



CycleLaw

A Division of McInnes Wilson Lawyers



ON THE ROAD AGAIN

A DIY Legal Repair Guide

A division of McInnes Wilson Lawyers



McInnesWilson
LAWYERS

The Purpose of this Guide

This Guide is intended to assist cyclists recover the cost of damage their property (including their bicycle) sustained in a traffic accident. It provides simple tips and sets out examples to assist with the process.

This Guide attempts to reduce the complex procedures of the related legislation by setting out the steps a person can take to self-represent their claim prior to going to Court, and, if necessary, through the Queensland Civil and Administrative Tribunal (“QCAT” or “the Tribunal”).

PLEASE NOTE:

This Guide deals with matters of a technical nature in general terms only and does not constitute legal advice. While every effort has been made to ensure accuracy, the law is complex and constantly changing. No responsibility is accepted for loss incurred by any person acting or refraining from action in reliance upon any material contained or omitted in this publication.

This Guide is not designed to assist you with a personal injuries claim. If you sustained injuries in a traffic accident, you should consult with a lawyer urgently. Please see page 5 for more information.

In this Guide, where the context allows it, “repair” includes “replacement”, and “bicycle(s)” includes “other personal property such as clothing, spectacles, watches, helmets etc”, unless otherwise stated.





Bicycle Queensland
More People Cycling More Often

McInnes Wilson Lawyers proudly support the work of Bicycle Queensland

Join us at bq.org.au and be supported as a rider

I want to be **COVERED** when I'm out riding

Bicycle Queensland members are covered by personal accident and third party liability insurance when riding anywhere in Australia or New Zealand!* Members also have access to legal assistance with a free initial consultation from our partner law firm – McInnes Wilson Lawyers.

I want to be **SUPPORTED** as a rider

Bicycle Queensland is a non-profit organisation that lobbies local, state and federal governments to improve cycling conditions. As a member you are playing an important role in creating change.

I want to **BE INFORMED**

Bicycle Queensland members receive a subscription to *Ride On*, Australia's most widely read bike riding magazine, *RideQ* member newsletter, and regular eNews updates on campaigns and events. We're also here to help answer your bicycle riding questions.

I want to meet **LIKE-MINDED** people

Bicycle Queensland organises Queensland's biggest bike ride – the Brisbane to the Gold Coast Cycle Challenge, Bike Week (including Ride to Work Day), Brisbane Coot-tha Challenge, Cycle Queensland and other great events.

I want great bike riding **DEALS**

Gain exclusive access to our online shop and members' marquee at events, offers from our membership partners and early entry to Bicycle Queensland events.

*Conditions apply. See www.bq.org.au/join/insurance for details.



Bicycle Queensland Inc. T: 07 3844 1144 | E: bqinfo@bq.org.au | www.bq.org.au
28 Vulture Street, West End QLD 4101 | PO Box 5957, West End QLD 4101





Contents

CHAPTER		PAGE
1	What to do at the Scene of an Accident	4
PERSONAL INJURIES		
2	I was injured in a traffic accident. What should I do?	5
PROPERTY DAMAGE		
3	Introduction to Property Damage	6
4	The Issues	7
5	My bicycle was damaged in a traffic accident – what should I do?	8
6	How to Recover Property Damage Informally	10
7	Having the Repair Costs to your Bicycle Assessed	12
8	Other Ways to Informally Resolve a Claim	13
QCAT CLAIM		
9	QCAT Claim: Introduction to QCAT	14
10	QCAT Claim: The Application	15
11	QCAT Claim: Preparation for Hearing	17
12	QCAT Claim: The Hearing	18
13	QCAT Claim: Recovering the Judgement	20
ALTERNATIVES TO QCAT		
14	Alternatives to QCAT	21
15	Assessment and Balancing of Risk	21
16	Further Information	22
17	Index to Sample Documents and Forms	23

1. What to do at the Scene of an Accident

1. Obtain as many details as possible from the driver of the vehicle that caused the accident, including the following:

- (a) The full and correct name, address and driver's licence number of the driver;
- (b) The make, model and registration number of the motor vehicle;
- (c) The full and correct name and address of the owner of the motor vehicle (if it is not the same person as the driver). For this purpose, ask to see the registration papers for the motor vehicle. If the driver is not the owner, attempt to obtain details of why the driver was driving the owner's motor vehicle. In certain circumstances, the owner of a motor vehicle may be liable for the driver's negligence even though the owner was not present. This is the case if the driver is employed by the owner and was driving for the purposes of the owner's business or if the driver was the "agent" for the owner e.g. was driving on an errand for the owner;
- (d) Obtain the details of any witnesses to the collision including names, address and telephone numbers;
- (e) Note the date and time of the accident; and
- (f) If you or any other person has been injured, or if you believe that the total damage to all property in the accident exceeds \$2,500.00, you should insist that the police be called to the accident scene.

TIP

Witnessed means they actually saw the incident with their own eyes.



2. As soon as possible after the accident, do the following:

- (a) Photograph the accident scene in similar weather and road conditions to those prevailing at the time of your accident. If possible, photograph your damaged property;
- (b) Find out if the driver was charged with a criminal or traffic offence;
- (c) While the events are fresh in your mind, you should write out a statement about the following:-
 - (i) The information obtained in relation to 1(a)-(f) and 2(a)-(b) above;
 - (ii) Where the accident occurred by reference to street names, the location of traffic signs and lights, distances from fixed reference points, the number of traffic lanes, the position of traffic islands and double lines, and the position on the roadway of your bicycle and the other vehicle at the time of the accident etc;
 - (iii) Describe fully how the accident occurred;
 - (iv) Draw and attach to your statement a sketch showing how the accident happened;
 - (v) Any conversations you had with the driver, including statements in which the driver admitted any fault or responsibility for the accident;
 - (vi) Full details of the damage to and loss of your property as a result of the accident; and
 - (vii) Sign and date your statement and the attached sketch;
- (d) Make a separate record of any statements or comments made by witnesses to the accident.

2. Personal Injuries

If you have been injured as a result of a traffic accident caused by the negligence of another person, you may be entitled to compensation.

TYPES OF COMPENSATION AVAILABLE

The types of compensation available will depend on the circumstances of each case. You may be able to receive monetary compensation for:

- Pain and suffering and loss of enjoyment of life;
- Past and future loss of earnings from employment and/or self employment;
- Past and future medical, rehabilitation, medication and travel expenses;
- Past and future paid and unpaid domestic care and assistance.

ARE THERE TIME FRAMES WHICH APPLY?

Please note that there is a strict limitation period which applies to personal injuries claims.

Any action for personal injuries must be commenced within three years from the date on which the cause of action arose. The *Limitation of Actions Act 1974 (Qld)* will prevent you from making a claim after that date has expired. Extensions are available in some cases, but are extremely difficult to obtain.

In addition, there are other critical dates that apply to your claim.

WHAT SHOULD I DO?

It is recommended you obtain legal advice about any accident involving personal injury to you or any other party.

McInnes Wilson Lawyers (the official lawyers for Bicycle Queensland) are able to assist with any enquiry a Member may have in relation to a claim for personal injury.

McInnes Wilson Lawyers can be contacted by phoning 1300 723 245. Alternatively, please feel free to visit our website www.cyclelaw.com.au.

TIP

Obtain legal advice about personal injuries as soon as possible.



3. Introduction to Property Damage

Have you sustained damage to your bicycle in Queensland, and the damage was caused by someone else's fault or negligence?

If so, this Guide can assist you with the recovery process, access information about the process and inform you of the time limits involved.

WHO CAN USE THIS GUIDE

YOU CAN USE THE KIT IF:	YOU CANNOT USE THIS KIT IF:
Your bicycle sustained damage in a traffic accident	Your bicycle did not sustain damage in a traffic accident
It occurred in Queensland	The damage occurred in another State or Territory of Australia or overseas
The damage was caused by someone else	You caused the accident or damage

WHAT LEGISLATION APPLIES

Queensland legislation related to property damage disputes includes the:

1. *Property Agents and Motor Dealers Act 2000*;
2. *Queensland Civil and Administrative Tribunal Act 2009*;
3. *The Limitation of Actions Act 1974 (Qld)*.

