to tell their side of the story under oath. The adjudicator may ask questions at any time during the presentation.

When the claimant has finished giving evidence, the adjudicator will invite the respondent to ask the claimant questions.

2. The claimant’s witnesses give their evidence

The claimant’s witnesses will be called into the room one at a time to tell their story under oath. The adjudicator may ask questions at any time during their presentations.

When each witness has finished giving evidence, the adjudicator will ask the respondent if they have any questions to ask the witnesses.

3. The respondent tells their story and gives their evidence

Now it is the respondent’s turn to tell their side of the story under oath. As before, the adjudicator can ask questions at any time.

When the respondent has finished presenting their side of the story, the adjudicator will invite the claimant to question the respondent.

Even if you disagree with what the other person is saying, do not interrupt. Take notes about anything you disagree with, so you can raise these issues when it is your turn to question the other person.
4. The respondent’s witnesses give their evidence

The respondent’s witnesses are then called into the hearing room one at a time to give their evidence.

Again, the adjudicator may question the witnesses at any time while they provide their evidence.

When the respondent and the adjudicator have finished questioning the respondent’s witnesses, the claimant may also question them.

*The respondent’s witness gives their evidence.*
The adjudicator’s decision

Having heard all sides of the story, the adjudicator will make a decision (usually immediately, but sometimes at a later date).

They will then make an order that reflects their decision and that both parties must follow. If the adjudicator fully agrees with the claimant’s case, it is likely they will order the respondent to pay the claim. If they only agree with part of the case, it is likely they will order the respondent to pay a percentage of the claim.

The Appeal Tribunal hears appeals from Queensland Civil and Administrative Tribunal (QCAT) decisions. Before you can appeal a decision by the tribunal, you must ask the Appeal Tribunal for permission to appeal by completing and lodging an Application for leave to appeal or appeal (Form 39), which is available on the QCAT website. The application contains instructions for completing.

You can appeal the decision on a:
- question of law
- question of fact
- question of mixed law and fact.

Your appeal does not stop the original QCAT decision being enforced. In some cases, the QCAT or the Court of Appeal can make an order staying, or temporarily stopping, the original decision from being carried out until the appeal has been finalised. Make sure to get legal advice before you appeal a decision.
What if the hearing took place and I could not be there?

Contact the QCAT to find out the decision and order made by the adjudicator.

If you had a good reason for not being able to go to the hearing, but could not tell the tribunal, you can apply for another hearing date by lodging an *Application for reopening, correction, renewal or amendment (Form 43)*, which is available on the QCAT website. The application contains instructions for completing. In your application you will need to explain why you could not go to the hearing and why the final decision was unfair or unjust.

The tribunal will only grant a reopening in special circumstances.
What if the respondent loses the case but doesn’t pay?

You can enforce a QCAT decision for motor vehicle property damage through the magistrates court.

You need to lodge a certified copy of the tribunal decision and an affidavit explaining the amount that has not been paid with the magistrates court. Once the magistrates court accepts the decision, it can be enforced in the same way as a magistrates court order. Enforcement options include a warrant of execution, enforcement hearing or enforcement warrant for redirection of earnings. Get legal advice about your enforcement options.

What if I cannot comply with a decision made against me?

If you cannot comply with the QCAT’s decision because your circumstances have changed or there are problems with interpreting, implementing or enforcing a decision, you may apply for another decision to be made about the same matter.

You will need to apply to the tribunal within 12 months of the original decision being made by completing and lodging an Application for reopening, correction, renewal or amendment (Form 43), which is available on the QCAT website. The application contains instructions for completing.

The QCAT may make the same decision or another decision that takes into account your new circumstances. That decision is then enforceable as a final decision. You should get legal advice before making this application as not all decisions will be reviewed simply because you cannot comply.
Making a claim in the magistrates court

The magistrates court handles claims for amounts up to $150,000. The court has more formal procedures than the Queensland Civil and Administrative Tribunal. For example:

- Lawyers are allowed to represent each person involved.
- The case will be heard in ‘open court’, which means members of the public can attend.
- If you lose your case, the magistrate may order you to pay the other person’s legal costs.

The person who is claiming damages is called the ‘plaintiff’ and the person defending the claim for damages is called the ‘defendant’.

You should get legal advice before you start a claim in the magistrates court.

If you want to make a claim in the magistrates court, see pages 37 to 39.

If you are defending a claim in the magistrates court, read this whole section to make sure you know how the process works and what you have to do.

If you are defending a claim against you, but believe the other person was wholly or partly responsible for the accident, you may be able to lodge a counterclaim. You should get legal advice before doing this.
How do I make a claim?

Step 1. Prepare the claim documents
You can get the two forms you need to complete from your local magistrates court. They are called Claim and Statement of claim forms. Follow the format of the sample forms on pages 68 to 71. Make sure you have the correct name of the other driver.

You will need the original plus three copies of these forms. Photocopies are acceptable, but you must sign the form before you copy it.

Step 2. Lodge your forms
Take your forms to your local magistrates court. Give three sets of forms to the court’s registry staff and keep one for your own records. Pay the court’s filing fee. The fee depends on how much money you are claiming. The staff will stamp your forms with the official court seal and give your claim a number. They will keep one set of forms and give you back the other two.

Step 3. Notify the other person about your claim
One of the stamped copies of the claim forms must be delivered to the defendant. You can do this yourself, but it is often better to pay a process server (someone who does this for a living) or enforcement officer from the magistrates court to do it for you. The magistrates court registry can tell you where to find a process server or you can look in the Yellow Pages or other business directories.

Ring a few of them to find out what it will cost.

It is important to include on your original claim form the amount it will cost you to hire a process server or enforcement officer.

If you win your case and the magistrate orders the other person to pay costs, you will get this money back.
What happens then?

There are four possibilities for how the other person may respond.

1. They may settle out of court

They may do this by paying your claim directly to you or contacting you to negotiate an agreement. If the court has already set a trial date, you will need to complete a *Notice of discontinuance* form and file it with the court.

2. They may defend the claim

To do this they will need to prepare and file two forms: *Notice of intention to defend* (see sample on page 77) and *Defence* (see sample on pages 78 to 79). They have 28 days from the date they received their copy of your claim forms to file this form with the magistrates court.

After they have filed their defence, they must also serve you with their defence forms.

3. They may lodge a counterclaim

A counterclaim means the other driver holds you responsible for the damage to their car or property and they are going to claim damages from you to recover the cost of repairs. They do this by filing a *Notice of intention to defend* form and a *Defence and counterclaim* form (see sample on pages 77 to 79) for their damages.

If you do receive a counterclaim, you must defend yourself by completing an *Answer to the counterclaim*, filing it with the court and serving it on the defendant within 14 days. The court may not provide a form for this, so use the sample form on page 80 as a guide. If you receive a counterclaim, you should get legal advice quickly to work out what you should do next.
4. They may not respond
If the other person has not responded to you or the court by 28 days from the time you served your claim, you can ask for an order called a default judgment. This means the magistrate will make a judgment without hearing evidence from the other person.

To request a default judgment you need to complete these forms and take them to the court:
- Request for default judgment and Affidavit (see samples on pages 72, 73)
- Repairer’s affidavit (see sample on page 74)
- Default judgment (see sample on page 75)
- Affidavit of service (see sample on page 76)

The magistrate does not always make a default judgment in favour of the person who has requested it. They still look at the merits of the case before making a decision.

How do I defend a claim made against me?
You know that a claim has been lodged against you in the magistrates court when the other person or a process server serves you with a Claim (see sample on pages 68 to 69) and Statement of claim (see sample on pages 70 to 71). We recommend you get legal advice at this stage to work out how to respond.

There are four possibilities for how you may respond.

1. You may settle out of court
You may decide to pay the claim directly to the other person, or contact them to negotiate an agreement. If this happens, make sure you get the agreement in writing. If the court has already set a trial date, the plaintiff will need to complete a Notice of discontinuance form and file it with the court.
2. You may defend yourself

To do this you need to prepare and file two forms: *Notice of intention to defend* and *Defence* (see samples on pages 77 and 78 to 79). You have 28 days from the date you receive the copy of the claim forms to file this form with the magistrates court.

Complete the form and make three copies. Photocopies are acceptable, but you must sign the form before you copy it. Take your completed forms to your local magistrates court. Give three sets of forms to the court’s registry staff and keep one for your own records. The staff will stamp your forms with the official court seal. They will keep one set of forms and give you back the other two.

After you have filed your defence, you must also serve the other person with your defence forms. You do this by sending your forms to the plaintiff at the address for service that appears on their claim.

3. You may lodge a counterclaim

If you believe the other person involved in the accident was responsible for some or all of the damage to your vehicle, you can lodge a counterclaim. A counterclaim means you are going to claim damages from the other person to recover the cost of repairs to your vehicle or other property as a result of the accident.

