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# On the Road Again

A DIY Legal Repair Guide

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## 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 sustain injuries in a traffic accident, you should consult with a lawyer urgently. Please see page 6 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.

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# 1. What to Do at the Scene of an Accident

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## 1. Obtain as Many Details as Possible from the Driver of the Vehicle That Caused the Accident, Including the Following:

- The full and correct name, address and driver licence number of the driver.
- The make, model and registration number of the motor vehicle.
- Obtain the details of any witnesses to the collision including names, addresses and telephone numbers.
- Note the date and time of the accident. The full and correct name and address of the owner of the motor vehicle.  
To get this information, ask to see the registration papers for the 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.
- 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, you should insist that the police be called to the accident scene.

## 2. As Soon as Possible After the Accident, Do the Following:

- Photograph the accident scene in similar weather and road conditions to those prevailing at the time of the accident. If possible, photograph your damaged property.
- Find out if the driver was charged with a criminal or traffic offence.
- While the events are still fresh in your mind, you should write out a statement about the following:
  - The information obtained in relation to Section 1.
  - 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.
  - Write a statement that fully describes how the accident occurred.
  - Draw and attach to your statement a sketch showing how the accident happened.
  - Any conversations that you had with the driver, including statements in which the driver admitted any fault or responsibility for the accident.
  - Full details of the damage to and loss of your property as a result of the accident.
  - Sign and date your statement and the attached sketch.
- Make a separate record of any statements or comments made by witnesses to the accident.

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### TIP

**'Witnessed'**  
means they  
actually saw the  
incident with  
their own eyes

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## 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; and
- Past and future paid and unpaid domestic care and assistance.

### Are There Time Frames That 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 the accident occurred. 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 critical dates that apply to your claim.

### TIP

**Obtain legal advice about personal injuries as soon as possible.**

### 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 representative lawyers for Bicycle Queensland) are able to assist with any enquiry you may have in relation to a claim for personal injury.

McInnes Wilson Lawyers can be contacted by phoning **1300 303 254**. Alternatively, please feel free to visit our website [www.cyclelaw.com.au](http://www.cyclelaw.com.au)

## 3. Introduction to Property Damage

*Have you sustained damage to your bicycle in Queensland whereby 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 guide if:

- your bicycle sustained damage in a traffic accident;
- it occurred in Queensland; and
- the damage was caused by someone else.

You cannot use the guide if:

- your bicycle did not sustain damage in a traffic accident;
- the damage occurred in another state or territory of Australia or overseas; and
- 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*; and
3. *The Limitation of Actions Act 1974 (Qld)*.

The 'Acts' are available on the Office of the Queensland Parliamentary Council [website](#).

Decisions about property damage disputes made by the Queensland Civil and Administrative Tribunal after 1 December 2009 can be found on the [Supreme Court of Queensland library website](#).

### What Time Limits Apply?

Please note, there is a strict limitation period that 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 the 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.



## 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. What **Risks** are involved.

### Liability

During a traffic accident, property such as your helmet and bicycle can be damaged. The person who caused the accident is generally responsible 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 traffic accidents;
- Obtaining a copy of the police report;
- Collecting 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 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 perusing 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 Incident

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

- The full and correct name, address and driver's licence number of the driver;
- The make, model and registration number of the motor vehicle;
- The full and correct name and address of the owner of the motor vehicle. For this purpose, ask to see the registration papers of the vehicle. If the driver is not the owner, attempt to obtain details of why the driver was driving the owner's vehicle. In certain circumstances, the owner of the 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' of the owner;
- Obtain the details of any witnesses to the collision including names, addresses and phone numbers;
- Note the date & time of the accident; and
- If you or any other person has been injured, or if you believe that the total damage to all property in the accident exceeds \$2500, you should insist that the police be called to the accident scene.