"The Acts" are available on the Office of the Queensland Parliamentary Council website www.legislation.qld.gov.au.

Decisions about property damage disputes made by the Queensland Civil and Administrative Tribunal after 1 December 2009 can be found online at http://www.sclqld.org.au/qcat/list.php/Other_minor_civil_disputes_matters or on the Supreme Court of Queensland Library website www.sclqld.org.au.

WHAT TIME LIMITS APPLY?

Please note that there is a strict limitation period which applies to property damage claims.

Any action to recover property damage must be commenced within six years from the date on which the cause of action arose. *The Limitation of Actions Act 1974 (Qld)* will prevent you from making a claim after that date has expired.

Further, time limits apply in QCAT for the lodgment of your application. For example, generally if you are seeking a review of a decision most applications must be lodged within 28 days of receiving the notice of decision.

DO YOU NEED FURTHER INFORMATION?

If you need further assistance or have any queries relating to your claim or the process, please feel free to contact McInnes Wilson Lawyers (the official lawyers for Bicycle Queensland). McInnes Wilson Lawyers can be contacted by phoning 1300 723 245. Alternatively, please feel free to visit our website www.cyclelaw.com.au.



4. The Issues

In any claim for property damage, there are a number of issues to be considered:

1. Who is **liable** for the damage sustained;
2. how much, in monetary terms, is the claim worth (**quantum**);
3. **Risks** involved.

LIABILITY

During a traffic accident, property such as your bicycle and helmet can be damaged. The person who caused the accident is generally responsible for paying for the damage sustained.

Your property damage claim will only succeed if you are successful in showing that someone else has caused the accident, which resulted in damage to your property.

QUANTUM

If you can establish that someone else was responsible for the damage to your property, you should then begin collecting the evidence required to support your claim. This may include:

- Obtaining statements of witnesses to the traffic accident;
- Obtaining a copy of the police report;
- Collating photographs of the damage sustained;
- Obtaining repair/replacement quotes.

Please see page 4 for further details about what to do at the scene of an accident.

RISK

It is important that you take into account, from the outset, the risks involved in pursuing property damage. Please see page 21 for further information.

TIP

A preliminary assessment of your prospects of success regarding liability should be undertaken before commencing a claim. This will ensure that you do not waste time and money pursuing a claim which has little or no prospects of success.

TIP

You should start collating the evidence you need to support your claim as soon as possible after the incident.



5. My Bicycle was Damaged – What should I do?

STEP 1: GATHER INFORMATION ABOUT THE ACCIDENT

1. Obtain as many details as possible from the driver of the vehicle that caused the accident, including the following:-
 - (a) The full and correct name, address and driver's licence number of the driver;
 - (b) The make and model and registration number of the motor vehicle;
 - (c) The full and correct name and address of the owner of the motor vehicle (if it is not the same person as the driver). For this purpose, ask to see the registration papers for the motor vehicle. If the driver is not the owner, attempt to obtain details of why the driver was driving the owner's motor vehicle. In certain circumstances, the owner of a motor vehicle may be liable for the driver's negligence even though the owner was not present. This is the case if the driver is employed by the owner and was driving for the purposes of the owner's business or if the driver was the "agent" for the owner e.g. was driving on an errand for the owner;
 - (d) Obtain the details of any witnesses to the collision including the names, address and telephone numbers;
 - (e) Note the date and time of the accident; and
 - (f) If you or any other person has been injured, or if you believe that the total damage to all property in the accident exceeds \$2,500.00, you should insist that the police be called to the accident scene.
2. As soon as possible after the accident, do the following:
 - (a) Photograph the accident scene in similar weather and road conditions to those prevailing at the time of your accident. If possible, photograph your damaged property;
 - (b) Find out if the driver was charged with a criminal or traffic offence;
 - (c) While the events are fresh in your mind, you should write out a statement about the following:
 - (i) The information obtained in relation to 1(a)-(f) and 2(a)-(b) above;
 - (ii) Where the accident occurred by reference to street names, the location of traffic signs and lights, distances from fixed reference points, the number of traffic lanes, the position of traffic islands and double lines, and the position on the roadway of your bicycle and the other vehicle at the time of the accident etc;
 - (iii) Describe fully how the accident occurred;
 - (iv) Draw and attach to your statement a sketch showing how the accident happened;
 - (v) Any conversations you had with the driver, including statements in which the driver admitted any fault or responsibility for the accident;
 - (vi) Full details of the damage to and loss of your property as a result of the accident; and
 - (vii) Sign and date your statement and the attached sketch;
 - (d) Make a separate record of any statements or comments made by witnesses to the accident.

STEP 2: IDENTIFY WHO CAUSED THE ACCIDENT

The person who caused the accident is responsible for paying for the damage sustained to your property.

Of course, if you caused the accident, you (or your insurance company) should pay for the damage.

If someone else caused the accident, they (or their insurance company) should pay.

TIP

Photograph the accident scene in similar weather and road conditions to those prevailing at the time of your accident

STEP 3: CONSIDER YOUR OPTIONS

If your property sustains damage, and that damage was caused by another person, you have a number of options available to you:

1. If you have an insurance policy that covers damage to your property, you may be able to make a claim on your policy to cover the cost of damage sustained. Your insurance company will then handle all negotiations with the person (or their insurer) who caused the accident;
2. You can negotiate with the person responsible for them to pay for the costs (see pages 10 & 11 – How to Recover your Property Damage Informally);
3. If negotiations prove unfruitful, you can make a claim to QCAT or take them to Court (see pages 14-21).



6. How to Recover Property Damage Informally?

You may wish to contact the person responsible for the accident. This gives them an opportunity to pay for the damage and/or to negotiate with you to reach an appropriate agreement. For most people, going to Court is a last resort as it is time consuming, costly and can be stressful.

If you are unable to negotiate an agreement over the phone, you may wish to send the person(s) responsible a formal letter of demand.

STEP 1: SEND A LETTER OF DEMAND

The letter of demand should outline your claim for damages and indicate your intention to make a claim for your property damage.

Who is the Letter of Demand to be Addressed to?

A letter of demand should be addressed and mailed to the each person responsible for the damage. This may include:-

1. The driver (or drivers if more than one) of a motor vehicle that caused the traffic incident;
2. The owner of the motor vehicle that caused the traffic incident (on the basis that the owner is responsible for the driver) (eg the driver is employed by the owner and was driving for the purpose of the owner's business or the driver was the agent of the owner (eg was driving on an errand for the owner)

If the driver refused to give you his/her or the owner's name and address or the name given was a false name, then you are able to do a search of the Department of Transport records using the registration number of the vehicle to find out who was the owner of the vehicle and that person's address.

If at all uncertain about the correct name of the driver, or owner if applicable, do one or more of the following:

1. A registration search at the Department of Transport;
2. Against a business firm: If the Respondent is a firm, go to Business Name Searches, Department of Consumer Affairs, 21st Floor, State Law Building, 50 Ann Street, Brisbane Qld 4000 and find out the correct name under which the firm trades and the names and addresses

of the owners of the firm. A fee is charged for the search. In the Claim form, write all the owners' names and addresses and add: "Trading as X (insert the firm's name)". If you are outside Brisbane, write to Business Name Searches, enclose a cheque for the cost of the search and ask them to search the records for you;

3. Against a "Ltd" Company: If the Respondent is a Company with "Ltd" after its name, go to the Australian Securities and Investments Commission, Level 24, Commonwealth Bank Building, 240 Queen Street, Brisbane Qld 4000 to find out the Company's full and correct name and registered address.

What should you include with a Letter of Demand

Include with the letter of demand, copies of the quotations for repair and keep copies of the letter and the original quotations for your own records and future use.

Example of a Letter of Demand

Attachments 1 and 2 are draft standard letters of demand which may be easily amended to suit the particular circumstances of your accident.