To proceed with a counterclaim, you need to lodge two forms: *Notice of intention to defend* and *Defence and counterclaim* (see samples on page 77 and 78 to 79). Take three copies of these forms to the court to be registered and stamped. Photocopies are acceptable, but you must sign the form before you copy it. The court will keep one set of forms and give you back the other two. Send one copy of the stamped forms to the other person and keep one for your own records.

The other person has 14 days to respond to the counterclaim. If they don’t agree with the details of your counterclaim they may send an answer to the court defending the counterclaim. They must also serve this stamped document on you.
If you receive an answer to your counterclaim from the other person, and it raises new issues not already covered in your defence, you can consider filing a reply to the answer to the counterclaim.

Obviously by this stage the matter has become quite complex, so we suggest you get legal advice.

4. You may choose not to respond

If you do not respond to the original Claim and Statement of claim within 28 days of these forms being served on you, the plaintiff can ask for an order called a default judgment. This means the magistrate will make a judgment for the full amount of the claim plus costs, without hearing evidence from you.

You will not necessarily be told if the magistrate makes a default judgment. If you think a judgment has been made against you, you should check with the court and get legal advice quickly.

Is there any other way to settle the matter?

Consider mediation. If you can settle the case without going to court you will save yourself a lot of time, energy and possibly money. If you and the other person agree, you can both go to mediation. Alternatively, the magistrates court registrar may refer your case to a dispute resolution program.

See page 14 of this guide for more information about mediation and dispute resolution. If you have any questions, speak to a lawyer before deciding what to do.
What happens if we can’t reach an agreement?

If you can’t reach an agreement, the matter will need to go to trial.

1. Ask to see the documents held by the other person

If you want to see the documents the other person has, you can write to them asking for a list of relevant documents in their possession or under their control. For example, if they are asking for towing costs you can ask for a copy of the receipt of payment. You can also ask to inspect the documents and be provided with copies.

The other person must provide a *List of documents* (see sample on pages 81 to 82). They normally should provide it within 28 days after the request.

If they refuse to give you a list of documents, you should get legal advice. It may be possible to apply to the court for an order that makes the other person provide a list of documents.

The other person might ask you for a list of documents you have. If so, you should complete a *List of documents* (see sample on pages 81 to 82).
2. Ask the court for a trial date

Once documents have been exchanged you can ask the court for a trial date. This can be done by writing to the court registry.

Some courts may allocate a directions hearing to see where the parties are at and then make directions for the management of the case including setting a trial date.

If you have been given or sent a *Notice of trial* form you need to send a copy by mail to the defendant as soon as you receive it. If you do not give the defendant enough time, the defendant may ask that the trial date be rescheduled to another date.

You may need to get legal advice once you are ready to set a trial date.
How do I prepare for the hearing?

Prepare facts and evidence

The magistrate will want to hear the facts about what happened in the accident. It will help your case if you are organised and present the facts and evidence clearly.

To prepare your evidence, it may help to draw a line down the middle of a sheet of paper. On the left side, write the facts, and on the right side, write the evidence that supports the facts.

Sample facts and evidence

<table>
<thead>
<tr>
<th>Facts to tell magistrate</th>
<th>Evidence to support facts</th>
</tr>
</thead>
</table>
| 1. Ford collided with my Mitsubishi. Ford sped up and ran a red light on Black St, Redwood. | a) own sworn evidence  
b) evidence of any witnesses  
c) map of accident scene |
| 2. Mitsubishi had damage to the front bumper and lights. | a) photograph of damage to car |
| 3. Had Mitsubishi towed ($200) and received quote to repair car ($2500). | a) own sworn evidence  
b) written quote  
c) affidavit of repairer  
d) receipts for towing |
| 4. Sent letter of demand on 21 October 2013. | a) copy of letter of demand |
Evidence allowed in court can include:

- verbal evidence (statements in the witness box) from you or your witnesses (the court prefers this form of evidence)
- documents like repair bills, receipts and quotes
- photographs (for example, of your car after the accident).

**Organise your witnesses**

Make sure your witnesses are available for court and have them meet you at least 15 minutes before court time. Ask them to read their statements the day before, so the evidence they may give is fresh in their minds. If they have never been to court before, let them know you and the other person will ask them questions.

Your witnesses could include:

- anyone who saw the accident
- the mechanic who gave you the quote to repair your car or who did the work repairing the vehicle
- the loss assessor who gave the valuation.

If a witness cannot come to the hearing but is willing to give evidence, you should get legal advice. Usually, all witnesses are required by the court to attend personally.
If any of your witnesses do not want to provide evidence, you can force them to do so by requesting a subpoena. A subpoena is a court order that requires a person to appear in court to give evidence or produce documents.

To organise a subpoena, lodge these forms with the court:

1. *Request for subpoena* (see sample on page 83)
2. *Subpoena to give evidence* or
3. *Subpoena for production* (see sample on pages 84 to 85).

You would only use a *Subpoena for production* if you wanted your witness to bring documents to support your case, like a quotation for repairs, photographs of the accident scene or damage done to your car.
The hearing

What should I do on the day of the hearing?

Before you arrive

• Find out the address of the court and check the location on a map.
• Organise transport to the court, allowing time to arrive half an hour before the hearing starts.
• Practise what you will say before the magistrate.
• Dress neatly.
• Bring all of your documents about the case including affidavits, quotes or receipts for repairs, photos etc.
• Bring a pen and note paper.

When you arrive

• Meet any witnesses who are coming to the court to provide evidence for you.
• Wait with your witnesses for your hearing outside the court room.
• You will be called into the hearing room when the magistrate is ready to begin. Witnesses wait outside the room until they are called.

When you are called

• Speak clearly and follow the magistrate's instructions.
• Address the magistrate as “Your Honour”.
• The magistrate will ask if there is any chance you and the other person could reach an agreement about the dispute. If there is a chance, you will be left to negotiate privately.
• If you reach an agreement, the magistrate will record the terms of the agreement.
• If you cannot reach an agreement, the hearing will continue in front of the magistrate.
What happens at the hearing?

Before anyone provides evidence to the court, they will be asked to swear an oath on a holy book or affirm (promise) to tell the truth. It is a crime to give false evidence.

When giving evidence, it is important to make sure what you say is relevant and to the point. Present your case in a business-like manner. Even though you might be upset or nervous about the situation, emotional outbursts will not help your case so try to keep calm.

1. The plaintiff tells their story and gives their evidence

The magistrate will invite the plaintiff to tell their side of the story. If the plaintiff has a lawyer, their lawyer will ask questions of the plaintiff. The magistrate may ask questions at any time during the hearing.

When the plaintiff has finished giving evidence, the magistrate will ask the defendant or their lawyer if they have any questions to ask the plaintiff.

2. The plaintiff’s witnesses give their evidence

The plaintiff’s witnesses will be called into the room one at a time to tell their story under oath. If the plaintiff has a lawyer, their lawyer will ask questions of the witnesses. The magistrate may ask questions at any time during the hearing.

When the plaintiff’s witnesses have finished giving evidence, the magistrate will ask the defendant or their lawyer if they have any questions to ask the witnesses.

3. The defendant tells their story and gives their evidence

Now it is the defendant’s turn to tell their side of the story under oath. If the defendant has a lawyer, their lawyer will ask questions of the defendant. As before, the magistrate may ask questions at any time.

When the defendant has finished presenting their side of the story, the magistrate will invite the plaintiff or their lawyer to question the defendant.
Even if you disagree with what the other person is saying, do not interrupt. Take notes about anything you disagree with, so you can raise these issues when it is your turn to again question the other person.

4. The defendant’s witnesses give their evidence

The defendant’s witnesses are then called into the hearing room one at a time to give their evidence. If the defendant has a lawyer, their lawyer will ask questions of the witnesses. Again, the magistrate may question the witnesses at any time while they provide their evidence.

When the defendant or the defendant’s lawyer and the magistrate have finished questioning the defendant’s witnesses, the plaintiff or the plaintiff’s lawyer may question them.

5. Each party can make ‘submissions’ to the magistrate

A submission is a summary of the main points of your case and any weaknesses in the other party’s case. At the end of your submission you ask the magistrate to make orders in your favour.

You are trying to convince the magistrate that your case is the stronger one.

The defendant tells their side of the story.
The magistrate’s decision

The magistrate will make their decision after they have heard both sides of the story and listened to the evidence from witnesses. The magistrate may agree with the plaintiff’s claim, agree with the defendant, or decide only part of the claim must be paid for.

The magistrate will make an order explaining how much has to be paid (this may happen immediately or at a later date). The person who does not win their case may be ordered to pay all or some of the other person’s legal costs.

