GUIDE 4

OEM REPAIR METHODS
RIGHTS & OBLIGATIONS OF AUSTRALIAN MOTOR BODY 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 body 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 fourth guide will help you understand your rights and obligations when an insurer instructs you to repair a vehicle using a method that differs from the Original Equipment Manufacturer (OEM) repair method.

THE PROBLEM

As a body repairer, one of the more difficult issues that you face is understanding your rights and obligations when you're instructed by an insurer to repair a vehicle using a method that is different to the repair methods issued by the OEM.

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

The legal risks

Legal risks will arise for repairers where they repair a vehicle in a manner different to that prescribed under the OEM repair method and that results in some sort of loss, damage or safety issue. These risks arise under the repairer's contract with the party who directed the repairer to take that course (whether insurer or car owner), and under the general law of negligence where the loss, damage or safety issue was the reasonably foreseeable result of the repairer's acts or omissions.

We discuss each in turn below.

1. Contractual risks arising under repairer's contract with insurer

If you have repaired the vehicle in a way that has resulted in loss, damage or a safety issue, you will likely have breached your contract with the insurer and/or be required to comply with additional obligations under your contract with the insurer to remediate any defects you have caused. Most repair authorities and preferred repairer agreements will require you:

- to carry out repairs according to the OEM's repair methods;
- not to do anything that may have the effect of voiding the OEM's factory warranty for the benefit of the customer; and
- rectify any defective work that you performed.

Repairing a vehicle in the way not prescribed by the OEM may have the effect of voiding the OEM's factory warranty for the customer and may result in defects to the vehicle. Depending on the way the repair contract is drafted, these obligations may still arise even where the relevant issue has arisen due to the insurer's own insistence that you follow a particular course of action as part of the repairs.

It is important though that the insurer is able to provide written evidence of the insurer's requirements to employ a particular method of repair in lieu of the OEM repair method, and the insurer's subsequent unwillingness to allow you to follow the method of repair of your choice (assuming this would be that which is set out in the OEM repair method). It is also important that if you are asked to repair a vehicle in a manner which you believe is unsafe, you should always say no and refuse the work.

2. Risks of legal liability for negligence

You may also have liability under the general law of negligence where you fail to exercise reasonable skill and care in repairing a vehicle and that causes loss or damage to the insured customer or any third parties.

While these laws are complex and highly fact-dependent, if a repairer follows a repair method dictated by the insurer that is different to the OEM repair method in circumstances where the repairer knows that the foreseeable outcome of such methods could cause loss or damage, this has the potential to be considered a failure to exercise reasonable skill and care where it results in loss or damage to a person. As with the position in contract law, it is important to ensure that any direction from the insurer to depart from the OEM repair method is recorded in writing.

In the worst case, where a customer brings a legal claim against you, you may be entitled to 'join' the insurer to the action (if they directed you not to follow the OEM repair method), as a party that caused or contributed to the relevant loss or damage. However, this may or may not relieve you from your liability to the customer depending on a range of factors including the specific event, the terms of the relevant contract(s) and the application of any relevant laws.

The bottom line is that where you foresee loss or damage resulting from the method of repair that you are being asked to follow by an insurer, in circumstances where this differs from the OEM repair method, you should seriously consider whether you take on the work. If you are being asked to do something unsafe, you should refuse.

Where an insurer has 'cash settled' a claim to the insured, or the insurer is otherwise indemnifying/paying the insured who then engages you directly, this is likely to move to a direct engagement at which point the consumer guarantee position will change and you may be responsible for consumer guarantees.

FINAL TAKEAWAYS

There are significant potential risks for the repairer in choosing not to follow OEM repair methods.

While there is no strict legal requirement to follow OEM repair methods, there are significant potential risks for the repairer in choosing not to do so, particularly where the repairer believes that following an alternative method directed by the insurer could cause loss or damage to an insured customer or a third party.

You should only accept work where you are comfortable with the potential risks.

You may have certain liabilities to the insured and third parties in relation to the repairs you carry out under the laws of negligence. While you are operating in a competitive environment, it is critical to consider whether you take on work from an insurer where you are being asked to carry out repairs in a way that you know does not align with the OEM repair method. If you are asked to repair a vehicle in a manner which you believe is unsafe, you should always say no and refuse the work.

The repairer may end up in breach of its contractual obligations to the insurer.

In situations where an insurer directs a repair procedure that is different to the OEM repair method, the repairer may end up in breach of its contractual obligations to the insurer (or required to perform additional obligations at its cost), even though it is the insurer who has requested the repairer follow such course of action. This includes where the repairs void the OEM's warranty in respect of the vehicle to the insured customer or where the repairs result in defects.

In all cases where you are directed to depart from the OEM repair method, you should confirm those instructions in writing and warn the party directing you that failure to follow the OEM repair method may void the OEM's factory warranty, requiring the insurer and consumer to sign in acknowledgement.

CONTACT For further information contact your local state member association.