Serving the Letter of Demand

There is no requirement that a letter of demand be served personally on the person(s) responsible for the damage. It is sufficient to post the letter to their residential address.

When to Send the Letter of Demand

It is recommended that the letter of demand be sent to the Respondent as soon as possible after the incident and after you have had an opportunity to source necessary repair/replacement quotes.

TIP

If you send the letter of demand by registered post, you will have a card showing when the Respondent received it.



STEP 2: OBTAIN QUOTES FOR THE REPAIRS/ REPLACEMENT

The next step is for you to obtain quotes for the repairs to your property. The repairs should return your property to the condition it was in before the accident.

If your property was written off, the total amount of your claim should be the wholesale value of your property.

For further information, please see page 12 – Having Repair Costs to your Bicycle Assessed.

STEP 3: RESPONSE TO LETTER OF DEMAND

In your letter of demand, you should provide a time frame within which you require the person(s) responsible to respond to you.

TIP

Diarise this date in your diary, so you know when to expect a response.

If the owner or driver does not respond to your letter of demand, or if they indicate that they are not prepared to pay your claim, we recommend that you telephone the other party to attempt to settle your claim (if you have not already done so).

If this is unsuccessful, send a second letter advising that you intend to issue proceedings in QCAT unless the amount of your claim is paid within say seven (7) days.

A threat of legal proceedings will often prompt a favourable response. **Attachment 3** is a draft standard letter before Court action.

TIP

You can negotiate over the phone.

STEP 4: IF AGREEMENT CANNOT BE REACHED

If the person who caused the accident does not have insurance and does not pay you for the damage, or their insurance company refuses to pay their claim, you can apply to QCAT (<http://www.qcat.qld.gov.au/matter-types/minor-civil-disputes/application-process-debt-disputes>) or the Courts to resolve the dispute.

QCAT hears property damage disputes which are valued up to and including \$25,000. Property damage disputes valued over \$25,000 are managed by the Courts (<http://www.courts.qld.gov.au/representing-yourself-in-court/money-disputes-up-to-150000>).



7. Having Repair Costs to your Bicycle Assessed

HAVING THE REPAIR COSTS TO YOUR BICYCLE ASSESSED

There is a common misconception that three repair quotes are required. However, to show that your claim is reasonable, it is advisable to obtain at least two quotes for repairs. These quotes should be obtained from bicycle repairers, either of whom you will be happy to have do the necessary work. Your claim is limited to the lower of the quotes. If the driver or their insurance company wishes to inspect the damage, you should allow them to do so before repairs are effected.

If your bicycle is not capable of being repaired or the cost of repairs is more than your bicycle is worth, then your claim is limited to the value of your bicycle before it was damaged (ie) its pre-accident market value. You should get a bicycle retailer to give a written valuation of your bicycle. The valuation should be signed and dated by the bicycle retailer. If you go ahead and have the repair work carried out or you purchase a comparable second-hand bicycle, then you should retain all invoices for repair or replacement costs.

If later you have to claim in **QCAT**, have the repairer/retailer complete and swear an Affidavit to file with the Claim form. The original quote or valuation should be exhibited to the Affidavit. Example forms of Affidavit of repairer and of retailer are **attachments 5 and 6**. Please refer to the QCAT website (<http://www.qcat.qld.gov.au/>) where a pro-forma affidavit is available as a word document (**attachment 8**). Amend the Affidavit appropriately in the case of other property. The Affidavit must be sworn before a Justice of the Peace, Commissioner for Declarations or a Solicitor and the repairer/retailer and Justice of the Peace, Commissioner for Declarations or Solicitor must sign a statement on the back of the quote which reads:

These are the particulars marked "A" referred to in the annexed Affidavit of _____ sworn before me at _____ this _____ day of _____ 2_____.

.....
 Repairer's/retailer's signature Justice of the Peace/Solicitor/
 Commissioner for Declarations

Repair Estimate Quote
This quote is good for 30 days from the date listed below, for labor only.

<p><<Company>> <<Address1>> <<Address2>> <<City>> <<State>> <<PostalCode>> Phone: <<WorkPhone>></p> <p>Pricing and Options for: <<CustCompany>> <<CustCity>> <<CustState>> <<CustPostalCode>> Phone: <<CustWorkPhone>></p> <p>Job Options Repair: _____ Installation: _____ Upgrade: _____</p>	<p>Date: <<CurrentDate>> Estimated Delivery: <<EndDate>> Estimate #: <<WorkOrder>></p> <p>Job Description: << Insert what you are doing for the customer here >></p> <p>Make: _____ Model: _____ Serial Number: _____</p> <p style="text-align: right;"> <input type="checkbox"/> Pick up <input type="checkbox"/> Local Delivery <input type="checkbox"/> Shipped </p>
--	---

PART #	DESCRIPTION	QTY	PRICE/ea	SUBTOTAL
TOTAL PARTS				
TAX				
TOTAL LABOR				
TOTAL ESTIMATE				

Labor Description:
 << Insert a detailed description of the work to be performed. >>

Shipping Options:
 TBD
 Fed Ex UPS DHL USPS Freight

Estimated Shipping Costs: << Insert Shipping Estimate >>

Note: All shipping costs are estimates and subject to change. Customers may opt to use their shipper of choice or their own account. Cost estimates of third-party components are only good for the day quoted and are subject to change at any time before the repair order is authorized. No goods will be held for over thirty (30) days. <<Company>> is not responsible for loss or damages caused by events outside of our control. Repairs are warranted for thirty (30) days from date of delivery, for labor only.



8. Other Ways to Informally Resolve a Claim

THE DISPUTE RESOLUTION CENTRE

If you have not had any success with a letter of demand, and you wish to exhaust all possibilities of settlement of your claim, you can ask the Department of Justice and Attorney-General's Dispute Resolution Centre (formerly Community Justice Program) to assist you with your dispute. The Centre offers a mediation service.

TIP

Mediation is a way of settling a dispute without taking legal action.

The Centre will generally write to the other party(ies) inviting them to attend mediation.

This is a free, confidential and impartial service.

The Centre can be contacted on 3239 6007 in Brisbane or on 1800 017 288 for callers outside Brisbane.

Alternatively, if you do not wish to delay your claim, you can commence proceedings in QCAT and then contact the Dispute Resolution Centre.



9. QCAT Claim: Introduction to QCAT

If you do not receive a response from the person(s) responsible for the incident, or their insurance company refuses to accept responsibility for their client, you may have no other option but to take legal action.

Before proceeding with a formal claim, you should again give consideration to:

1. Who is liable for the damage sustained;
2. How much, in monetary terms, is the claim worth (**quantum**);
3. **Risks** involved. Including, is the person I am taking action against able to pay me if I win?

You can take legal action through:

1. The Queensland Civil and Administrative Tribunal (QCAT);
2. The Magistrates Court.

WHO IS QCAT?

QCAT operates from each of the Magistrates Courts throughout Queensland.

The Tribunal has been set up as a non-legalistic venue to provide inexpensive and quick access to justice in claims where the amount claimed is \$25,000 or less.

The normal rules of evidence do not apply in QCAT and the parties are generally not entitled to be legally represented. As a result, the Members who hear claims in the Tribunal tend to adopt a very straightforward approach to claims and do not get bogged down by legal niceties.

You should note that once a matter has been heard and resolved by the Tribunal, you cannot take it to the Magistrates Court (other than for enforcement). However, the Tribunal does have an appeals process and you should note that time limits apply.

WHAT IS THE MAGISTRATES COURT

If your damage is less than \$150,000.00 (the current Magistrates Court jurisdictional limit), you can make a claim before the Magistrates Court.

TIP

A preliminary assessment of your prospects of success and your prospects of receiving any award from the person responsible should be undertaken from the outset. This will ensure that you do not waste time and money pursuing a claim which has little or no prospects of success.



10. QCAT claim: The Application

To start a claim in QCAT, you will need to complete an Application. The Application particularises who you are, the Respondent and exactly what it is you are seeking.