What if I don’t agree with the decision?

If you disagree with the magistrate’s decision and want to appeal the decision you should get legal advice quickly. You will only have a short amount of time to lodge appeal documents.

You will have to apply to the district court for permission to appeal the decision. A lawyer will explain how to start the appeal process when you get legal advice about your case.

What if they don’t pay me?

If you have trouble being paid after the magistrate has made an order, you should contact:

- Legal Aid Queensland on 1300 65 11 88 for free legal information and advice
- a lawyer or
- a community legal centre.
Sample documents and forms

Queensland Civil and Administrative Tribunal forms
Forms are available from the Queensland Civil and Administrative Tribunal (or your local courthouse outside the Brisbane metropolitan area).
Sample 1  Application for minor civil dispute – consumer dispute form
Sample 2  Loss adjuster’s affidavit
Sample 3  Repairer’s affidavit
Sample 4  Affidavit of service

Magistrates court forms
Forms are available from your local courthouse.
Sample 5  Magistrates court claim
Sample 6  Statement of claim
Sample 7  Request for default judgment
Sample 8  Plaintiff’s affidavit
Sample 9  Repairer’s affidavit
Sample 10  Default judgment
Sample 11  Affidavit of service
Sample 12  Notice of intention to defend
Sample 13  Defence and counterclaim
Sample 14  Answer to the counterclaim
Sample 15  List of documents
Sample 16  Request for subpoena
Sample 17  Subpoena for production
Note:

- These are sample forms to give you an idea of the information you might need to put in. Do not copy the information on the sample forms. Use them as a guide only and put in the information about your situation.
- You will not need to use all these forms. Only use the ones that apply to you.
- If you need help filling in any forms, call Legal Aid Queensland on 1300 65 11 88.
- Type your answers or write neatly in black or blue pen.
- Make sure the information you use is correct and always double-check the spelling of the names of other people involved.
- The QCAT sample forms are based on the following scenario:

“Jane Wright was driving along White Street towards the intersection with Black Street. Jane was in her Mitsubishi Magna, registration number ABC246.

As Jane approached the intersection, a green Ford sped up and ran a red light on Black Street. The Ford, registration number XYZ890, was driven by George Getz. George’s Ford collided head on with the front of Jane’s Mitsubishi Magna.

Jane’s Magna sustained $2500 damage and she paid $200 to have her car towed. The speed limit was 60 km/h.”
Sample 1: Application for minor civil dispute – consumer dispute form

Form Number 1 (version 3)
Queensland Civil and Administrative Tribunal Act 2009 (section 33)

Application for minor civil dispute – consumer dispute

Refer to attached instructions prior to filling out this form.

For office use only

Case number:
Date filed:
Registry:
Fee paid:
Receipt number:

PART A  APPLICANT’S DETAILS

APPLICANT’S DETAILS

Name
Mrs Jane Margaret Wright

Address
200 Tanith Avenue
Redwood QLD
Postcode 4350

Contacts
(07) 3923 8300

INFORMATION FOR RESPONDENTS

You cannot file a formal response to this application however you may file written submissions in the tribunal attaching copies of any documents upon which you wish to rely. You must also give a copy of your submissions and any attachments to the other party as soon as possible after it has been filed.

You may also file a counter-application against the applicant to this application or against another person. Counter-applications must be made in the Form 8 - minor civil disputes - counter-application and lodged with the tribunal.

Application for minor civil dispute – consumer dispute – page 1 of 4

For more information on QCAT, Call 1300 733 226 or visit www.qcat.qld.gov.au
Application for minor civil dispute – consumer dispute form cont’d

**PART A APPLICANT’S DETAILS**

**Representative’s details (if applicable)**
- [ ] Tick if you want this to be your address for notices
- [ ] Tick if you want your representative to represent you in proceedings before the tribunal. (see Part A of the instructions – you may be required to seek the tribunal’s leave for this to happen by making an application under the Form 56 - Application for leave to be represented. The tribunal may not give you leave to be represented.)

**Name**

**Address**

**Contacts**

- Preferred phone number
- Alternative number
- Email

**Postcode**

**PART A RESPONDENT’S DETAILS**

**RESPONDENT’S DETAILS**

**Name**

Mr George Getz

**Address**

5 Norman Road

Redwood QLD

**Postcode**

4350

**Contacts**

- (07) 3322 5399
- Email

**PART B GENERAL DISPUTE DETAILS**

1. **What are you seeking?** Tick applicable and insert amount. If ticked, please include details in Part C below:

- [ ] payment of money to me
- [ ] refund of money to me
- [ ] repair from payment of money by me
- [ ] return of goods
- [ ] rectification of work
- [ ] costs of transporting a motor vehicle to the respondent if claimable
- [ ] payment of the filing fee for this application

**TOTAL**

$2,601.40

Application for minor civil disputes – consumer dispute – page 2 of 4

For more information on QCAT, call 1300 253 228 or visit www.qcat.qld.gov.au

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Have you been in an accident? A guide to help you work out who pays for the damage
Application for minor civil dispute – consumer dispute form cont’d

**PART C** DETAILS OF WHAT YOU SEEK FROM THE TRIBUNAL
If there is insufficient space here, please attach additional pages.

1. I want the tribunal to make the following order(s):
   Insert orders sought in numbered paragraphs.
   The respondent is to pay the claimant $2801.40 being $2500.00 for repairs to my vehicle, $200.00 in towing fees and the $101.40 filing fee.

2. The reason I am seeking orders from the tribunal
   Outline the basis for your claim, including details of any agreement or contract and attach the documents you seek to rely on. Please refer to the instructions for completing this form for assistance with what information may be required.
   See attached
Have you been in an accident? A guide to help you work out who pays for the damage

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**PART D  CHECKLIST AND SIGNATURE**

- I have completed all questions on the application form according to the instructions
- I have provided the correct number of copies of the application form and attachments (for the number of copies required – see the instructions)
- I have paid the prescribed fee
- I am ready to proceed with this application

**INTERPRETER**

*Is an interpreter required? The assistance of an interpreter is subject to approval by the tribunal.*

- [ ] Yes
- [x] No

*If YES, please specify language*

**WARNING**

Section 216 of the Queensland Civil and Administrative Tribunal Act 2009 makes it an offence for a person to knowingly give the registry documents containing false or misleading information. Maximum penalty for such an offence – 100 penalty units.

**SIGNATURE**

The information in this application is true to the best of my knowledge.

*Jane Wright*

Applicants sign here

[ ] Date

If more than one applicant is named all must sign the application.

---

For more information on QCAT, call 1300 253 226 or visit www.qcat.qld.gov.au
Attachment

- The accident happened at 9.30am on Saturday 1 October 2013, at the intersection of Black Street and White Street, Redwood, Toowoomba.
- I, Jane Wright, was driving a 2008 Mitsubishi Magna sedan, registration number ABC246. I am the owner of the car.
- The other car was a Ford Falcon sedan, registration number XYZ890.
- I was travelling along White Street towards the intersection with Black Street at Redwood.
- The traffic lights facing me were green and I proceeded across the intersection. I was just at the halfway point when a Ford Falcon coming from Black Street hit my car on the left-hand side.
- My car had damage to the front bumper and lights.
- I believe that George Getz was speeding and disobeyed a red light traffic signal.
- I also believe that George Getz did not keep a proper lookout otherwise he would have been able to avoid the accident.
- I was quoted $2500 by Tom’s smash repairs. I am claiming $2500 plus towing costs of $200.

(OR The cost of repairs to my car would exceed the value of the car. My car was valued at $2700, less salvage value of $200 by Smart Insurance and Loss adjusters. I also had towing costs of $200.)
Have you been in an accident? A guide to help you work out who pays for the damage

Instructions for completing

Application for minor civil dispute – consumer dispute

Use this form if your claim is not more than $25,000 and is
- Between a consumer and a trader about goods or services;
- Between traders about goods or services
- A dispute about property damage caused by a motor vehicle incident; or
- A dispute about the repair of a defect in a motor vehicle.

A “consumer dispute” is between a consumer and a trader, or between traders.

Consumer and trader disputes involve disputes against trader arising out of a contract for the supply of goods or services, valued up to and including $25,000.

For example:
- Goods include food, clothes, appliances and furniture;
- Services include repairing a defect in a motor vehicle, car maintenance, meals served in restaurants and a haircut by a hairdresser.

However, your dispute may be a debt dispute not a consumer and trader dispute, if it is about a fixed or agreed sum of money valued up to and including $25,000 e.g. a debt resulting from overcharging branches an ICU or money lent and not repaid. If your dispute is for an agreed sum of money you may need to complete the Form 3 – application for minor civil dispute – minor debt. For more information visit www.qcat.qld.gov.au or call 1300 753 229.

