

**MOTOR TRADES
ASSOCIATION
OF AUSTRALIA**

Representing the
retail automotive industries
throughout Australia



GUIDE 2

DEFECTIVE PARTS RIGHTS & OBLIGATIONS OF COLLISION REPAIRERS



INTRODUCTION

With repairers facing persistent pressure from motor vehicle insurers, the Motor Trades Association of Australia (MTAA) and the Australian Motor Body Repairers Association (AMBRA) have teamed up with HWLE Lawyers to tackle the challenges collision repair businesses face.

To empower repairers in navigating the complex landscape of insurance demands, MTAA and AMBRA will roll out a series of guides, clarifying their legal rights against unreasonable or prohibited insurer requests.

This second guide will outline what rights and obligations collision repairers have when the parts they have used for a repair are found to be defective.

THE PROBLEM

As a collision repairer, you may face difficulties understanding your rights and responsibilities if a part used in a repair is defective, especially if the insurer directed you to obtain it from a specific supplier.

What are your legal rights and obligations when this issue arises?

Your rights and responsibilities as a repairer will depend on whether the repairs are performed by you for either:

1. A customer, under a repair authority or preferred repairer agreement with an insurer; or
2. A customer who is not insured; or
3. A customer who has received a cash settlement from their insurer and has chosen you to carry out their repairs.

In this guide we explain the reasons for these differences and provide a breakdown of your legal rights and obligations under each legal relationship.

Scenario 1: Insurance arrangement

The customer is insured and has come to you for repairs that are covered by a repair authority.

Your rights and obligations with the insurer

If you have used a defective part when carrying out the repair services, you will likely have breached your contract with the insurer.

Most repair authorities and preferred repair agreements require you to make good any defective work. While it may not be your fault that the part you've sourced is defective, it will be up to you to take that up with the supplier who supplied you with the defective product (see page 3 for more information about your rights and obligations as far as suppliers and manufacturers are concerned).

However, where you have been directed to use and source parts from a particular supplier by the insurer against your recommendation, the liability position will change.

As covered in more detail in Guide 1, "Using Non Genuine Parts – Legal Rights and Risks for Collision Repairers" depending on the terms of your contract with the insurer, you may have a right to recover costs from the insurer for loss or liability that you incur as a result of having to comply with a directive given by the insurer (e.g. a directive to source parts from a particular supplier only).

To enforce this right however, you would need to be able to provide written evidence of the insurer's requirement to use the relevant part and from which supplier, and the insurer's unwillingness to allow you to use the part of your choosing.

Your rights and obligations with the customer

As outlined in Guide 1, when an insurer authorises a repair, your contractual relationship is with the insurer rather than the customer.

In this scenario, the insurer is responsible for providing consumer guarantees to the customer, as they are considered the supplier of the goods and services. Any claims from the customer alleging that you've breached a consumer guarantee under the Australian Consumer Law (ACL) may not be entirely accurate.

However, if the insurer addresses the issue with the customer, they might seek reimbursement from you if they determine that you were responsible for sourcing the defective part. In such cases, it's crucial to obtain written evidence from the insurer, as mentioned above.

Even in the absence of contractual obligations, you could still be liable under negligence laws if the defective part you used – or the way you performed the repair – caused injury or loss to the customer or third parties.

TIP: When insurers pressure repairers to source parts from specific suppliers against the repairer's recommendations, it can undermine trust between the customer and the repairer, leading to dissatisfaction.

As an "insurance fulfillment provider," a repairer is not obligated to follow the insurer's directives if the repairer believes that following the directive will cause them to breach a legal duty they owe to their customer. The repairer must be satisfied with the insurer's request before proceeding with any repairs

Your rights against the supplier and/or manufacturer of the defective part

If a supplier or manufacturer provides you with a defective part, you may have rights against them for breaching their contract with you. However, these rights depend on the contract's terms, including any limitations of liability, warranties, or obligations related to the quality of the goods.

Since you are purchasing goods for the purpose of resupply or for use in repairing a customer's vehicle, you won't have consumer guarantee rights against the supplier or manufacturer.