THE CLAIM FORM

You can obtain a copy of the Application form online at www.qcat.qld.gov.au. A copy of the Application form can also be found at **Attachment 4**.

We encourage you to read carefully the section of the Application form headed "Instructions for completing".

HOW TO COMPLETE THE APPLICATION

When completing your application or any other forms, you should remember to:

1. complete the form answering all relevant questions and providing as much information as possible;
2. include the contact details of all parties as required;
3. complete all pages of the form;
4. provide any supporting documents in their original format or as certified copies which have been appropriately witnessed (eg by a Justice of the Peace or a lawyer).

WHO SHOULD I NAME AS THE RESPONDENT IN THE APPLICATION?

The Application should fully and properly describe each Respondent to your claim. This may include:-

1. The driver (or drivers if more than one) of a motor vehicle (or otherwise) that caused the traffic incident;
2. The owner of the motor vehicle (or otherwise) that caused the traffic incident (on the basis that the owner is responsible for the driver) (eg the driver is employed by the owner and was driving for the purpose of the owner's business or the driver was the agent of the owner (eg was driving on an errand for the owner)

If at all uncertain about the correct name of the driver, or owner if applicable, do one or more of the following:

1. A registration search at the Department of Transport;
2. *Against a business firm:* If the Respondent is a firm, go to Business Name Searches, Department of Consumer Affairs, 21st Floor, State Law Building, 50 Ann Street, Brisbane Qld 4000 and find out the correct name under which the firm trades and the names and addresses of the owners of the firm. A fee is charged for the search. In the Claim form, write all the owners' names and addresses and add: "Trading as X (insert the firm's name)". If you are outside Brisbane, write to Business Name Searches, enclose a cheque for the cost of the search and ask them to search the records for you;
3. *Against a "Ltd" Company:* If the Respondent is a Company with "Ltd" after its name, go to the Australian Securities and Investments Commission, Level 24, Commonwealth Bank Building, 240 Queen Street, Brisbane Qld 4000 to find out the Company's full and correct name and registered address.

Documents you should Attach to the Claim Form

You should attach the following to the Claim Form:

1. An affidavit of the repairer;
2. Quotes obtained for repair/replacement of the damaged property;
3. Photographs of the damage sustained (if available).

Signing the Claim Form

The Claim form must be signed and dated by you.

TIP

You should complete the Claim form and any Affidavits by typing them or in neat and legible handwriting.

HOW TO LODGE YOUR CLAIM?

Once completed the Claim form should be filed (with the appropriate application fee) in QCAT. This can be done in person at QCAT or by post. The Claim form should be filed with the completed repairer's Affidavit and quote. You should also provide a stamped self-address A4 envelope, so that QCAT can provide you with a copy of the document.

You should make a number of copies of the Claim form, including, the original Claim form for the Tribunal, a copy for you, and a copy for each of the other parties.

Your Claim form may be lodged either in person or by mail, with location and address details as follows:

IN PERSON:	BY MAIL:
QCAT Level 9 Bank of Queensland Building 259 Queen Street Brisbane QLD 4000, or at any Magistrates Court (excluding Brisbane).	QCAT GPO Box 1639 Brisbane 4001

WHAT FEES ARE ASSOCIATED WITH MY APPLICATION?

There is a filing fee payable at the QCAT Registry to lodge a claim which is subject to the amount being claimed (see table below).

APPLICATIONS OR REFERRALS UNDER:	APPLICATION FEE	APPEAL FEE
Not more than \$500, or no amount claimed	\$21.50	\$275.00
More than \$500 but no more than \$1,000	\$55.00	\$275.00
More than \$1,000 but no more than \$10,000	\$98.00	\$275.00
More than \$10,000	\$275.00	\$550.00

If you choose to lodge your Claim form by mail, you should enclose a cheque or money order made payable to the Department of Justice and Attorney-General or a completed credit card payment authorisation form (**Attachment 9**).

Cash payments will only be accepted if the Claim form is lodged in person. Please note that your claim will not be taken to be lodged until the associated fees have been paid.

SERVICE OF THE APPLICATION

Once filed, you should arrange to have one of the stamped copies of the Application served on the person(s) you are claiming against as soon as possible.

Service of documents refers to the delivering documents to a person or business (such as a copy of an application you have made).

Generally, personal service will be required, which means you must personally give the document to the other person. You can do this yourself, but it may be worthwhile engaging a private process server to do it for you.

If you are required to serve a document on a company or business, you may be permitted to post the document.

Once the documents have been served on the relevant person(s), you should complete an Affidavit of Service form. This form is available at www.qcat.qld.gov.au.

NOTICE OF HEARING

The Registrar will also post a Notice of Hearing to you and the other party. This Notice sets out the time and place of the hearing. When filing the Claim form, whether in person or by post, inform the Registrar of any dates on which you will be unavailable for the hearing.

11. QCAT Claim: Preparation for the Hearing

Below are some helpful tips, to assist you when preparing for a QCAT hearing.

1. The Member makes the decision by looking at the **evidence**.

Therefore, think about what you will tell the Member and what evidence you will use to support your Claim. The Member expects you to tell your story clearly, in proper sequence, and with enough details to explain your case;

2. Evidence can include:

- (a) your sworn evidence;
- (b) witnesses;

you may have witnesses, including an expert witness, give evidence for you, but you must pay their expenses.

however, you cannot force a witness to appear before QCAT.

- (c) witness Affidavits;

Affidavits from witnesses may be given, but verbal evidence is preferred.

- (d) documents;

- (e) photographs; and

- (f) real objects (bring the damaged bicycle or other property to the hearing if you haven't had them repaired).

documents may include:

- (i) a quote;
- (ii) a bill for repairs;
- (iii) a receipt;
- (iv) or letters.

3. If you are claiming for property damage, you should consider calling as a **witness**:

- (a) anyone who saw the accident;
- (b) the repairer or retailer who gave the quote on which you rely.

4. If the witnesses cannot, or will not, agree to come to the hearing, prepare an Affidavit for them to sign (see above);

5. **Practice** your evidence by telling it to someone, such as your partner or a friend. If listeners cannot understand a point, put in details to make it clearer;

6. Have your documents in **order** so that when you mention one in your evidence, it is ready to show to the Member.

TIP

We suggest that you take a sheet of paper and draw a line down the middle. On the left-hand side, write the facts you want to tell the Member. On the right-hand side, write the evidence you will use to support your facts.



12. QCAT Claim: The Hearing

CAN I HAVE A LEGAL REPRESENTATIVE APPEAR AT QCAT WITH ME?

Generally, no. Parties involved in a matter before QCAT must generally represent themselves.

This does not however stop you from seeking and obtaining legal advice from a lawyer.

There are some exceptions however to this general rule. For example, a party may apply to QCAT if they want to be represented in circumstances where:-

1. a party is a State agency;
2. the proceeding is likely to involve complex questions of fact or law;
3. another party is being represented;
4. all of the parties have agreed to the party being legally represented.

To apply to be legally represented, you need to complete and lodge the Application for Leave to be Represented. This form can be found online at www.qcat.qld.gov.au.

DO I HAVE TO ATTEND THE PROCEEDINGS IN PERSON?

As a party to a QCAT proceeding, you have the right to attend the hearing in person.

You are however also entitled to apply to QCAT to attend via telephone or videoconferencing in appropriate situations. This can be done by completing and lodging an Application for Attendance at a Hearing, Compulsory Conference or Mediation by Remote Conferencing. This form can be found online at www.qcat.qld.gov.au.

WHAT IF YOU CAN'T ATTEND THE HEARING ON THE DAY

If you are unable to attend the hearing, you must advise QCAT urgently. You may wish to ask to have someone else attend on your behalf or apply to attend the hearing by remote conferring. Alternatively, you may ask for the hearing to be moved to another day.

The Tribunal may elect to continue with the hearing and to make orders/decisions in your absence.