Who is a trader?

Please refer to the definition of “trader” in the Queensland Civil and Administrative Tribunal Act 2009.

A trader is a person who in trade or commerce has a business that supplies goods or provides services. However, a trader is not a person who supplies goods or provides services if that work is not ordinarily regarded as being within trade or commerce. Examples of persons who are not within the definition of traders are lawyers, dentists, valuers, podiatrists or professional town planning consultants.

HOW TO COMPLETE FORM 1 – APPLICATION FOR MINOR CIVIL DISPUTE – CONSUMER DISPUTE

Copies of the application and providing copies to other parties

When lodging your original application and any attachments, you must also provide two copies of all of the documentation being lodged and a stamped, self-addressed envelope. If there is more than one respondent, you must include an extra copy of the application form and attachments for each additional respondent.

The tribunal will return sealed copies to you, at the address you provide.

Generally, you must then give a copy of the application to all parties to the proceeding as soon as practicable, and no later than seven (7) days after the application is filed.
Instructions for completing (continued)

Applications may be lodged in person or by post

By post: QCAT, GPO Box 1839, Brisbane QLD 4001

If you are posting your original application and copies to QCAT, you need to include a stamped self-addressed A4 envelope with your application.

In person: QCAT, Level 9, Bank of Queensland Building, 259 Queen Street, Brisbane QLD 4000, or at any Magistrates Court outside of the Brisbane CBD.

To find your nearest Magistrates Court, look under “Justice and Attorney-General” in the phone book or visit www.courts.qld.gov.au. For more information visit www.qcat.qld.gov.au or call 1300 753 228.

Applications must be accompanied by the prescribed application fee

For more information on QCAT fees visit www.qcat.qld.gov.au. Payment can be made by cash, cheque (payable to Department of Justice and Attorney-General), money order or credit card payment authorisation (see Credit card payment authorisation form – MasterCard and Visa accepted).

PART A – APPLICANT AND RESPONDENT DETAILS

- More than one applicant or respondent can be named in an application.
- If there is insufficient space for the names of either applicant or respondent, you may attach additional pages with similar details.

If the applicant or respondent is not an individual then the correct name must be used e.g. a company name, a business name (whether it is registered or not) or the name of a State agency or department. You must also state the correct ABN/ACN for the company or business name. Please refer to the tribunal’s factsheet “How to identify and name the parties in QCAT” available at www.qcat.qld.gov.au.

Your address will be the address at which documents are given or sent to you, unless you indicate your representative’s address as your address for notices. If you change your address, you must file in the tribunal and serve on all other parties a notice of change of contact details form.

Representative’s details

If you want your representative’s address as the address for notices, please complete your representative’s details. If you want your representative to represent you in any proceedings before the tribunal you must complete the form Form 56 - Application for leave to be represented. Generally the tribunal expects people to represent themselves. The decision regarding representation will be decided by the tribunal.

You are not required to seek leave to be represented if:
- you are a child or a person with impaired capacity;
- relevant laws state that you may be legally represented.

COMPLETING PART B – GENERAL DISPUTE DETAILS

Please tick the relevant boxes and provide details.
Instructions for completing (continued)

COMPLETING PART C – DETAILS OF WHAT YOU SEEK FROM THE TRIBUNAL

You must outline what orders you want the tribunal to make and what the dispute is about. Complete Part C by outlining your claim, the brief facts of the matter and why you want the tribunal to make the orders you seek. Refer to the information below for guidance about what information the tribunal needs to make a decision about your application.

DISPUTES ABOUT GOODS OR SERVICES

You may make an application if:

• you are a consumer who feels that a trader has not treated you in the way that was agreed;
• you are a trader who disputes a spoken or written agreement with another trader who has provided goods or services.

Proving your case - you will need to provide details of your claim to the tribunal.

For disputes about goods:

• write the date of your written or oral agreement with the respondent, for example, the date you bought the goods
• describe the goods (give the brand name, model number, serial number, registered number, size, quality, etc.)
• write how much you agreed to pay, including any trade-in
• write the date the goods were delivered
• write the date you paid the amount and the date you delivered the trade-in to the respondent
• write what was said by the respondent about the quality of the goods or the way they would perform. Who made the statements? What was their position in the company or business?
• briefly describe the problems you have had with the goods
• explain any repairs, and how much they cost – the amount will be the amount of your claim. Attach any written invoices/quotes or receipts
• explain what must be done to correct the problems or faults, attach any written quotes or reports
• if the goods cannot be repaired, set out how much it will cost to replace them and attach a written quote

For disputes about services:

• write the date of your written or oral agreement with the respondent, for example the date you accepted the quote
• briefly describe the services the trader agreed to provide
• write the amount you agreed to pay
• write the date on which the trader provided the services
• write the date and amount you paid
• briefly describe the problems you have had with the services
• explain any problems, and how much they cost to fix – the amount will be the amount of your claim. Attach any written invoices/quotes or receipts
• explain what must be done to correct the problems or faults, attach any written quotes or reports
• if the problems cannot be fixed, mention how much it will cost to replace the services and attach a written quote

For more information on QCAT, Call 1300 725 226 or visit www.qcat.qld.gov.au
Application for minor civil dispute – consumer dispute form cont’d

Instructions for completing (continued)

FOR A DISPUTE ABOUT THE REPAIR OF A DEFECT IN A MOTOR VEHICLE
You may make an application for the repair of a defect in a motor vehicle which is under a statutory warranty.

Proving your case - you will need to provide details of your claim to the tribunal.
- write the date that the motor vehicle was bought
- write the make and model of the vehicle, and the year it was manufactured
- write the odometer reading at time of purchase
- attach a copy of the defect notice that was given to the respondent, and write the date that the defect notice was given
- write how far away (the distance in km) the respondent resided or had their place of business from your residence or place of business and the costs of transporting your vehicle to the respondent
- if the respondent refused to accept the motor vehicle, write the date of refusal
- indicate whether the vehicle was repaired within 14 days of the respondent accepting the motor vehicle
- indicate whether the defect has not been repaired properly
- write the day that the respondent, or their nominated repairer, accepted the vehicle
- attach a copy of the repair invoice

FOR DISPUTES ABOUT PROPERTY DAMAGE CAUSED BY A VEHICLE
- write the time, date and place of the incident
- write the make and model of your vehicle (if applicable), the registration number and who was driving it at the time of the accident
- write the make and model of the respondent’s vehicle, the registration number and the name and address of the driver (and if appropriate, the name and address of the owner or employer)
- explain how the incident happened fully and simply and say what other driver did
- attach an extra sheet of paper to your claim and draw a sketch of what happened. Show street names, the location of traffic signs and lights, the number of traffic lanes, the position of traffic islands and double lines, and the position of each vehicle at the time of collision. Please mention if the driver was charged by the police with a traffic offence.
- write how much you were quoted for repairs and attach any quote(s). Obtain written quotes for both labour and parts – the amount of your claim should be the quote you think is reasonable. You will need to get a quote and affidavit from the repairer
- if the cost of repairs to your vehicle is more than the vehicle is worth, get a loss assessor/adjuster to give a written valuation of your vehicle before it was damaged. The loss assessor should also fill out an affidavit

PROVING YOUR CASE
Have you included a copy of all the relevant documents and evidence? You must include a copy of all the relevant documents that you want to use and rely on.

You must print out all electronic evidence

Sometimes evidence (such as photos or receipts) may be stored in an electronic device, such as a mobile phone, tablet or computer. Sometimes evidence may be stored on a CD or DVD. You must provide a printed copy of this evidence with your application if you wish to use and rely on it at the hearing. The Tribunal will not accept a CD or DVD for filing and will not consider evidence provided only in an electronic format.
Application for minor civil dispute – consumer dispute form cont’d

Instructions for completing (continued)

Witnesses

If you have a witness, that person should complete an affidavit setting out their evidence. You should provide this evidence before the hearing. Your witness may be required to answer questions at the hearing. If the witness cannot attend the hearing in person, they should be available by telephone.

Your Information

QCAT collects your contact details for the purposes of compliance with the Queensland Civil and Administrative Tribunal Act 2009 in relation to proceedings in QCAT. QCAT may contact you to seek your assistance in research to assist in the evaluation of the operation of QCAT. You are not obliged to participate in feedback or surveys. If you do participate no identifying particulars will be published. QCAT will not disclose your contact details or any other personal information to a third party unless required by law.
AFFIDAVIT

PART A: APPLICANT’S AND RESPONDENT’S DETAILS

Applicant
Jane Wright

Respondent
George Getz

PART B: CASE NUMBER (if known)


PART C: DETAILS OF AFFIDAVIT

I, Ken Bowen, Insurance Loss Adjuster of 22 Oats Street, Redwood, Toowoomba
MAKE ON OATH AND SAY AS FOLLOWS:
1. I am 32 years old and have worked as an insurance loss adjuster for eight years.
2. I am employed by Smart Insurance and Loss Adjusters at 63 Queen Street, Redwood.
3. On 6 October 2013, at the request of Jane Wright, I inspected a Mitsubishi Magna registered
   number ABC246, which had damage consistent with being involved in a collision.
4. In my opinion, the vehicle was damaged beyond economic repair.
5. A pre-accident market value of the vehicle was $2700 and the most favourable salvage value
   if it is sold as a wreck would be $200.