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

- 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;
- Find out if the driver was charged with a criminal or traffic offence;
- While the events are fresh in your mind, you should write out a statement about the following:
  - The information obtained in relation to sections 1 and 2;
  - 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;

- Describe fully how the accident occurred;
  - Draw and attach to your statement a sketch showing how the accident happened;
  - Any conversations you had with the driver, including statements in which the driver admitted any fault or responsibility for the accident;
  - Full details of the damage to and loss of your property as a result of the accident; and
  - Sign and date your statement and the attached sketch;
- 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 damage, 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:

- 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.
- You can negotiate with the person responsible for them to pay for the costs (see pages 12 - 17).
- If negotiations prove unfruitful, you can make a claim to QCAT or take them to court (see pages 18-31).



## 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 property damage.

#### Who is the letter of demand to be addressed to?

A letter of demand should outline your claim for damages and indicate your intention to make a claim for your property damage. This may include:

- The driver/s of a motor vehicle that caused the traffic accident;
- The owner of the motor vehicle that caused the traffic incident (on the basis that the owner is responsible for the driver) (e.g. 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.)

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:

- A search of the vehicle's registration number at the Department of Transport;
- If the vehicle was driven by an employee of a company, search the details of the organisation on the [Australian Securities and Investments Commission website](#). A small fee is charged for the search. In the claim form, write all the owner's names and addresses and add: "trading as [insert firm's name]".
- For limited (Ltd) companies, the same process as above can be undertaken 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 own records and future use.

#### Example of a Letter of Demand

Attachments 1 & 2 (found on page 36 and 37) are draft standard letters of demand which can 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 a residential address.

#### When to Send the Letter of Demand

It is recommended that the letter of demand be sent to the person or company responsible for the damage 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 know when the Respondent receives it.**





## Step 2: Obtain Quotes for the Repairs or Replacement

The next step is for you to obtain quotes for the repairs to or replacement of 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 equal to the wholesale value of your property.

For further information, please see Page 16.



## TIP

**Put the date of response in your diary so you when to pursue further action.**

## 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.

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 a specified amount of time (e.g. seven (7) days).

A threat of legal proceedings will often prompt a favourable response. Attachment 3 provides an example of a standard letter before court action.

## Step 4: If Agreement Cannot Be Reached

If the person who caused the accident does not have insurance, does not pay you for the damage, or their insurance company refuses to pay their claim, you can apply to **QCAT** 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**.

## TIP

**You can negotiate over the phone.**





## 7. Having Repair Costs to your Bicycle Assessed

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There is a common misconception that three repair quotes are required to should that your claim is reasonable. However, it is sufficient to provide only 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 begin.

If your bicycle is not capable of being repaired or the cost of repairs exceeds the value of your bicycle, then your claim is limited to the value of your bicycle before it was damaged. 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 proceed with repair work or you purchase a comparable second-hand bicycle, then you should retain all invoices for repair or replacement costs.

If at a later date you have a 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 6 and 7. Please refer to the [QCAT website](#) where a pro-forma Affidavit is available as a word document. Amend the affidavit appropriately in the case of other property. The Affidavit must be sworn before a Justice of the Peace or a solicitor and the repairer/retailer and Justice of the Peace, Commissioner of 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\_\_\_\_\_.

[Signatures of the repairer/retailer and a Justice of the Peace/Solicitor are included]

## 8. Other Ways to Informally Resolve a Claim

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### The Dispute Resolution Centre

If you have not had any success with a letter of demand, and you wish to exhaust all possibilities for 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.

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### TIP

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

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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

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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. What Risks are 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 (the current Magistrates Court jurisdictional limit), you can make a claim in the Magistrate's 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 prospect of success.**



## 10. QCAT Claim: The Application

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To start a claim in QCAT, you will need to complete an application. The application outlines who you are, the respondent (the person who caused the damage) 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](http://www.qcat.qld.gov.au). A copy of the application form can be found at Attachment 5.

We encourage you to carefully read the 'Instructions for completing' section of the application form.

### 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 (e.g. 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 in your claim. This may include:

- The driver/s of a vehicle that caused a traffic accident.
- The owner of the motor vehicle that caused the accident (on the basis that the owner is responsible for the driver).