THE DAY OF THE HEARING

When you arrive:

1. On the date of the hearing, bring all your documents with you and arrange to meet your witnesses at the Tribunal just before the hearing starts;
2. You should arrive at least 15 minutes prior to the start time outlined in the Notice;
3. Find your name and room on the listing board and go to the listed room. You should wait outside until invited into the room;
4. Bring a pen and paper. Dress neatly and address the Member as 'Mr/Ms Member', 'Sir' or 'Ma'am';
5. Witnesses wait outside the room until called to give their evidence.

When you are Called:

6. When you are called before the Member, speak clearly and be guided by what the Member asks you to do. Be ready to tell your story slowly and clearly to the Member and present your evidence as you have prepared it;
7. You will be asked to swear an oath on the Bible or affirm (promise) to tell the truth;
8. You, and your witnesses, may be questioned by the Member and/or the other party about the evidence you or your witnesses give in the Tribunal;

Basic Outline of the Hearing:

9. You tell your story and give your evidence:-

When giving evidence, tell the Member about the following:

- (a) The circumstances of the accident, including the exact location of the accident;
- (b) The lighting and weather conditions at the time of the accident;
- (c) The location of traffic lanes, traffic signs and lights and the position of your bicycle and the other party's vehicle;



- (d) Explain fully how the accident occurred, what the driver did, and what actions you took to try to avoid the accident;
- (e) If the driver admitted any fault or responsibility for the accident, or if what the driver said is incorrect, tell the Member about that, including why the driver's version at the scene of the accident is incorrect;
- (f) If you tell the Member about an important fact that a witness can support, say that you have a witness who can give evidence about this matter later;
- (g) If you have photographs of the location of the accident, show these to the Member at this time and also hand to him/her the sketch you have prepared showing what occurred on the day of the accident;
- (h) If you have difficulty recalling any of the events surrounding the accident while you are giving your evidence, ask the Member for permission to refer to your notes or statement for the purpose of refreshing your memory. Tell the Member that the notes or statement were made while the events were still fresh in your mind, if this is the case, and he/she may give you permission to do so. However, it is preferable to give evidence without referring to the notes;
- (i) Tell the Member what you did to effect repairs of your bicycle and hand up to the Member the Affidavit of your repairer/retailer which sets out the evidence of the quote and costs of repairs or pre-accident market value of your bicycle. If you have had the repairs effected or have purchased a replacement bicycle, then also hand to the Member a copy of your receipt for those repairs or purchase;
- (j) Then tell the Member about the efforts you have made to obtain the amount of your claim from the other party and hand to the Member a copy of your letter of demand and any other correspondence you have had with the other party;

10. You call your witnesses:

Then call your witnesses one at a time to give their evidence. The evidence of witnesses is given by your asking questions of your witnesses and their answering your questions. Avoid asking leading questions (that is, questions which suggest what the answer is that you want). If any witness is unable to attend at the Tribunal, or does not agree to attend, you can hand to the Court an Affidavit that has been signed by that witness stating

the witness' knowledge of the facts of the accident (that is, the evidence about the accident that they would give if they were present in Court). Include in the Affidavit why they are unable to come to Court. The Affidavit must have been signed personally by the witness in the presence of a Justice of the Peace, Commissioner for Declarations or Solicitor. See **Attachment 7**;

11. The Respondent (and their witnesses) give their evidence:

After you and your witnesses have given evidence and have been questioned by the Member and the other party, the other party, and any witnesses, will give their evidence. You must not interrupt, but you may make notes of things you disagree with so you can raise them later. You may question (cross-examine) the other party and witnesses if you wish after they have finished their evidence. In cross examination, you may, and often should, ask leading questions;

12. The Decision

The Member will then make a decision about your Claim.

If you are successful, the Member will award you the amount of your Claim (or such other sum as the Member considers appropriate). He/she may also order that the other party pay your filing fees for the Claim. Please note that the Tribunal cannot award any other costs or fees against the other party and therefore you will have to pay the costs of any witness to come along and give evidence for you.

WHAT IF YOU ARE NOT HAPPY WITH THE DECISION?

The Appeal Tribunal hears appeals from QCAT decisions.

Before you can appeal a decision however, you must obtain permission from the Internal Appeal Tribunal. This is done by completing and lodging an Application for Leave to Appeal or Appeal (form 39). This form can be found at www.qcat.qld.gov.au.

You can appeal a decision on a:-

1. Question of law;
2. Question of fact;
3. Question of mixed law and fact.

You should seek legal advice before you appeal a decision.

13. QCAT Claim: Recovering a Judgment

At the end of a proceeding, the Tribunal makes a final decision. Their decision may require the person responsible for the damage to pay you an amount of money.

Decisions made by the Tribunal must be adhered to. They are enforceable as if they were made by a Court.

Unfortunately, the Tribunal's role does not extend to enforcing the decision. You are ultimately responsible for enforcing it.

It may be necessary for you to take steps to have the Judgment enforced against the Respondent. This may involve:

1. You may attempt to enforce the Order of Tribunal in the Magistrates Court Civil Registry or in another Magistrates Court Office. You will be required to present a certified copy of the Order of Tribunal, obtained from the office of QCAT upon request, together with an Affidavit detailing the amount that has not been paid. Once the Order has been registered as a judgment in that Registry, you can either:
 - (a) Apply for a Garnishee Order which requires the employer of the Judgment Debtor to deduct an amount of money determined by the Registrar from their wage or salary for a certain period, or upon a bank to deduct a lump sum from their bank account; or
 - (b) Make an application for a Warrant of Execution to be executed against property or goods of the Judgment Debtor. This enables the Court to seize assets owned by the Judgment Debtor, such as a motor vehicle or land, and sell those assets to satisfy the Tribunal's Order in your favour;

Note: Some actions in the Magistrates Court require the payment of prescribed fees, most of which are recoverable.

2. A final, but less attractive, option is to issue bankruptcy proceedings against the Judgment Debtor. Your debt must exceed \$5,000.00 and proceedings are issued in the Federal Court. This can be a very costly and lengthy process and may not result in the recovery sought.

It is important for you to again consider:

1. the likely costs of enforcing the judgment or issuing bankruptcy proceedings;
2. the delays involved in progressing your claim;
3. whether the debt amount warrants the extra time, expense and risk involved in enforcing the judgment.

Of course, if the other party pays the amount of the order directly to you, you should advise QCAT of the payment. Alternatively, in some instance payment is made by Respondents directly to the Tribunal. In those instances the Tribunal will generally make payment to you by cheque.



14. Alternatives to QCAT

In cases where the amount of property damage is considerable or in difficult or fervently contested cases, it may be more appropriate to issue proceedings in the Magistrates Court.

This Court has jurisdiction for all claims up to a monetary limit of \$150,000.00.

This is a represented jurisdiction. That is, in nearly all cases, a party will be represented by a Solicitor and often a Barrister will be engaged for the trial of the action.

15. Assessment and Balancing of Risk

It is important that you take into account, from the outset, the risks involved in a property damage claim.

Some of the risks involved in property damage claims are:

1. A Member or Judge may not be satisfied that the respondent caused the damage to your property, which means you lose the case and get no monetary compensation at all.
2. Even if the Member or Judge says that the Respondent did cause damage to your property, the Member or Judge may award less by way of compensation than the amount you had calculated and/or hoped for;
3. There is no way of knowing the actual outcome of your claim;
4. Even if a judgment is given ordering payment of property damage, you may not ultimately be able to recover that amount from the Respondent (see page 20).

Other factors you should take into account in making a claim and when considering informal resolution of your claim include:

1. the likely costs of making a claim with QCAT and/or taking it to the Court;
2. The likely costs of enforcing any order made by QCAT or Judgment of the Court;
3. The delays involved in progressing your claim.

16. Further Information

Should you require any further information, please do not hesitate to contact McInnes Wilson Lawyers on 1300 723 245.

Alternatively, please feel free to visit our website or make an online enquiry at www.cyclelaw.com.au or as the official lawyers for Bicycle Queensland, we are more than happy to speak with all members about any legal needs.