PART D: SIGNATURE

Sworn (or affirmed) by:

(insert full name)
Ken Bowen

on

(insert date)
28-01-2014

at

(insert place)
Toowoomba

in the presence of:

Ken Bowen
Person making affidavit to sign

Damian Davids
Person taking affidavit to sign

Ken Bowen
Print name

Commissioner for declarations/solicitor/justice of the peace.
**Sample 3: Repairer’s affidavit**

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**AFFIDAVIT**

**PART A: APPLICANT’S AND RESPONDENT’S DETAILS**

*Applicant*

Jane Wright

*Respondent*

George Getz

**PART B: CASE NUMBER (if known)**


**PART C: DETAILS OF AFFIDAVIT**

I, Tom Jones, Panel Beater of 149 Hughes Street, Redwood, Toowoomba, make on oath and say as follows:

1. I am 40 years old and have worked as a panel beater for 12 years.
2. I have run my own business, Tom’s Smash Repairs, for the past 10 years.
3. On 3 October 2013, at the request of Jane Wright, I inspected a Mitsubishi Magna registered number ABC246, which had damage consistent with having been involved in a collision.
4. I provided Jane Wright with a quote to fix the damage. I quoted $2500 in total. That quote is Attachment A to this Affidavit.
5. I consider the amount set out in the quote for repairs were fair and reasonable at the time.
6. On 7 November 2013 I repaired the damage to the Mitsubishi magna at Jane Wright’s request at the agreed price of $2500.

**PART D: SIGNATURE**

Sworn (or affirmed) by:

(insert full name) Tom Jones

on

(insert date) 28-01-2014

at

(insert place) Toowoomba

in the presence of:

Tom Jones

*Person making affidavit to sign*

Damian Davids

*Person taking affidavit to sign*

---

*Commissioner for declarations/solicitor/justice of the peace.*
Sample 4: Affidavit of service

Affidavit of service

Refer to attached instructions prior to filling out this form.

Please note that this is an affidavit. Each of the following pages must be signed by the person making the affidavit in the presence of a qualified witness (the person taking the affidavit).

For office use only

Case number:
Date:
Registry:

PART A  APPLICANT’S AND RESPONDENT’S DETAILS

Case number (if known):

Applicant
Jane Wright

Respondent
George Getz

Affidavit of service – page 1 of 5

For more information on QCAT, call 1300 753 226 or visit www.qcat.qld.gov.au
PART B DETAILS OF SERVICE

1. Kylie Wong

(insert full name of person making affidavit)

Of (insert residential or business address, or place of employment)

10 Stanley Place, Toowoomba, QLD

Postcode 4350

I state on oath / solemnly and sincerely affirm and declare:

On the 23 / 11 / 2013 at 8:00 AM am / pm,

I served George Getz

(insert name of person or entity served)

a copy of Application for minor civil dispute – consumer dispute

(insert name of documents)

filed on 21 / 11 / 2013 at the Queensland Civil and Administrative Tribunal

Toowoomba Magistrates Court, 159 Hume Street, Toowoomba

(insert tribunal address)

as follows: (For personal service please complete part B1, for other service please tick relevant boxes in parts B2 and B3)

PART B1 PERSONAL SERVICE

Note: personal service is required for applications for minor civil dispute - minor debt claims.

1. I delivered the copy to ☑ him ☐ her ☐ them

Personally at (insert address)

9 Norman Road, Redwood

Postcode 4350

2. I identified the person served by asking him “are you George Getz?”, to which he replied, “Yes I am”

(insert means of identification)

K. Wong

Person making affidavit to sign

Damian Davids

Person taking the affidavit to sign (qualified witness)

For more information on QCAT, call 1300 753 226 or visit www.qcat.qld.gov.au
PART B3 OTHER SERVICE (continued)

- I emailed the copy to the email address that was included in the entity’s address for service.
  
  (insert email address)

- I electronically transmitted the copy to the non-fax or email electronic address that was included in the entity’s address for service (e.g. via a website).
  
  (insert electronic address)

- I left the copy with a person (insert name) who is apparently an adult and apparently residing or employed at the entity’s address for service, namely (insert address) and Postcode.

- I left the copy with a person (insert name) who is apparently an adult and apparently residing or employed at the address in accordance with the service practice direction at which documents may be left with a person in circumstances where the entity does not have an address for service, namely (insert address) and Postcode.

- I served the copy in another way in accordance with the service practice direction, namely (insert method of service).

- I served the copy in accordance with the tribunal’s direction, namely by (insert method of service).

- I otherwise served the copy in accordance with an Act, namely by (insert name of Act) and (insert method of service).

K. Wong
 Person making affidavit to sign

Damian Davids
 Person taking the affidavit to sign (qualified witness)
### Affidavit of service cont’d

#### PART C DOCUMENT SERVED

One of the following must apply, please tick as appropriate:

- [x] I have attached to this affidavit a copy of the document served, or
- [ ] I have already filed the document which is named above in Part B.

#### PART D INTERSTATE SERVICE

This part only applies if you served the document interstate. Tick as applicable.

- [ ] I did attach the notice under the Service and Execution of Process Act 1992 (Commonwealth) to the document.
- [ ] I did not attach the notice under the Service and Execution of Process Act 1992 (Commonwealth) to the document.

**Warning**

Section 216 of the Queensland Civil and Administrative Tribunal Act 2009 makes it an offence for a person to knowingly give the registry documents containing false or misleading information. Maximum penalty for such an offence — 100 penalty units.

#### SIGNATURE

Sworn (or affirmed) by *(insert full name)*

- **Kylie Wong**

on 23/11/2013 at *(place)*

in the presence of:

- **K. Wong**
- **Damian Davids**

**Person instructing affiant to sign**

**Person taking the affidavit to sign (qualified witness)**

**Damian Davids (UP)**

Print name *(commissioned for declarations, solicitor, justice of the peace)*
Instructions for completing

Affidavit of service

Use this form where you are seeking, or are required, to prove that you have provided a copy of a document to another party.

Default decisions
Where you are applying for a decision in default of a response by a respondent you will need to prove that you have provided a copy of your application to the respondent. You may complete this affidavit, or in some cases you may complete the affidavit in the application for decision by default (for example, the Form 6 – application for decision by default – minor debt).

Interstate service
If the respondent resides in another state or territory you will need to provide an additional notice to the respondent, as required by the Service and Execution of Process Act 1992 (see also Practice Direction 2 of 2014). The notice is available on the QCAT website at www.qcat.qld.gov.au.

Where to lodge your Affidavit of Service
The Affidavit of Service must be lodged in the QCAT registry where the application that started the proceeding was lodged.

By post: QCAT, GPO Box 1639, Brisbane QLD 4001
If you are posting your original response and/or counter-application and copies to QCAT, you need to include a stamped self-addressed A4 envelope with your material.

In person: QCAT, Level 6, Bank of Queensland Building, 259 Queen Street, Brisbane QLD 4000, or at any Magistrates Court outside of the Brisbane CBD.

For more information visit www.qcat.qld.gov.au or call 1300 753 228.

PART B DETAILS OF SERVICE
Refer to the Queensland Civil and Administrative Tribunal Rules 2009 and the tribunal’s practice directions for service requirements available at www.qcat.qld.gov.au.

Insert your full name and residential or business address or place of employment.

If the entity served is not an individual then the correct name must be used. For example, a company name, business name (regardless of whether it is registered) or a State agency name. For further information you can refer to the tribunal’s factsheet How to identify and name parties in QCAT available at www.qcat.qld.gov.au.

If you are serving an application for a minor debt claim you must deliver the copy to an entity personally and in a way that complies with QCAT’s practice direction on service. Practice Directions are available at www.qcat.qld.gov.au.
Affidavit of service cont’d

SIGNATURE
Please sign in the presence of a person who is authorised by the Oaths Act 1867 to take an affidavit:
(a) a justice, commissioner for declarations or notary public under the law of Queensland, the
Commonwealth or another State,
(b) a lawyer,
(c) a conveyancer, or another person authorised to administer an oath, under the law of the
state, the Commonwealth or another state,
(d) if the affidavit is taken outside Australia — a person authorised to administer an oath under
the law of the place in which the affidavit is taken.

