

**MOTOR TRADES
ASSOCIATION
OF AUSTRALIA**

Representing the
retail automotive industries
throughout Australia



GUIDE 3

REPAIR WORK & INSURANCE 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.

Our third guide will outline what are your legal rights and obligations if you go ahead and start the repair work, despite not having a commitment from the insurer on what you will be paid or what has been agreed for 'items on report' or similar.

THE PROBLEM

As a collision repair business, one of the difficult issues that you face is working out what your rights and obligations are when an insurer authorises your estimate for repair services and sends you a repair authority, but marks certain items in your estimate as being 'on Report', 'to be discussed', or words to that effect. You don't want to let the customer (the policyholder) down, as they've been told that their repairs have been authorised by the insurer, and they need their car repaired as soon as possible. However, what are your legal rights and obligations if you go ahead and start the repairs despite not having a full commitment from the insurer?

You are an independent business, so generally speaking, you can provide an estimate on the amount that you deem appropriate for any requested repair services. However, when you are repairing a vehicle under a repair authority with an insurer, you will be bound by your contract with that insurer (either a repair authority or an ongoing repairer agreement), which can contain certain requirements and restrictions.

In practice, an assessor representing the insurer will review your estimate and may request you to make certain changes before the repair services are authorised. Sometimes, an assessor may mark certain items in your estimate 'on report', 'to be discussed', or some similar variation of those terms (**Items on Report**).

This generally means they will assess that item at some later point (generally once they have more information or have made an internal decision), which may take some time. In the meantime, the policyholder has been told that the repairs are 'authorised' by their insurer, despite the absence of any agreement on those Items on Report.

So, what is going on here from a legal perspective? In this publication we delve into the position a little deeper and provide some practical tips for repairers to keep in mind when this situation arises.

Are the vehicle repairs really authorised if there are Items on Report?

While it will depend on the language used in your contract with the insurer, from a contract law perspective it is unlikely that the estimated repairs will be interpreted as being fully authorised. The more likely position is that the estimated repairs have been partially authorised, subject to further agreement of the Items on Report, or other matters such as the method of repair or parts to be used. Alternatively, the position could potentially be that the estimated repairs have not been authorised at all because the parties have not yet reached certainty over what the terms of the agreement are for that overall repair. What this means in very simple terms is that you are in a grey and very murky contractual position and your rights to receive payment for the Items on Report are at risk.

TIP: The practice of assessors marking items as 'on Report' has become somewhat of an **insurer** industry standard. **It should not be considered industry standard.**

In more instances than not, marking items on Report allows insurers to expedite the authorisation of a vehicle for repairs, even though the repairs are not fully authorised if any items are marked as 'on Report' or similar.

That risk is two-fold. If the estimated repair hasn't been authorised, you may be potentially in breach of your obligations under your contract with the insurer (and potentially the Motor Vehicle Insurance and Repair Industry Code of Conduct (**Code**)). This is because your repair authority or repair contract will likely prohibit you from proceeding with repairs until the repairs have been authorised, which is also mirrored in the Code. It is also potentially problematic from the insurer's perspective if they are informing policyholders that the repairs have been authorised when contractually this may not be the case given, they are marking Items on Report.

So, what should you do when you receive an assessment with Items on Report?

While it may be tempting to go ahead and get started on the repair process on the assumption that the insurer has partially authorised your estimate, it is important that you consider your options, and take some protective steps, before doing so.

Firstly, it is important that you read each authority you receive to ensure that it reflects what you as the repairer are comfortable in guaranteeing and to identify any Items on Report. You should get clarity on **why** these items are on report. Is it because the insurer is disputing that item, or the assessor cannot see the damage to that item, or does it relate to something that may reasonably necessitate some further investigation? Once you know the reason for why something is on Report, you can put some protections in place, such as the following:

1. Don't start work until you get agreement on the Items on Report and the repairs are in fact fully 'authorised'

The best approach from a legal perspective is not to proceed with the repairs where there are Items on Report and to insist that the parties have a full understanding and allow for a complete authority to be issued. If that means dismantling of the vehicle is required then speak to the insurer, and ensure the insurer has a legitimate reason why they have marked something on report. This may tease out the position of the insurer on the repairs and provide you with more information about how to proceed - i.e., you may decide you don't want to take on the work at all because it raises too many risks (see our previous publication). In doing so, you could explain to the insurer or assessor that you are not comfortable accepting the potential risk and that you will not proceed with those repairs until you have this sorted out and the insurer needs to convey that to the vehicle owner. You could also point to the fact that having Items on Report in the authorisation brings into question whether the repairs are in fact fully authorised, which could result in you breaching your contractual obligations to the insurer and the insurer's commitments to the insured policyholder under the Product Disclosure Statement for its insurance product.

While there are obviously practical challenges with this suggestion for repairers, given the impact that this may have on your business (particularly if this results in the policyholder being disgruntled), you will need to weigh up that risk against the risk that you may not be paid what you expect to be paid. Sometimes it is easier for an assessor to mark something on report instead of teasing out the issue or concern then and there, and unfortunately that is not an acceptable practice by them as it may end up having a detrimental impact on you and/or the policyholder.

Agree to proceed with the repairs , but on the basis of a written commitment regarding on Report items

If you have decided to proceed with the repairs despite the risks outlined above or there is a legitimate reason for having an item 'on Report' in your estimate, consider whether you can get something in writing from the insurer or assessor that provides comfort over how the additional repairs will be authorised later. From a contractual perspective, this may provide sufficient certainty that the repairs have been fully authorised and may give you greater clarity on how the Items on Report will be considered.

FINAL TAKEAWAYS



Clarify authority terms

Always confirm the specifics of the repair authority, especially regarding items marked as on report. Engage with the insurer to ensure clarity on what is fully authorised before proceeding with repairs.



Hold off on repairs

Refrain from starting any repair work on items marked as on report until you have a clear and formal agreement on the items. This can help avoid potential breaches of contract and protect your interests.



Document communication

Maintain thorough documentation of all communications with the insurer regarding repair estimates, authorisations, and any items on report. Written records can provide valuable evidence if disputes arise later.



Request written commitment

If you decide to proceed with repairs despite uncertainties, obtain a written commitment from the insurer about how the work will be approved upon completion. This commitment can provide clarity and security prior to completion of repairs.



Educate customers

Inform your customers about the implications of items marked as on report. Transparency can help manage their expectations and reduce dissatisfaction if repairs are delayed due to authorisation issues.



Seek legal advice

If you encounter complex situations or potential disputes, consider consulting with legal experts familiar with automotive repair and insurance law. They can provide guidance tailored to your specific circumstances.

CONTACT

For further information contact your local state member association.