17. Index to Sample Documents and Forms

ATTACHMENT		PAGE
1	Draft Standard Letter of Demand (to a driver)	24
2	Draft Standard Letter of Demand (to a owner who was not the driver)	25
3	Standard Letter Before Court Action	26
4	Example Particulars of Claim	27
5	QCAT Application for minor civil dispute – consumer dispute	28
6	Affidavit of repairer	38
7	Affidavit of retailer	39
8	Affidavit of witness	40
9	Affidavit (blank)	41
10	Credit Card Authorisation	42

ATTACHMENT 1 – LETTER OF DEMAND

STANDARD DRAFT LETTER OF DEMAND TO A DRIVER

**My name and address.
Telephone no.
The date.**

**The Driver's name and
Address.**

Dear **(sir/madam/Mr Mrs etc as applicable)**.

Re: Motor vehicle accident on **(date of accident)**

I am the owner of a **(make and type of your bike)** bicycle which was damaged in a collision involving your **(here identify the make and model of the driver's motor vehicle/truck/bus/motorbike)**, registered number **(here set out the registration number)** driven by you (at/on...:**here, as applicable, set out the location of the accident by reference to the streets(s), intersections and distances from fixed points, suburbs etc**) on the **(date)** at **(time or approximate time)**. (Also damaged were...: **here set out details of any other property damaged, such as clothing, spectacles, sun glasses, watches etc**).

The collision was caused solely by your negligence in that **you (briefly set out how the accident happened and why you say the driver was responsible for the accident)**. I therefore hold you fully responsible for the damage to my bicycle (and other property – **if applicable**).

I **enclose*** photocopies of **[number]** quotations for the (costs of repairs to/replacement value of, **as applicable**) my bicycle (and other property – **if applicable**) from **(here set out name of the repairer or retailer)**.

Accordingly, I now demand payment from you of **(\$- amount of claim)**, being the lowest amount quoted, within fourteen (14) days from the date of this letter, or confirmation that you have submitted a claim to your insurer, otherwise I will immediately take such court action as is necessary to recover the amount of **(\$)**.

If you have submitted a claim to your insurer, please let me know their name, address, telephone number and claim number so that I may correspond with them.

Yours faithfully

(your signature)



ATTACHMENT 2 – LETTER OF DEMAND

STANDARD DRAFT LETTER OF DEMAND TO AN OWNER WHO WAS NOT THE DRIVER

**My name and address.
Telephone no.
The date.**

**The owner's name and
Address.**

Dear **(sir/madam/Mr Mrs etc as applicable)**.

Re: Motor vehicle accident on **(date of accident)**

I am the owner of a **(make and type of your bike)** bicycle which was damaged in a collision involving your **(here identify the make and model of the driver's motor vehicle/truck/bus/motorbike)**, registered number **(here set out the registration number)**, driven by **(here set out the name of the driver and why the owner is responsible for the driver e.g. driver is employed by the owner and was driving for the purposes of the owner's business or the driver was the agent for the owner e.g. was driving on an errand for the owner)**, (at/on...: **here, as applicable, set out the location of the accident by reference to the street(s), intersections and distances from fixed points, suburbs etc**) on the **(date)** at **(time or approximate time)**. (Also damaged were...: **here set out details of any other property damaged, such as clothing, spectacles, sun glasses, watches etc**).

The collision was caused solely by your driver's negligence in that he/she **(briefly set out how the accident happened and why you say the driver was responsible for the accident)**. I therefore hold you fully responsible for the damage to my bicycle (and other property – **if applicable**).

I **enclose*** photocopies of **[number]** quotations for the (costs of repairs to/replacement value of, **as applicable**) my bicycle (and other property – **if applicable**) from **(here set out name of the repairer or retailer)**.

Accordingly, I now demand payment from you of **(\$- amount of claim)**, being the lowest amount quoted, within fourteen (14) days from the date of this letter, or confirmation that you have submitted a claim to your insurer, otherwise I will immediately take such court action as is necessary to recover the amount of **(\$)**.

If you have submitted a claim to your insurer, please let me know their name, address, telephone number and claim number so that I may correspond with them.

Yours faithfully

(your signature)

ATTACHMENT 3 – LETTER BEFORE PROCEEDINGS

STANDARD LETTER BEFORE COURT ACTION

**My name and address.
Telephone no.
The date.**

**The owner's name and
Address.**

Dear **(sir/madam/Mr Mrs etc as applicable)**.

Re: Motor vehicle accident on **(date of accident)**

I refer to my letter of demand of **(insert the date of your letter of demand)** to which no **(either: response or: no favourable response)** has been received. (I also spoke to you on **(date of conversation)** about my claim against you, but without success).

I now advise you that I intend to issue proceedings against you in the Queensland Civil and Administrative Tribunal unless the full amount of my claim is paid within seven (7) days of the date of this letter.

Yours faithfully

(your signature)

ATTACHMENT 4 – EXAMPLE PARTICULARS OF CLAIM

EXAMPLE PARTICULARS OF CLAIM

Property Damage (Motor Vehicle Incident) – Include description of the incident, details of other vehicle, details of property damage and all other relevant particulars.

Attach additional pages if there is sufficient space.

1. *The incident occurred on 15 January 1998 outside a business called Fast Cars at 33 Autostrada Drive, Grand Prix Heights, Brisbane at approximately 1:15pm. It was a clear day and visibility was good. I (the claimant) was riding a Cannondale Road Bike Model 2001 at the time of the incident. The Respondent was driving a red Ferrari Coupe 1998 model (registration no -123BAC).*
2. *At approximately 1:15pm I was riding my bicycle in an easterly direction along Autostrada Drive, Grand Prix Heights. Autostrada Drive is flat. I was riding on the left side of the road about a metre and a half from a number of cars, including a large van, parked near the kerb. There was another car following me.*
3. *I was travelling at approximately 20km/hr when I saw a red Ferrari Coupe (the Respondent's car) drive out directly in front of me past the front of the van. The car was travelling at about 15km/hr. I did not see the Ferrari until it entered the roadway in front of me because of the van. I was about 8 metres away when it drive out in front of me. I instinctively tried to steer my bicycle to the right to avoid a collision with the Ferrari and as I did so I fell of my bicycle which was then sandwiched between the Ferrari's front right mudguard and the front of the car that had been following me.*
4. *I believe that Michael Schumacker should have stopped his car before entering the roadway and was not keeping any, or any proper, lookout or he would have seen me. I do not consider the driver of the other car was to blame at all.*
5. *After that, we exchanged addresses and telephone numbers. I asked the driver who owned the Ferrari and he said that it was owned by his employer (NB: The following two possible options for ownership), **EITHER:** European Sports Cars Pty Ltd, trading as Fast Cars **OR** Jack Brabham & Jill Brabham, trading as Fast Car, and that he was taking the Ferrari to a customer for a test drive.*
6. *Attached is a sketch of the accident scene, headed SKETCH, showing where the accident occurred by reference to street names, the location of traffic signs and lights, distances from fixed reference points, the number of traffic lanes, the position of traffic islands and double lines, and the position on the roadway of my bicycle and the other vehicles at the time of the accident showing what happened.*
7. *The accident was not reported to the police and as far as I am aware the Respondent has not been charged with any offence.*
8. *I took my bicycle to Michael Fixyerbike of Mike's Cycles Pty Ltd at 12 Sandgate Road, Albion and he quoted \$700.00 for the repairs. He said that the repairs were so expensive because of the nature and extent of the damage. He also said that the market value of my bicycle was \$1,500.00.*

I also obtained the following quotes for repairs to my bicycle:-

<i>Max's Bicycle Shop dated 18/01/98 (1 Right Road, Clayfield)</i>	<i>\$750.00</i>
<i>Sue's Wheels dated 10/01/98 (12 Knox Street, Albion)</i>	<i>\$800.00</i>

Attached are the written quotes from each of the above two repairers, together with an Affidavit of repairer by Michael Fixyerbike to which is attached the original of his quote dated 17/01/98.