Each page must be signed in the presence of a qualified witness.
A qualified witness includes a lawyer, Justice of the Peace or a Commissioner for Declarations.

Your information
QCAT collects your contact details for the purposes of compliance with the Queensland Civil and
Administrative Tribunal Act 2009 in relation to proceedings in QCAT. QCAT may contact you to seek your
assistance in research to assist in the evaluation of the operation of QCAT. You are not obliged to participate
in feedback or surveys. If you do participate no identifying particulars will be published. QCAT will not
disclose your contact details or any other personal information to a third party unless required by law.
Sample 5: Magistrates court claim

MAGISTRATES COURT OF QUEENSLAND

REGISTRY: Toowoomba
NUMBER: M123456 of 2013

Plaintiff: JANE WRIGHT

AND

Defendant: GEORGE GETZ

CLAIM

The Plaintiff claims: Two thousand, seven hundred dollars ($2700) plus costs.

The plaintiff makes this claim in reliance on the facts alleged in the attached Statement of Claim.

ISSUED WITH THE AUTHORITY OF THE MAGISTRATES COURT OF QUEENSLAND:

And filed in the Toowoomba Registry on 21/11/2013

Registrar:

To the defendant/s: TAKE NOTICE that you are being sued by the plaintiff in the Court. If you intend to dispute this claim or wish to raise any counterclaim against the plaintiff, you must within 28 days of the service upon you of this claim file a Notice of Intention to Defend in this registry. If you do not comply with this requirement judgment may be given against you for the relief claimed and costs without further notice to you. The Notice should be in Form 6 to the Uniform Civil Procedure Rules. You must serve a sealed copy of it at the plaintiff’s address for service shown in this claim as soon as possible.

Address of Registry: Hume Street, Toowoomba, Qld, 4350

If you assert that this Court does not have jurisdiction in this matter or assert any irregularity you must file a Conditional Notice of Intention to Defend in Form 7 under Rule 144, and apply for an order under Rule 16 within 14 days of filing that notice.

CLAIM
Filed on behalf of the plaintiff
Form 2 – Rule 22
Uniform Civil Procedure Rules 1999

Jane Wright
200 Tenth Avenue
Redwood Qld 4350
Telephone: 07 3238 300
Facsimile:
If you object that these proceedings have not been commenced in the correct district of the Court, that objection must be included in your Notice of Intention to Defend.

PARTICULARS OF THE PLAINTIFF:

Name: Jane Wright
Plaintiff’s residential or business address: 200 Tenth Avenue
                                           Redwood Qld 4350

Solicitor’s name:
and firm:
Solicitor’s business address:
Adress for service:
DX (if any)
Telephone: 07 3238 300
Fax:
E-mail address (if any):

Plaintiff’s telephone or contact number:
Plaintiff’s fax number (if any):
Plaintiff’s e-mail address (if any):

Signed: J Wright
Description: Plaintiff
Dated: 21/11/2013

This claim is to be served on: George Getz
of: 9 Norman Road, Redwood Qld 4350
Sample 6: Statement of claim

MAGISTRATES COURT OF QUEENSLAND

REGISTRY: Toowoomba
NUMBER: M123456 of 2013

Plaintiff: Jane Wright

AND

Defendant: George Getz

Filed in the Toowoomba registry on 21/11/2013

STATEMENT OF CLAIM

This claim in this proceeding is made in reliance on the following facts:

1. At all material times:
   (a) the plaintiff was the owner of a Mitsubishi Magna registration ABC246.
   (b) the defendant was the owner and driver of a Ford Falcon registration XYZ890.

2. On 1 October 2013, at about 9.30am at the intersection of Black and White Streets, Redwood, Queensland, the vehicle owned and driven by the defendant, registration XYZ890, collided with the front of the plaintiff’s vehicle, registration ABC246.

3. The collision was caused solely by the negligence of the defendant. The driver’s negligent behaviour included:
   (a) failing to keep a proper lookout
   (b) failing to take evasive action in the circumstances
   (c) failing to steer or control their vehicle to avoid the collision
   (d) failing to apply the brakes on their vehicle to avoid the collision
   (e) failing to sound any warning of the approach of their vehicle
   (f) driving at an excessive speed in the circumstances
   (g) disobeying a red light and entering an intersection.

4. As a result of the defendant’s negligence, the plaintiff has suffered loss and damage.

Jane Wright
200 Tenth Avenue
Redwood Qld 4350
Telephone: 07 3238 300
Facsimile:

Form 16 – Rules 22 and 146

Uniform Civil Procedure Rules 1999

Have you been in an accident? A guide to help you work out who pays for the damage
The plaintiff claims the following relief:

PARTICULARS OF LOSS AND DAMAGE —

Repair to vehicle $2500 and towing fee of $200, total $2700.

The plaintiff also claims the sum of $2700 against the defendant, together with interest under the Supreme Court Act 1995 and costs.

Signed: J Wright
Description: Plaintiff
Dated: 21/11/2013

NOTICE AS TO DEFENCE

Your defence must be attached to your notice of intention to defend.
Sample 7: Request for default judgment

MAGISTRATES COURT OF QUEENSLAND

REGISTRY: Toowoomba
NUMBER: M123456 of 2013

Plaintiff: Jane Wright

AND

Defendant: George Getz

REQUEST FOR DEFAULT JUDGMENT

The plaintiff requests the registrar to enter a judgment in default as the defendant has not filed a Notice of Intention to Defend in response to this claim.

The claim was served on the defendant on 23/11/2013 as shown by Kylie Wong affidavit filed on 23/12/2013.

The claim is for unliquidated damages. The plaintiff requests judgment conditional on the damage assessment and asks the court to assess the damages.

No Notice of Intention to Defend has been served at the address for service of the plaintiff.

The repair costs claimed by the plaintiff have not been paid, as shown in Jane Wright’s affidavit, filed with this request.

The plaintiff also claims costs prescribed and made up of the following:
Filing fee for Statement of claim of $205.20
Service fee of $42.40

Signed: J Wright

Description: Plaintiff

Dated: 23/12/2013

REQUEST FOR DEFAULT JUDGMENT
Filed on behalf of the plaintiff
Form 25 – Rules 283–287 and 289
Uniform Civil Procedure Rules 1999

Jane Wright
200 Tenth Avenue
Redwood Qld 4350
Telephone: 07 3238 360
Facsimile:
Sample 8: Plaintiff’s affidavit

MAGISTRATES COURT OF QUEENSLAND
REGISTRY: Toowoomba
NUMBER: M123456 of 2013

Plaintiff: Jane Wright

AND

Defendant: George Getz

AFFIDAVIT

I, Jane Wright, of 200 Tenth Avenue, Redwood, Queensland, administrator, state on oath:

1. I am the plaintiff in these proceedings.

2. I have not received any money from the defendant regarding my claim.

3. The defendant has not:
   - filed a Defence, or Notice of intention to defend, or Defence and counterclaim or Conditional notice of defence
   - paid into court the amount claimed and costs, or
   - filed a confession for the total amount claimed and costs.

4. The total amount of $2700 plus costs is justly due to the plaintiff and remains unpaid.

I swear/affirm the contents of this affidavit are true.

By Jane Wright on 23/12/2013
at Toowoomba in the presence of:

Jane Wright
Damien Davids (JP)

Deponent    Barrister/Solicitor/Justice of the Peace/Commissioner for Declarations

AFFIDAVIT
Filed on behalf of the plaintiff
Form 46 – Rule 431

Uniform Civil Procedure Rules 1999
Sample 9: Repairer’s affidavit

MAGISTRATES COURT OF QUEENSLAND

REGISTRY: Toowoomba
NUMBER: M123456 of 2013

Plaintiff: Jane Wright
AND
Defendant: George Getz

AFFIDAVIT

I, Tom Jones, of 149 Hughes Street, Redwood, Queensland, panel beater, state on oath:

1. I am the proprietor of Tom’s smash Repairers, 149 Hughes Street, Redwood, in Queensland and have been a panel beater for 12 years.

2. On 7 November 2013 I repaired a damaged Mitsubishi Magna, registration number ABC246, which I am informed is the property of the plaintiff in this action.

3. The work outlined in the account attached to this document (marked with the letter ‘A’) was necessary to repair the damage, and the amounts are a fair and reasonable charge for that work.

I swear/affirm the contents of this affidavit are true.