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

- A search of the vehicle's registration number at the Department of Transport;
- If the vehicle was driven by an employee of a company, search the details of the organisation on the [Australian Securities and Investments Commission website](http://www.asic.gov.au). A small fee is charged for the search. In the claim form, write all the owner's names and addresses and add: "trading as [insert firm's name]".
- For limited (Ltd) companies, the same process as above can be undertaken 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 must be signed & 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 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
<b>QCAT</b> 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 to 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	\$23.80 (not payable by State-related applicant*)	\$305.00
More than \$500 but no more than \$1,000	\$61.00 (not payable by State-related applicant*)	\$305.00
More than \$1,000 but no more than \$10,000	\$108.70 (not payable by State-related applicant*)	\$305.00
More than \$10,000	\$305.00 (not payable by State-related applicant*)	\$610.00

\*NB - These fees change regularly. Please visit [www.qcat.qld.gov.au](http://www.qcat.qld.gov.au) for up to date fee information

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.

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 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](http://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

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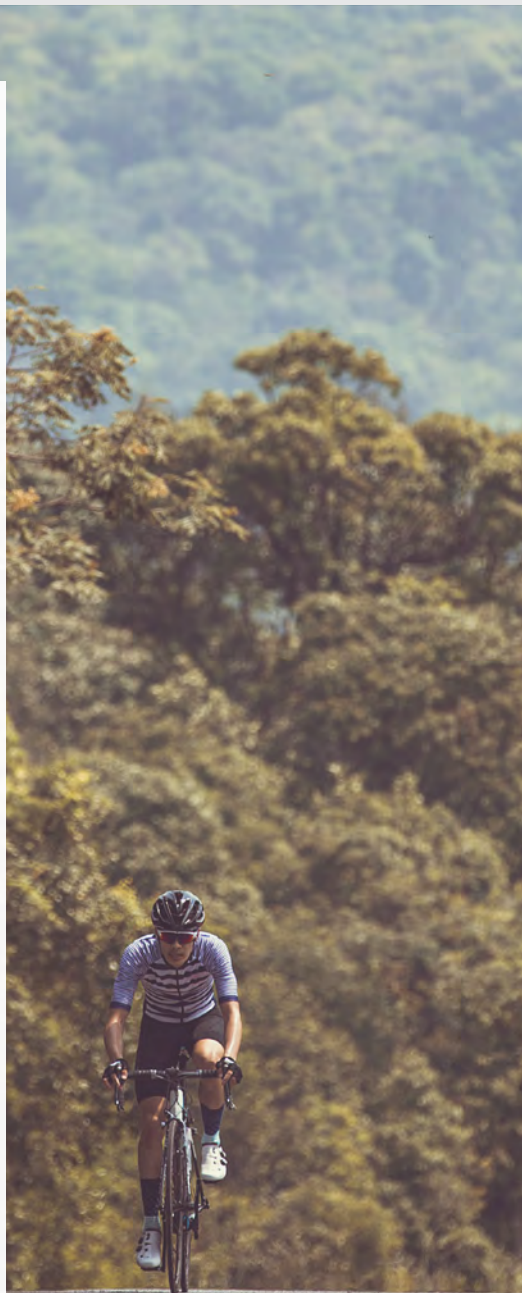
Below are some helpful tips, to assist you when preparing for a QCAT hearing.

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:

- Your sworn evidence;
- 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.
- Witness Affidavits;
- Affidavits from witnesses may be given, but verbal evidence is preferred.
- Documents;
- Documents may include:
  - a quote;
  - a bill for repairs;
  - a receipt;
  - or letters.



- Photographs; and
  - Real objects (bring the damaged bicycle or other property to the hearing if you haven't had them repaired).
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.

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### TIP

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

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## 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 should represent themselves.

This however does not 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](http://www.qcat.qld.gov.au).

### Do I Have to Attend the Proceedings in Person?

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

You are however also entitled to apply to QCAT to attend via telephone or video conferencing 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](http://www.qcat.qld.gov.au).

### What If I 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 hearing and to make orders or decisions in your absence.

