

## ✔ Factsheet: Pleadings and particulars for car accidents – Plaintiff

Some statements of claim filed by parties can be quite complicated and difficult to understand, even for simple car accidents. Below are some examples of pleadings and particulars of negligence that are often used in a statement of claim for a car accident.

Pleadings are the sections of court documents in a civil case that set out the facts you rely on. Particulars are the details of the facts used in the claim.

In the particulars section of a car accident statement of claim form, the plaintiff must describe the negligent things that the defendant did to cause the accident. For example, 'The defendant drove too fast in the circumstances', or 'The defendant failed to give way'.

The common pleadings and particulars of negligence given below can have different meanings, depending on the circumstances of the accident. If you don't understand what pleadings apply to your situation, you should get legal advice.

You should make sure you give proper particulars of your claim. If you don't, the defendant can ask for 'further and better particulars', which will mean that your claim might be delayed. If this happens, you may have to pay the legal costs of the defendant.

If the pre-trial review date is 'adjourned' (put off to another date) because you have not given proper particulars, you might be ordered to pay some of the legal costs of the defendant.

### Car accidents – Example pleadings and particulars

1. **Failed to give way to other vehicles**

This particular could be used where the driver at fault should have given way, but didn't. For example, at a give way sign, a roundabout or a t-intersection.

2. **Failed to do all things necessary to avoid placing the plaintiff in peril**

This particular could be used where there were a number of things the driver at fault could have done, but didn't do, to avoid putting the plaintiff in danger. For example, braking in time, swerving out of the way, having lights on in dark conditions, or driving at a speed suitable in the circumstances.

3. **Failed to keep a proper lookout**

This particular could be used where the driver at fault did not look for other cars before the collision, not because the driver's view was obstructed, but because the driver was not watching the road. For example, the driver did not check their side mirror before changing lanes.

**4. Failed to drive in a safe manner**

This particular could cover a number of circumstances. For example, where the driver drove above the speed limit, or was swerving across each side of the road.

**5. Failed to avoid colliding with the plaintiff**

This particular could be used where the driver at fault could have avoided crashing. For example, by safely swerving to avoid the other car or applying their brakes in time.

**6. Drove at a speed which was excessive in the circumstances**

This particular could be used where the driver at fault was driving at a speed that was too fast in the circumstances. It does not necessarily mean that the driver was speeding - they could have been driving below the speed limit, but at a speed that was still too fast to avoid an accident in the circumstances. For example, in very heavy rain driving at 50 or 60 kilometres per hour may be dangerous even if the speed limit is 60 kilometres per hour.

**7. Failed to safely control their car**

This particular could be used where the driver at fault could have braked or swerved safely to avoid the other car, but didn't. This particular could also be used where the driver at fault brakes suddenly for no reason, causing the car behind it to collide with its rear.

**8. Failed to sound any warning of the approach of their car**

This particular could be used where the driver at fault could see that the accident was about to happen but didn't use their horn to warn the other driver.

**9. Drove or attempted to drive the motor vehicle across the path of the Plaintiff's motor vehicle when there was neither time nor space to do so**

This particular could be used where the driver at fault drives into the path of oncoming traffic, or moves in front of the other car when there isn't enough room, and it isn't safe to do so. For example, the driver at fault may try to turn right when they don't have enough time to do so because the other car is coming from the other direction.

**10. Failed to apply the brakes on the motor vehicle in time to avoid the collision or at all**

This particular could be used where the driver at fault could have avoided the accident by braking. For example, where the driver at fault is driving behind another car and that car stops, but the driver at fault doesn't use the brakes in time to avoid hitting the car in front.

**11. Failed to comply with the Road Rules 2014**

This particular could be used where a driver disobeyed one of the road traffic rules and causes an accident. For example, driving through a red light, not stopping at a stop sign, failing to give way at a give way sign, or failing to indicate when they are turning left or right. If you want to know more about the NSW Road Rules, go to [NSW Legislation](#).

**12. Contrary to rule 129 of the Road Rules 2014, failed to drive as near as practicable to the far left side of the road**

Rule 129 of the *Road Rules* requires a driver to keep to the far left side of the road. This particular could be used where the driver at fault was driving too close to the dividing line in the middle of the road and hits a car driving in the opposite direction.

**13. Drove or attempted to drive their motor vehicle when their ability to manage or control the same was impaired as a result of the consumption of intoxicating liquor**

This particular could be used where the driver at fault was driving while under the influence of alcohol, which affected their ability to safely control their vehicle.

**14. Res Ipsa Loquitur**

Res Ipsa Loquitur is a Latin phrase that means 'The thing speaks for itself'. When a plaintiff can't prove what caused an accident, the fact that the accident happened may be used as evidence that it was caused by the defendant's negligence. For example, where a car is being driven on the wrong side of the road and hits another car. A plaintiff may plead 'Res Ipsa Loquitur' in their statement of claim, and what they are saying is that the accident could only have happened if the defendant was doing something negligent.