By Tom Jones on 28/11/2013
at Toowoomba in the presence of:

T Jones
Tom Jones
Deponent

Damien Davids
Barrister/Solicitor/Justice of the Peace/Commissioner for Declarations

AFFIDAVIT
Filed on behalf of the plaintiff
Form 46 – Rule 431
Uniform Civil Procedure Rules 1999

Jane Wright
200 Tenth Avenue
Redwood Qld 4350
Telephone: 07 3238 300
Facsimile:
Sample 10: Default judgment

MAGISTRATES COURT OF QUEENSLAND

REGISTRY: Toowoomba
NUMBER: M123456 of 2013

Plaintiff: Jane Wright

AND

Defendant: George Getz

JUDGMENT

Before:
Date:
Claim filed on:
The Defendant not having filed a Notice of Intention to Defend,

THE JUDGMENT OF THE COURT IS THAT the defendant pay to the Plaintiff damages to be assessed upon the Plaintiff’s Statement of Claim together with costs to be assessed, and that the damages be assessed by the court,

AND THAT the Defendant pay to the Plaintiff the amount of $2700.00 plus interest and costs.

This judgment is conditional on the value and damages being assessed.

Signed:................................
(registrar to sign and seal)

DEFAULT JUDGMENT
Filed on behalf of the plaintiff
Form 26 – Rules 283-287 and 289
Uniform Civil Procedure Rules 1999

Jane Wright
200 Tenth Avenue
Redwood Qld 4350
Telephone: 07 3238 300
Facsimile:
Sample 11: Affidavit of service

MAGISTRATES COURT OF QUEENSLAND

REGISTRY: Toowoomba

NUMBER: M123456 of 2013

Plaintiff: Jane Wright

AND

Defendant: George Getz

AFFIDAVIT

I, Kylie Wong of 20 Lawson Road, Toowoomba, process server, in the State of Queensland state on oath:-


2. I identified the Defendant by asking him “Are you George Getz?” to which he replied “yes”.

3. Attached is a true and correct copy of the Claim and Statement of Claim served on the Defendant.

All the facts and circumstances herein deposed to are within my own knowledge save such as are deposed to from information only and my means of knowledge and sources of information appear on the face of this my Affidavit.

Sworn by Kylie Wong on the 24th day of November 2013 at Toowoomba in the presence of:

K. Wong

Deponent

Kylie Wing

Damian Davids

Barrister/Solicitor/Justice of the Peace/Commissioner for Declarations

AFFIDAVIT

Filed on behalf of the plaintiff
Form 46 – Rule 431

Uniform Civil Procedure Rules 1999
MAGISTRATES COURT OF QUEENSLAND

REGISTRY: Toowoomba
NUMBER: M123456 of 2013

Plaintiff: Jane Wright

AND

Defendant: George Getz

NOTICE OF INTENTION TO DEFEND

TAKE NOTICE that the Defendant intends to defend this proceeding.

The facts relied upon by the Defendant are set out in the attached defence and counterclaim.

Filed in the Toowoomba Registry on 12/12/2013.

Registrar

PARTICULARS OF THE DEFENDANT:

Name: George Getz
Defendant’s address for service: 9 Norman Road, Redwood Qld 4350.
Defendant’s telephone number or contact number: 07 3238 339
Defendant’s fax number (if any): 
Defendant’s e-mail address (if any):

Signed: G Getz
Description: Defendant
Dated: 11/12/2013

NOTICE OF INTENTION TO DEFEND
Filed on behalf of the defendant
Form 6 – Rule 139

Uniform Civil Procedure Rules 1999
Sample 13: Defence and counterclaim

MAGISTRATES COURT OF QUEENSLAND

REGISTRY: Toowoomba
NUMBER: M123456 of 2013

Plaintiff: Jane Wright
AND
Defendant: George Getz

Filed in the Toowoomba registry on 12/12/2013

DEFENCE AND COUNTERCLAIM

The defendant relies on the following facts in defence of the claim:

1. The defendant admits the allegations in paragraphs 1 (a) and (b) and 2 of the statement of claim.

2. The defendant does not admit the allegations in paragraphs 3 and 4 of the statement of claim. The defendant has made reasonable inquiries and is uncertain whether the allegations made against them are true. The defendant is unable to admit fault because the plaintiff’s negligence also contributed to the circumstances leading to the claim. The defendant believes they cannot admit to the allegations because the plaintiff failed to keep a proper lookout, failed to see the defendant had already entered the intersection, drove at excessive speed and could not control her car to avoid the collision.

COUNTERCLAIM

This counterclaim is made by the first defendant against:

1. Jane Wright (the plaintiff)

This counterclaim is made in reliance on the following facts:

1. The plaintiff’s negligence contributed to the collision referred to in paragraph 2 of the plaintiff’s Statement of claim.

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DEFENCE AND COUNTERCLAIM
Filed on behalf of the defendant
Form 18 – Rule 179
Uniform Civil Procedure Rules 1999

George Getz
9 Norman Road
Redwood Gld 4350
Telephone: 07 3238 339
Facsimile:
Defence and counterclaim cont’d

2. The plaintiff:
   (i) cut across the path of an oncoming vehicle where it was unsafe to do so
   (ii) failed to take evasive action in the circumstances
   (iii) failed to give way
   (iv) failed to keep a proper lookout.

The Defendant claims the following relief:

Repair to vehicle: $3,179.25

Signed: G Getz
Description: Defendant
Dated: 11/12/2013

NOTICE AS TO REPLY AND ANSWER

To the plaintiff: You have 14 days to file and serve an answer to this counterclaim. If you do not do so, Rule 166 provides allegations of fact in the counterclaim are taken to be admitted by you unless denied or stated to be not admitted by you in a pleading.

Address of Registry: Hume Street, Toowoomba, Qld, 4350.

PARTICULARS OF THE DEFENDANT:

Name: George Getz
Defendant’s address for service: 9 Norman Road, Redwood Qld 4350.
Defendant’s telephone number or contact number: 07 3238 300
Defendant’s fax number (if any):
Defendant’s e-mail address (if any):

This claim is to be served on: Jane Wright, 200 Tenth Avenue, Redwood Qld 4350.
Sample 14: Answer to the counterclaim

MAGISTRATES COURT OF QUEENSLAND
REGISTRY: Toowoomba
NUMBER: M123456 of 2013

Plaintiff: Jane Wright
AND
Defendant: George Getz

ANSWER TO THE COUNTERCLAIM

The Plaintiff relies on the following facts in defence of the counterclaim:
(Note: if you are admitting an allegation, use the phrase ‘the plaintiff admits the allegation in paragraph...’)

1. The plaintiff denies the allegations in paragraphs 1, 2 (i), 2 (ii), 2 (iii), 2 (v) and 2 (vi) of the counterclaim and believes the allegations are untrue or cannot be admitted because the plaintiff was not negligent and was driving within the speed limit, and applied the brakes when the defendant’s vehicle was observed entering the intersection.

Signed: J Wright
Description: Plaintiff
Dated: 15/12/2013

NOTICE AS TO REPLY AND ANSWER

You have 14 days to file and serve a reply to this defence. If you do not do so, you may be prevented from adducing evidence in relation to allegations of fact made in this defence.
LIST OF DOCUMENTS

The following is a list of the documents directly relevant to the allegations or matters in question in this proceeding which are in the possession or control of the plaintiff and is served in compliance with the Uniform Civil Procedure Rules, Chapter 7, Part 1 [or the order dated the ..............day of..................].

1. The documents are listed in the schedule. Subject to Rule 216, you may request copies of documents. So far as copies have not been provided to you with this list, or previously, you may require inspection of the original documents under Rule 215.

It is inconvenient to deliver copies of the documents marked with the asterisk (*) in the Schedule. You may inspect them at 200 Tenth Avenue, Redwood Qld at the following time(s): Monday 22 February 2014, 9am until 11am and Tuesday 23 April 2014, 9am until 11am.