PLEASE NOTE – Once the issue is heard and resolved by QCAT, that issue cannot be taken to another court.

AMOUNT OF CLAIM: \$700.00

(place and "X" in the appropriate square)

Refund/Payment: Relief from Payment Return of Goods Rectification of Work

I, the abovenamed Claimant, hereby give notice that I wish to refer the above Claim to the Queensland Civil and Administrative Tribunal.

SIGNATURE OF CLAIMANT/S **Stuart O'Grady** **DATE: 20/02/98**

Instructions for completing

**Application for minor civil dispute –
consumer dispute**

WHAT TYPE OF APPLICATION ARE YOU MAKING?

FOR A DISPUTE ABOUT GOODS AND/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. A consumer is a person who buys or hires goods or services and does not use them for business purposes. The term includes a tenant of premises let for residential dwelling. A trader is a person who carries on a business of supplying goods or providing services. Most professionals such as dentists and solicitors are not regarded as traders, or
- you are a trader who disputes a spoken or written agreement with another trader who has provided goods or services.

FOR A DISPUTE ABOUT A DIVIDING FENCE

You may make an application if you are involved in a dispute about the building or repair of a dividing fence and the fence has not already been built or repaired.

FOR A DISPUTE ABOUT PROPERTY DAMAGE CAUSED BY A MOTOR VEHICLE INCIDENT

You may make an application if during a motor vehicle accident, your property (such as your car or house) was damaged, and

- the person who caused the accident does not have insurance and does not pay you for the damage, or
- the person has insurance but their insurance company refuses to pay their claim.

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, if the previous owner refuses to carry out the repair.

Note: the amount in dispute can only be up to \$25,000.

General instructions

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, an extra copy of the application form and attachments must also be included for each additional respondent.

Generally, you must give a copy of the application to all parties to the proceeding as soon as practicable, and no later than seven days after the application is filed. The tribunal will return sealed copies to you, at the address you provide, for this purpose.



Instructions for completing (continued)

Applications may be lodged

In person: At QCAT, Level 9, 259 Queen Street, Brisbane, 4000 or any Magistrates Court.

By post: QCAT, GPO Box 1639, Brisbane QLD 4001 or to any Magistrates Court.

Refer to your phone book or visit www.courts.qld.gov.au for Magistrates Court address information.

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'S AND RESPONDENT'S 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, for example:
 - a company name
 - a business name regardless of whether it is registered under the *Business Names Act 1962*
 - a State agency name, for example a Queensland Government department.
- 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.
- Any change in your address for notices must be filed in the tribunal and served on all other parties.

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 *Application for leave to be represented*. Generally the tribunal expects people to represent themselves. It may not grant your request.

You are not required to seek leave if:

- you are a child or a person with impaired capacity
- your case is a disciplinary case
- an Act or the Rules state that you may be legally represented.

PART B GENERAL DISPUTE DETAILS

Please tick the relevant boxes and provide details.

Instructions for completing *(continued)*

PART C DETAILS OF WHAT YOU SEEK FROM THE TRIBUNAL

Refer to the information below for guidance about what information the tribunal needs to make a decision about your application.

FOR DISPUTES ABOUT DIVIDING FENCES

- write the date on which you served the Notice to fence on the respondent
- provide details about the location and dimensions of the fence
- write how much you were quoted for repair of the fence or construction of a new fence. Get written quote for both labour and parts. You will need to get a quote and affidavit from a fence builder.

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 a trade-in to the respondent
- write what was said by the respondent about the quality of the goods or the way they would perform.

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.

FOR DISPUTES ABOUT GOODS AND/OR SERVICES

- briefly describe the problems you have had with the goods or services
- explain what you did to overcome the problems or faults. Mention who did what repairs, and how much they cost – the amount will be the amount of your claim.

OR

- explain what must be done to correct the problems or faults. Mention how much you were quoted for repairs and attach any quote(s). Quote the lowest of two or three quotes – this amount will be how much you claim.

OR

- if the goods cannot be repaired, mention how much it will cost to replace them and attach a written quote. This will be the amount you claim.

If you have a witness that is unable to attend at the hearing, they may complete an affidavit stating the evidence they would give if they were present. You can file this affidavit or bring it to the hearing.



Instructions for completing *(continued)*

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 the 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). Get 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 auto 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.

FOR DISPUTES ABOUT THE REPAIR OF A DEFECT IN A MOTOR VEHICLE

- 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.

For more information on QCAT: Call 1300 753 228 or visit www.qcat.qld.gov.au

QCAT

Queensland Civil and Administrative Tribunal

Form Number 1 (version 2)
Queensland Civil and Administrative Tribunal Act 2009 (section 33)

Application for minor civil dispute – consumer dispute

Refer to attached instructions at the front of this application
prior to filling out this form.

For office use only	
Case number:	
Date:	
Registry:	
Sent to:	
Fee paid:	
Rec no:	

PART A APPLICANT'S DETAILS	
Applicant's name	
<input type="text"/>	<input type="text"/>
<i>Title</i>	<i>Given name/s</i>
	<i>Surname/Family name</i>
OR	
Company/Partnership/other	
<input type="text"/>	ABN <input type="text"/>
Business Name	<input type="text"/>
Address	<input type="text"/>
	Postcode <input type="text"/>
Telephone	<input type="text"/>
	<input type="text"/>
	<input type="text"/>
	<i>Home Business Mobile</i>
Fax	<input type="text"/>
Email	<input type="text"/>

Application for minor civil dispute – consumer dispute – page 1 of 6

For more information on QCAT: Call 1300 753 228 or visit www.qcat.qld.gov.au



PART A APPLICANT'S DETAILS (continued)

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 Application for leave to be represented). The tribunal may not give you leave to be represented.

Name

<input type="text"/>	<input type="text"/>	<input type="text"/>
----------------------	----------------------	----------------------

Title

Given name/s

Surname/Family name

OR

Company/Partnership/other

<input type="text"/>	ABN	<input type="text"/>
----------------------	-----	----------------------

Business Name

Address

<input type="text"/>	Postcode	<input type="text"/>
----------------------	----------	----------------------

Telephone

() <input type="text"/>	<input type="text"/>
--------------------------	----------------------

Business

Mobile

Fax

Email

PART A RESPONDENT'S DETAILS

Respondent's name

<input type="text"/>	<input type="text"/>	<input type="text"/>
----------------------	----------------------	----------------------

Title

Given name/s

Surname/Family name

OR

Company/Partnership/other

<input type="text"/>	ABN	<input type="text"/>
----------------------	-----	----------------------

Business Name

Address

<input type="text"/>	Postcode	<input type="text"/>
----------------------	----------	----------------------

Telephone

() <input type="text"/>	() <input type="text"/>	<input type="text"/>
--------------------------	--------------------------	----------------------

Home

Business

Mobile

Application for minor civil dispute – consumer dispute – page 2 of 6

For more information on QCAT: Call 1300 753 228 or visit www.qcat.qld.gov.au

PART A RESPONDENT'S DETAILS (continued)	
Fax	()
Email	
Representative's details (if applicable)	
Name	
<i>Title</i>	<i>Given name/s</i>
	<i>Surname/Family name</i>
OR	
Company/Partnership/other	
	ABN
Business Name	
Address	
	Postcode
Telephone	()
	<i>Business</i>
	<i>Mobile</i>
Fax	()
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.	
<input type="checkbox"/> payment of money to me	\$
<input type="checkbox"/> refund of money to me	\$
<input type="checkbox"/> relief from payment of money by me	\$
<input type="checkbox"/> return of goods	\$
<input type="checkbox"/> rectification of work	\$
<input type="checkbox"/> construction or repair of a fence	\$
<input type="checkbox"/> payment of the filing fee for this application	\$
<input type="checkbox"/> costs of transporting a motor vehicle to the respondent if claimable under the <i>Property Agents and Motor Dealers Act 2000</i>	\$
TOTAL	\$

Application for minor civil dispute – consumer dispute – page 3 of 6

For more information on QCAT: Call 1300 753 228 or visit www.qcat.qld.gov.au



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.