### The Day of the Hearing

#### When you arrive:

- 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;
- You should arrive at least 15 minutes prior to the start time outlined in the notice;
- Find your name and room on the listing board and go to the listed room. You should wait outside until invited into the room;
- Bring a pen and paper. Dress neatly and address the member as 'Mr/Ms Member,' 'Sir' or 'Ma'am';
- Witnesses wait outside the room until called to give their evidence.

#### When you are Called:

1. Speak clearly and be guided by what the member asks you to do.
2. Be ready to tell your story slowly and clearly to the member and present your evidence as you have prepared it;
3. You will be asked to swear an oath on the Bible or affirm (promise) to tell the truth;
4. 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:

1. You tell your story and give your evidence:

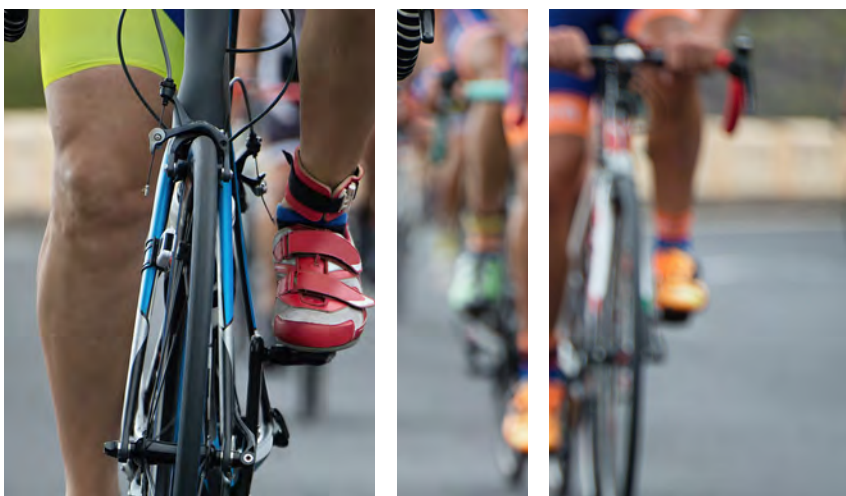
When giving evidence, tell the member about the following:

- The circumstances of the accident, including the exact location of the accident.
- The lighting and weather conditions at the time of the accident.
- The location of traffic lanes, traffic signs and lights and the position of your bicycle and the other party's vehicle.
- Explain fully how the accident occurred, what the driver did, and what actions you took to try to avoid the accident.
- 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 of the scene is incorrect.
- 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.
- 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.





- 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 purposes of refreshing your memory. Tell the member that the notes or statement were made while the event was still fresh in your mind, if this is the case, then he/she may give you permission to do so. However, it is preferable to give evidence without referring to notes.
- 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 repairs effected or have purchased a replacement bicycle, then also hand to the member a copy of your receipt for those repairs or purchase.
- 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. You will be required to ask your witnesses questions. Their answers will be considered as evidence of your claim. Avoid asking leading questions (that is, questions which suggest what the answer is that you want). If any witness is unable to attend 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 8.

#### 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 (form 39)'. This form can be found at [www.qcat.qld.gov.au](http://www.qcat.qld.gov.au).

You can appeal a decision on a:

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

You should seek legal advice before you appeal a decision.



## 13. QCAT Claim: Recovering a Judgement

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: 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 \$5000.00 and proceedings are issued in the Federal Court. This can be 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 instances 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

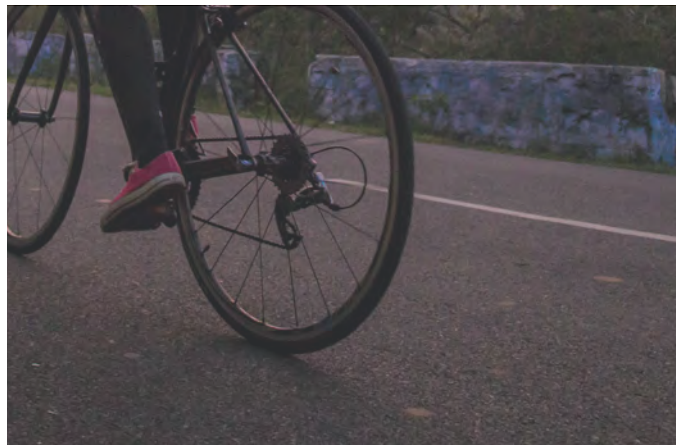
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In cases where the amount of property damage is considerable or in difficult or fervently contested cases, it may be more appropriate to issue proceedings in the Magistrate's Court.