2. The plaintiff objects to produce the documents listed in part 2 of the schedule on the ground of privilege.
List of documents cont’d

-2-

SCHEDULE 1

Part 1

<table>
<thead>
<tr>
<th>No.</th>
<th>Description of document</th>
<th>Person who made document</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Court documents</td>
<td>Both parties</td>
<td>various</td>
</tr>
<tr>
<td>2</td>
<td>Correspondence and copies</td>
<td>Both parties</td>
<td>various</td>
</tr>
<tr>
<td>3</td>
<td>Copy of police report</td>
<td>Police Commissioner</td>
<td>30/10/13</td>
</tr>
<tr>
<td>4</td>
<td>Copy of repairers affidavit</td>
<td>Tom Jones</td>
<td>23/11/13</td>
</tr>
<tr>
<td>5</td>
<td>Copies of accident photos</td>
<td>Jane Wright</td>
<td>1/10/13</td>
</tr>
</tbody>
</table>

Part 2 - Documents for which privilege is claimed

<table>
<thead>
<tr>
<th>No.</th>
<th>Description of document</th>
<th>Person who made document</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

Signed: [Signature]

Description: Plaintiff

Dated: 27/03/2014
Sample 16: Request for subpoena

MAGISTRATES COURT OF QUEENSLAND

REGISTRY: Toowoomba
NUMBER: M123456 of 2013

Plaintiff: Jane Wright

And

Defendant: George Getz

REQUEST FOR SUBPOENA

TO: The Registrar of the Magistrates Court at Toowoomba

Please issue a subpoena for production

On behalf of: George Getz

Directed to: Director-General

of: Department of Main Roads
Level 13, Capital Hill Building
85 George Street, Brisbane

returnable before the magistrates court at:

Place: Hume Street, Toowoomba

Date: 30/04/2014

Time: 10am

Signed: G Getz

Description: Defendant

Dated: 28/03/2014

REQUEST FOR SUBPOENA
Filed on behalf of the defendant
Form 44 - Rule 44

Uniform Civil Procedure Rules 1999

Geoff Getz
9 Norman Road
Redwood Qld 4350
Telephone: 07 3238 339
Facsimile:
Sample 17: Subpoena for production

MAGISTRATES COURT OF QUEENSLAND

REGISTRY: Toowoomba
NUMBER: M123456 of 2013

Plaintiff: Jane Wright

And

Defendant: George Getz

SUBPOENA FOR PRODUCTION

TO: Director-General
Department of Main Roads
Level 13, Capital Hill Building
85 George Street, Brisbane

THE COURT ORDERS that you attend and produce this subpoena and the documents and things described in the schedule:
(a) before the Magistrates Court
(b) at Hume Street, Toowoomba
(c) on 30/04/2014 at ten o'clock in the morning and until you are excused from further attending.

SCHEDULE

1. All maps, plans and documentation current on 1 October 2013 in relation to the traffic signage at the intersection of Black Street and White Street, Redwood heading in an easterly direction.

TAKE NOTICE:

(1) failure to comply with this subpoena without lawful excuse is contempt of court and may result in your arrest.

SUBPOENA FOR PRODUCTION
Filed on behalf of the defendant
Form 41 - Rule 415(1) and 420
Uniform Civil Procedure Rules 1999

George Getz
9 Norman Road
Redwood Qld 4350
Telephone: 07 3238 339
Facsimile:
(2) you need not comply with this subpoena unless conduct money sufficient to meet your reasonable expenses of complying with the subpoena is paid, or tendered to you, not later than a reasonable time before the day on which you would be required to attend the Court.

(3) you have the right to apply to the court to have the subpoena set aside on any sufficient grounds including -
   - want of relevance
   - privilege
   - oppressiveness, including oppressiveness because substantial expenses may not be reimbursed, or
   - non-compliance with the Uniform Civil Procedures Rules.

(4) if you are not a party to these proceedings, instead of attending the court you or your agent may produce the documents and things described in the schedule to the Registry of the court from which the subpoena was issued, not later than the day before the day on which you are required to attend.

(5) if you are not a party to the proceeding and you incur substantial loss or expense in complying with this subpoena, you may apply to the Court for an order that the party who requested the issue of the subpoena pay to you an amount in addition to conduct money to compensate you for the loss or expense, including legal costs, incurred in responding properly to the subpoena.

ISSUED WITH THE AUTHORITY OF THE MAGISTRATES COURT OF QUEENSLAND:

Signed: B Caruso

Dated: 30/03/2014

Issued at the request of George Getz, the defendant.
Legal words and phrases explained

**Adjudicator** – The decision maker in the Queensland Civil and Administrative Tribunal. The adjudicator is a court officer, usually a registrar or magistrate.

**Affidavit** – A written statement made by a person to be used in a court. The person who makes an affidavit must swear under oath or make an affirmation that the contents are true. It is signed by a justice of the peace, commissioner of declarations or a lawyer. An affidavit is often used when a person is unable to come to the court and provide information or evidence in person.

**Affirm (affirmation)** – A spoken declaration where you promise to tell the truth when giving information or evidence to the court or writing it in an affidavit. You can make an affirmation if you do not want to swear an oath on a Bible or other sacred book.

**Claim and Statement of claim** – These are documents a person claiming damages files in the court to start legal action.

**Claimant** – A person who starts a claim in the Queensland Civil and Administrative Tribunal.

**Contributory negligence** – Where the accident was caused by both drivers (for example, one driver fails to give way and the other driver is speeding). Each person is then compensated according to the extent of the other’s negligence.

**Default judgment** – A judgment made because the defendant does not defend a court action.
**Defence and Notice of intention to defend** – If someone has made a claim against you and you disagree with their side of the story, you can lodge these documents to begin the process of defending yourself.

**Defendant** – A person who is defending themselves against legal action.

**Enforcement officer** – An officer of the court who takes action to ensure an order made in a court or tribunal by a judge, magistrate or adjudicator is followed.

**Evidence** – The proof needed to support your side of the story. Evidence is usually given verbally in court.

**Filing documents** – The process where documents are received and accepted by a court. The person filing the documents may need to pay a filing fee. Usually the court will stamp its seal on the filed document.

**Hearing** – Where evidence is given to the court from all people involved in a case and a decision is made.

**Legal costs** – These are the costs involved in taking a case to court. These can include the costs of lawyers and the cost of filing documents with the courts. Usually a court will order the person who loses a case to pay the other person’s legal costs.

**Letter of demand** – A letter that formally demands something from another person. It does not need to be in any particular form and does not need to be sent by a lawyer.

**Lodging documents** – see filing documents.

**Loss assessor** – Someone who can assess the damage done to a vehicle. They are usually a qualified panel beater.
Magistrate – The name for the decision maker in the magistrates court. In civil proceedings like this one, they decide who is responsible for the damages. You call the magistrate “Your Honour”.

Magistrates court – The magistrates court deals with civil claims up to $150,000.

Mediation – A dispute resolution process run by an independent third party who helps people to reach agreement through the process of discussion and negotiation without entering into the content of the dispute.

Negligence – This is when someone has not taken the proper care or paid enough attention to avoid causing damage to another person or their property.

Notice of hearing – A document telling you the date your matter will go to court.

Order – An order is made by the court requiring a person to do something (for example, pay damages).

Plaintiff – A person who starts a civil claim in court.

Process server – A person who delivers or ‘serves’ court documents by handing them to the person concerned.

Quantum – The total amount of your claim including the cost to repair your vehicle to the condition it was before an accident, plus any towing fees.

Queensland Civil and Administrative Tribunal (QCAT) – A tribunal dealing with disputes of $25,000 or less including motor vehicle property damage claims.

Rehearing – A second hearing for the same matter.

Respondent – A person who has had a claim made against them in the Queensland Civil and Administrative Tribunal.

Served – The process where a person is presented with official court documents.
**Subpoena** – A court order requiring a person to appear in court to give evidence or produce documents.

**Swear an oath** – A spoken promise where you swear on the Bible or other sacred book to tell the truth when you give evidence to the court.

**Trial** – A court hearing where all the evidence is presented and a final decision is made.

**Witness** – A person who saw or heard something about your case and is called to give this ‘evidence’ in court.

**Written-off** – When the cost of repairing your vehicle is more than it would be worth at wholesale (dealer’s) price if you sold it.
Your local Legal Aid Queensland office

BRISBANE
44 Herschel Street
BRISBANE Q 4000

BUNDABERG
3rd Floor
WIN Tower
Cnr Quay & Barolin Streets
BUNDABERG Q 4670

CABOOLTURE
Ground Floor
Kingsgate
42 King Street
CABOOLTURE Q 4510

CAIRNS
Level 2
Cairns Square Complex
42-52 Abbott Street
CAIRNS Q 4870

INALA
Level 1
Inala Commonwealth Offices
20 Wirraway Parade
INALA Q 4077

IPSWICH
Level 7, 117 Brisbane Street
IPSWICH Q 4305

MACKAY
Ground Floor
17 Brisbane Street
MACKAY Q 4740

MAROOCHYDORE
Ground Floor
M1 Building
1 Duporth Avenue
MAROOCHYDORE Q 4558

MOUNT ISA
6 Miles Street
MOUNT ISA Q 4825

ROCKHAMPTON
Ground Floor
35 Fitzroy Street
ROCKHAMPTON Q 4700

SOUTHPORT
1st Floor
100 Scarborough Street
SOUTHPORT Q 4215

TOOWOOMBA
1st Floor
154 Hume Street
TOOWOOMBA Q 4350

TOWNSVILLE
3rd Floor
Northtown
280 Flinders Street
TOWNSVILLE Q 4810

WOODRIDGE
1st Floor
Woodridge Place
Cnr Ewing Road & Carmody St
WOODRIDGE Q 4114

1300 65 11 88
www.legalaid.qld.gov.au

Legal Aid
QUEENSLAND