



# Financial Rights

LEGAL CENTRE

FACT SHEET



Financial Rights Legal Centre  
Inc. ABN 40 506 635 273

Fact sheets are information only and should not be relied upon as legal advice.

©2017 Financial Rights  
All rights reserved.

## I'M NOT AT FAULT, WHY DO I HAVE TO PAY MY EXCESS?

This fact sheet is for information only. It is recommended that you get legal advice about your situation.

### CASE STUDY

Josie's car was parked on the street overnight. The next morning she woke up to find her car had been ploughed into by another car. The police were in attendance. They tell her that a stolen car has run into her and the thief has fled. Josie contacts her insurer and makes a claim. They ask her to pay an excess. Josie says that she wasn't at fault. Her insurer says she still needs to pay. Is that right?

### WHY DO I HAVE TO PAY MY EXCESS?

An insurance excess is your contribution to a claim. The general rule is that an excess is always payable when you make a claim, whether you are at fault or not.

Sometimes insurers will insert terms into the Product Disclosure Statement (PDS) where they agree to "waive" the excess (that is, not require you to pay your excess) or refund the excess in some limited circumstances. This is common in some types of claims like a windscreen breakage. This is regularly associated with situations when we are "not at fault".

However, insurers often place certain conditions, requirements, limitations or qualifications to when they will "waive" an excess, refund the excess or not require an excess to be paid. You should read your PDS – the contract of insurance between you and the insurer - carefully, to work out if you can meet the conditions of where the excess will not be payable. These can include the following scenarios:

**a. the insurer agrees you are in no way at fault**

This can be a difficult condition to meet. Sometimes in accidents you may have contributed to the accident, so the other party is not 100% at fault. Equally it may be difficult to prove or establish definitively that you were not at fault.

*and/or*

**b. you can provide the name, registration number and address of the at fault party**

This can be tricky where the at fault party leaves the scene without

[www.insurancelaw.org.au](http://www.insurancelaw.org.au)



providing you the details. It can be very stressful after an accident, and you may forget to ask for their information.

Equally, the driver may be unwilling to supply it, or flee the scene.

Even if the police can locate the at fault driver, the police may not be able to provide you the details. The insurer may be able to make an application to the police to obtain the information, but this requires them to pay fees and devote resources to the case, which is part of the insurer's cost of a claim.

*and/or*

### **c. the insurer recovers their costs from the at fault party**

If the other party is not insured, cannot be located or refuses to pay, this condition may not be met. Or it may not be met for a number of months or years.

## **WHAT CAN YOU DO?**

### **1. Pay your excess and dispute it later**

In order for your claim to be processed quickly (to, for example, get your car fixed, or receive payment), you could consider paying your excess and then deciding whether you should dispute it and seek a refund of your excess.

When disputing it, have close regard to what your PDS says about when the insurer will "waive" the excess. Make sure you have as much evidence as possible that you meet the conditions.

### **2. Refuse to pay the excess and dispute it**

If you refuse to pay the excess the insurer will not repair your property or they may automatically deduct it from any pay out.

For further information on insurance disputes see our fact sheet: [Insurance Dispute Resolution](#) and our [Raising a Dispute with Your Insurer Sample Letter Generator](#).

We have other fact sheets on hardship and a sample letter generator if you having difficulty paying your excess. Check out our [Paying Your Excess Checklist](#) and our [I Can't Pay My Excess Sample Letter Generator](#).

*Last Updated: June 2017*