Therefore, it is crucial to review the warranties that come with the goods you receive, ensuring you have a basis for seeking redress from the supplier in such situations.

Scenario 2: Direct arrangement for repairs

The customer comes to you after receiving a cash settlement from their insurer or for repairs which are not covered by insurance

Your obligations to the customer

When you perform repair services for a customer directly, rather than under a repair authority or preferred repairer agreement, you have contractual obligations and must adhere to statutory 'consumer guarantees' under the ACL. These guarantees include ensuring that goods are of acceptable quality and fit for their intended purpose, and that services are provided within a reasonable time. As detailed in Guide 1, you also likely owe a duty of care to the customer under negligence laws.

If you use a defective part, the customer can rely on their consumer guarantee rights under the ACL. These rights vary depending on whether the issue is classified as a major failure or a minor failure. A major failure means the parts or services are unsafe, create a hazardous situation, or have a serious problem or multiple smaller problems. In contrast, a minor failure involves issues that can be resolved within a reasonable time and do not amount to a major failure.

If the repair services or parts you've provided have a major failure, the customer will have the following statutory rights:

GOODS	SERVICES
<ul style="list-style-type: none"> Reject the product and choose a refund or an identical replacement (or one of similar value if reasonably available); or Keep the product and ask for compensation for any decrease in its value caused by the problem; and Seek compensation for any other reasonably foreseeable loss or damage. 	<ul style="list-style-type: none"> Cancel the services contract and get a refund. This may not be a full refund, as the consumer needs to pay a reasonable amount for any work done so far and as expected; or Keep the contract but pay a lower price having regard to the problem.

Where the repair services you've provided (or parts that you've provided as part of that service) have a minor failure, you must fix the problem or repair the product for free. However, you do not have to offer a replacement or refund for a minor failure, although you can choose to do so, if you wish.

Your rights against the supplier and/or manufacturer of the defective part

Where you have supplied a defective part, you will have a right of indemnity against the manufacturer of the defective part to recover your losses for breaching a consumer guarantee, provided that the consumer guarantee that has been breached is one of the following:

- Acceptable quality;
- Fitness for a disclosed purpose which the consumer made known to the manufacturer either directly or

indirectly, or indirectly through the supplier or a person who any prior negotiations or arrangements in relation to the acquisition of the parts were conducted or made; or

- Supply by description.

Your right of indemnity against a manufacturer cannot be excluded or modified by contract (except to impose an even greater liability on the manufacturer).

You have a 3-year period within which to make an indemnity claim against the manufacturer.

FINAL TAKEAWAYS



Insurer-directed parts

If an insurer directs you to source parts for a repair from a particular supplier, but you prefer to use your own supplier, you should attempt to come to an agreement with the insurer. If an agreement cannot be reached and you believe that using the insurer's suggested supplier is not the course of action you would recommend, ensure you obtain the insurer's requirements in writing.

As highlighted in Guide 1, it's crucial to have written evidence of the insurer's directive to use a particular part from a specific supplier, and their refusal to allow you to use your preferred part.



Consumer guarantees

When providing repair services directly to customers (i.e., not through an insurance arrangement), you are likely to owe consumer guarantees under the ACL. If a customer claims that a defective part you supplied has caused an issue with their vehicle, you must fulfil your consumer guarantee obligations, regardless of whether the defect is due to a part sourced from your own supplier. Your obligations to the customer under the ACL remains, irrespective of the issues with your supplier / manufacturer, which should be addressed separately with them.



Managing risk

In most cases, to mitigate risks associated with defective parts, source parts from reputable suppliers and ensure that the terms of your acquisition provide at least basic protections against defective goods.

You are likely to owe consumer guarantees to customers that acquire repair services from you directly (i.e. not under an insurance arrangement). If a customer asserts there is a defect with their vehicle caused by a defective part, you are still required to comply with your consumer guarantee obligations under the ACL when managing the issue, even if you know or suspect it is caused only by a defective part that you have sourced from your own supplier.

Your obligations to the customer under the ACL in this instance are not affected by the potential failures of your supplier - this is a separate issue that you need to manage with your supplier / the manufacturer.

CONTACT

For further information contact your local state member association.