- 2. The reason I am seeking orders from the tribunal**
For disputes about services, goods, dividing fences and property damage caused by a vehicle, refer to the instructions at the front of this form for guidance about what information the tribunal needs.

NOTE: All relevant documents must be brought with you and made available to the tribunal at any hearing of this proceeding

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 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 – \$10,000.

SIGN AND DATE HERE

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

Applicant/s sign here

Date

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

Information for respondents

You cannot file a response to this application however you may file a counter-application against the applicant to this application or against another person. Counter-applications must be made in the approved form and lodged with the tribunal.



Privacy consent and disclosure statement

The Queensland Civil and Administrative Tribunal (QCAT) collects personal information from applicants in proceedings (You), for the purposes of compliance with the provisions of the *Queensland Civil and Administrative Tribunal Act 2009*.

Research purposes

QCAT wishes to use your personal information for research purposes to improve its services. An example of research is an online survey or focus group. QCAT may also share information about You with research companies for the purposes of conducting research. Any research company engaged by QCAT will undertake to keep your personal information confidential subject to the *Information Privacy Act 2009*.

By signing this Statement, you consent to communicate with QCAT by email or other suitable manner for research purposes; you consent to the sharing of your personal information with third parties as indicated and you waive your right to take further action against QCAT for any breach of your privacy.

Your consent commences from the date that you sign this Statement and return it to QCAT and continues for research purposes after your matter with QCAT has finalised and until you either withdraw your consent or upon the expiration of a period of 12 months.

Signature of applicant

By signing below, I acknowledge that I have read this Privacy Consent and Disclosure Statement and that I consent to the use and disclosure of my personal information as described in this Statement.

Applicant/s sign here

Date

Contact details

For further information call 1300 753 228 or write to the QCAT registry, GPO Box 1639, Brisbane 4001.

ATTACHMENT 6 – AFFIDAVIT OF REPAIRER

AFFIDAVIT OF REPAIRER

PART A: APPLICANT’S AND RESPONDENT’S DETAILS

Applicant

Respondent

PART B: CASE NUMBER (if known)

PART C: DETAILS OF AFFIDAVIT

I, *Michael Fixyerbike*, bicycle repairer of *12 Sandgate Street, Albion* in the State of Queensland, state on oath/solemnly and sincerely affirm and declare:

1. I am the bicycle repairer/..... repairer **(describe other damaged property)*** and am the manager of Mike’s Cycles Pty Ltd carrying on a business at 12 Sandgate Road, Albion.
2. I have had *20 years* experience in the business of repairing damaged bicycles/.....**(describe other damaged property)***.
3. On the *17/01/98* at the request of *Stuart O’Grady* I inspected a Cannondale Road Bike model 2001 which was in a damaged condition consistent with having been involved in a recent collision.
4. I gave a written quotation for the repairs to this bicycle/..... **(describe other damaged property)*** to *Stuart O’Grady* dated the *17/01/98*, a true copy whereof is now annexed hereto and marked with the letter “A”.
5. I consider the amounts set out in that quote for repairs were fair and reasonable at the time and in all the circumstances are not excessive.

PART D: SIGNATURE

Sworn (or affirmed) by:

on

At

in the presence of:

Person making affidavit to sign

Person taking affidavit to sign

Print name

**Commissioner for declarations/
solicitor/justice of the peace.**



ATTACHMENT 7 – AFFIDAVIT OF RETAILER (DAMAGED BEYOND REPAIR)

AFFIDAVIT OF RETAILER (DAMAGED BEYOND REPAIR)

PART A: APPLICANT'S AND RESPONDENT'S DETAILS

Applicant

Respondent

PART B: CASE NUMBER (if known)

PART C: DETAILS OF AFFIDAVIT

I, John Brown, bicycle retailer/..... Retailer **(describe other damaged property)***, of 38 Hedge Street, The Gap in the State of Queensland, state on oath/solemnly and sincerely affirm and declare:

1. I am a bicycle retailer/..... **(describe other damaged property)*** employed by *Hunt's Cycles Pty Ltd at 27 Handle Street, Ashgrove, Brisbane.*
2. I have had 20 years experience in the repair and retailing of bicycles/..... **(describe other damaged property)***
3. On the 21/02/98 at the request of *Stuart O'Grady* I inspected a *Cannondale Road Bike Model 2001/.....* **(describe other damaged property)*** which was in a damaged condition consistent with having been involved in a recent collision.
4. In my opinion the said bicycle/property* was damaged beyond economic repair.
5. A pre-accident market value of the bicycle/property* was \$1,250.00 and the most favourable salvage value if it is sold in its damaged state would be \$45.00.

PART D: SIGNATURE

Sworn (or affirmed) by:

on

at

in the presence of:

Person making affidavit to sign

Person taking affidavit to sign

Print name

**Commissioner for declarations/
solicitor/justice of the peace.**

ATTACHMENT 8 – AFFIDAVIT OF WITNESS

AFFIDAVIT OF WITNESS

PART A: APPLICANT'S AND RESPONDENT'S DETAILS

Applicant

Respondent

PART B: CASE NUMBER (if known)

PART C: DETAILS OF AFFIDAVIT

I, *Eva Vigilant* of *7 Careful Street, Northgate, Brisbane* in the State of Queensland, state on oath/solemnly and sincerely affirm and declare:

1. At approximately 1:15pm on 15/01/98 I was driving my Ford Falcon sedan in an easterly direction on Autostrada Drive, Grand Prix heights.
2. I was following a cyclist and was travelling at about 20kph. The cyclist was travelling about 1.5 metres to the right of some cars parked on the left hand side of the road.
3. I was about to pass the cyclist when I saw a red Ferrari car drive out directly in front of the cyclist from the premises of Fast Cars.
4. The cyclist turned to the right in an apparent attempt to avoid a collision, but lost control of his bicycle and fell to the road. His bicycle fell in front of my car.
5. I applied the brakes of my car heavily but was unable to stop before hitting the Ferrari. The bicycle sandwiched between the front of my car and the right front mudguard of the Ferrari.
6. I saw the driver of the Ferrari get out of his car and speak to the cyclist. He said to him, "if you weren't travelling so quickly and were looking where you were going, this accident wouldn't have happened." The cyclist replied, "I was only going 20km/hour and you just drove out in front of me."

PART D: SIGNATURE

Sworn (or affirmed) by:

on

at

in the presence of:

Person making affidavit to sign

Print name

Person taking affidavit to sign

Commissioner for declarations/
solicitor/justice of the peace.



ATTACHMENT 9 – AFFIDAVIT BLANK

AFFIDAVIT BLANK

PART A: APPLICANT'S AND RESPONDENT'S DETAILS

Applicant

Respondent

PART B: CASE NUMBER (if known)

PART C: DETAILS OF AFFIDAVIT

I <insert full name of person making affidavit> of <insert residential or business address or place of employment> state on oath/solemnly and sincerely affirm and declare:

<insert contents in numbered paragraphs>

PART D: SIGNATURE

Sworn (or affirmed) by:

(insert full name)

on

(insert date)

at

(insert place)

in the presence of:

Person making affidavit to sign

Person taking affidavit to sign

Print name

**Commissioner for declarations/
solicitor/justice of the peace.**

Credit Card Payment Authorisation

If you wish to pay by credit card, please complete the following:

QCAT Case number *(if available):*

Applicant

Respondent

Your name

Title

Given name/s

Surname/Family name

Telephone

()

Home

()

Business

Mobile

Fee type:

application \$

photocopying \$

other \$ please specify

A list of fees is available at www.qcat.qld.gov.au

Details for credit card payment:

Charge my: MasterCard Visa

Credit card No.:

Cardholder's name:

(as printed on the front of the card)

Amount authorised: \$ Expiry date: /

Cardholder's signature:

This form should be provided to QCAT with your application form.



Freecall 1300 855 103
www.cyclelaw.com.au



A division of McInnes Wilson Lawyers