This court has jurisdiction for all claims up to a monetary limit of \$150,000.

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 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 processing your claim.



## 16. Sample Documents and Forms

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## Attachment 1: Letter of Demand

### ATTACHMENT 1

#### 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

### ATTACHMENT 2

#### 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

### ATTACHMENT 3

#### 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 Case

### ATTACHMENT 4

#### 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 off 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 micycle was \$1,500.00.

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

Max's Bicycle Shop dated 18/01/98	\$750.00
(1 Right Road, Clayfield)	
Sue's Wheels dated 10/01/98	\$800.00



(12 Knox Street, Albion)

Attached are the written quotes from each of the above two repairers, together with an Affidavit of repairer by xxxxx 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** xxxx      **DATE:** xx/xx/xx

## Attachment 5: QCAT Application for minor civil dispute - consumer dispute

**QCAT**  
Queensland Civil and Administrative Tribunal

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  
  
Address  
  
 Postcode   
Contacts  

( )  ( )   
Preferred phone number Alternative number Email

**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 dispute - 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 753 228 or visit [www.qcat.qld.gov.au](http://www.qcat.qld.gov.au)

**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

Postcode

Contacts

( )

Preferred phone number

( )

Alternative number

Email

**PART A RESPONDENT'S DETAILS****RESPONDENT'S DETAILS**

Name

Address

Postcode

Contacts

( )

Preferred phone number

( )

Alternative number

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"/> costs of transporting a motor vehicle to the respondent if claimable	\$
<input type="checkbox"/> payment of the filing fee for this application	\$
<b>TOTAL</b>	<b>\$</b>

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

For more information on QCAT: Call 1300 753 228 or visit [www.qcat.qld.gov.au](http://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.

**PART C DETAILS OF WHAT YOU SEEK FROM THE TRIBUNAL (continued)**

If there is insufficient space here, please attach additional pages.

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.

Application for minor civil dispute – consumer dispute – page 3 of 4

For more information on QCAT: Call 1300 753 228 or visit [www.qcat.qld.gov.au](http://www.qcat.qld.gov.au)

#### 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 – 100 penalty units.

#### SIGNATURE

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

*Applicant/s sign here*

Select Date

*Date*

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



# Attachment 6:

## Affidavit of Repairer

### ATTACHMENT 6 – EXAMPLE AFFIDAVIT OF REPAIRER

#### AFFIDAVIT

##### 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:

*Mike Fixyerbike*

on

*18/02/1998*

at

*Brisbane*

in the presence of:

*Mike Fixyerbike*

Person making affidavit to sign

*Mike Fixyerbike*

Print name

Person taking affidavit to sign

Commissioner for declarations/  
solicitor/justice of the peace.

# Attachment 7:

## Affidavit of Retailer

### ATTACHMENT 7 – EXAMPLE AFFIDAVIT OF RETAILER (DAMAGED BEYOND REPAIR)

#### AFFIDAVIT

##### 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

18/02/98

at

in the presence of:

John Brown

Person making affidavit to sign

John Brown

Print name

Person taking affidavit to sign

Commissioner for declarations/  
solicitor/justice of the peace.

# Attachment 8: Affidavit of Witness

## ATTACHMENT 8 – EXAMPLE AFFIDAVIT OF WITNESS

### AFFIDAVIT

#### 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:

*Eva Vigilant*

on

18/02/98

at

Brisbane

in the presence of:

Person making affidavit to sign

Person taking affidavit to sign

Print name

Commissioner for declarations/  
solicitor/justice of the peace.