

**MOTOR TRADES  
ASSOCIATION  
OF AUSTRALIA**

Representing the  
retail automotive industries  
throughout Australia



## GUIDE 1

# USING NON-GENUINE PARTS LEGAL RIGHTS & RISKS FOR 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 this year, clarifying their legal rights against unreasonable or prohibited insurer requests.

This first guide will outline legal rights and risks for collision repairers using non-genuine parts.

## THE PROBLEM

***As a collision repairer, one of the dilemmas you face is handling an insurer's request for non-genuine parts when you believe genuine parts are the safer and smarter choice. What are your legal rights in this situation, and what risks do you need to consider?***

When an insurer insists on using non-genuine parts for vehicle repairs, follow these steps to navigate the situation effectively.

### 1. Review any agreements, repair authorities and Product Disclosure Statements (PDS)

#### **Understand Your Agreement or Repair Authority:**

Review your repair authority or contract with the insurer, along with the Product Disclosure Statement (PDS), to determine if they specify the use of genuine parts or permit non-genuine options.

Be sure to check for any clauses regarding adherence to manufacturer specifications as well.

**Verify Warranty Requirements:** Make sure that using non-genuine parts won't breach any conditions of the vehicle's factory warranty. While your main contract is with the insurer, you also have a duty of care to the insured customer. This means you must uphold high standards of safety and quality in your repairs.

You're responsible for ensuring that repairs don't compromise the vehicle's safety or performance. Even

if the insurer pushes for non-genuine parts, assess whether those parts meet the necessary safety and quality standards.

**TIP:** Just because an assessor instructs you to use specific parts or methods—often to save costs—it doesn't mean their directions are right or that they've upheld their commitments to the insured. Always critically evaluate these directives to ensure they align with industry standards and do not violate any warranties or contractual obligations.

### 2. Assess the risks - Evaluate safety and quality

When considering repairs, it's crucial to thoroughly evaluate non-genuine parts for safety, quality, and alignment with manufacturer specifications.

**Safety Concerns:** Non-genuine parts may not always meet the same safety standards as genuine parts, regardless of what the assessor claims. Assess whether these parts have been tested and certified to the same standards as OEM (Original Equipment Manufacturer) parts.

Consider the potential risks to vehicle occupants and others on the road if these parts fail, especially if the vehicle is still under its new car warranty.

**Quality and Performance:** Non-genuine parts can vary significantly in material quality, fit, and performance. Evaluate whether these parts can match the reliability and durability of genuine parts. Poor performance or inconsistent quality could lead to malfunctions in vehicle systems, jeopardising overall safety and functionality.

**Manufacturer Specifications:** Ensure that non-genuine parts align with the vehicle manufacturer's specifications. Any deviation from these standards can affect the vehicle's performance and longevity.

If you believe that using non-genuine parts will compromise the repair, inform the assessor. Additionally, check if the non-genuine parts are approved or recommended by the manufacturer.

### 3. Consider legal and financial implications

When opting for non-genuine parts in repairs, it's vital to consider the potential liabilities, financial risks, and warranty implications that may arise from their use.

**Liability for Defects:** Using non-genuine parts can expose you to liability if they lead to defects or issues with the vehicle. Should a defect arise, you could be held accountable for any resulting damage or harm, facing claims from both the vehicle owner and third parties affected by the malfunction. Even if the insurer rectifies the issue for the customer, they may seek reimbursement from you if they determine you caused the defect during the repair process. Remember, an insurer's promise of a 'lifetime' warranty on repairs does not absolve you of your duty of care to ensure all repairs meet OEM standards and specifications.

**Financial Risks:** Consider the financial implications of using non-genuine parts. This includes the potential costs of addressing any issues that arise from these parts. If they result in further repairs or replacements, you may bear those expenses, and the insurer might refuse to cover them.

**Warranty Implications:** Utilising non-genuine parts may void the vehicle's factory warranty. If this occurs, the vehicle owner could hold you accountable for any warranty-related problems, leading to financial claims against you for repairs that would have been covered under the factory warranty.

**TIP:** The next time an assessor says, "We provide a lifetime warranty on the repairs; go ahead and use the part I recommended," ask them to clarify what "lifetime" actually means.

Does it refer to the reasonable lifespan of the product (like five years), or does it mean "forever," even if the vehicle changes hands multiple times?

The term "lifetime" can be vague, so it's essential to get a clear explanation from the assessor.

They should respect the expertise of the repairer and approve the parts you've recommended in your estimate. Remember, the repairer is the true expert in vehicle repair and holds primary responsibility to the vehicle owner.

### 4. Communicate with the insurer and customer

To protect yourself and your customer when considering non-genuine parts, it's essential to communicate your concerns, educate the insured, and obtain proper documentation throughout the process.

**Present Your Concerns:** Clearly express any concerns you have regarding the safety, performance, or warranty implications of using non-genuine parts. Support your concerns with evidence, such as manufacturer specifications, industry standards, or relevant past experiences.

**Explain the Implications:** Educate the insured customer about the insurer's request and the potential effects of using non-genuine parts. Discuss how these parts may impact the vehicle's performance, safety, and warranty status.

**Obtain and Document Consent from the Insured Customer:** Ensure that the customer is fully informed and consents to the use of non-genuine parts if you decide to proceed. Get their written consent to document their understanding and acceptance of the potential risks.

**Request Written Confirmation from the Insurer:** If you decide to use non-genuine parts, safeguard yourself by requesting written confirmation from the insurer regarding their directive. This creates a record of their instructions. However, remember that this written confirmation does not absolve you of your duty of care to the insured customer and may not protect you if issues arise later.

# SUMMARY



## Professional advice matters

While you may have some protections under negligence law by following the insurer's instructions, the complexities involved necessitate careful consideration. If unsure, it may be wise to refuse the request.

Insurers should value the professional advice of repairers, whose expertise should not be undermined by inexperienced assessors or algorithmic estimates.



## Upholding standards

Repairers are committed to maintaining high ethical standards. Using non-genuine parts, especially lower-quality ones, can compromise these standards and harm a repairer's reputation.

Insurers and assessors must clearly communicate to customers that using non-genuine parts may void warranties and violate OEM standards.



## Building trust

Customers trust repairers to ensure their vehicle's safety and longevity. Pressuring repairers to use non-genuine parts can erode this trust and lead to dissatisfaction.

A repairer, as an "insurance fulfillment provider," is not obligated to comply with the insurer's directives just because the repair is authorised. Insurers should rely on repairer expertise to ensure a smooth process and customer satisfaction.



## Contractual obligations

Insurers have contractual obligations to maintain certain repair standards. Forcing the use of non-genuine parts to save costs could breach these obligations, leading to disputes from customers expecting quality repairs.

Customers should lodge disputes with their insurer and, if necessary, file complaints with the Australian Financial Complaints Authority (AFCA).

Repairers can also dispute the insurer under the Motor Vehicle Insurance and Repair Industry Code of Conduct.



## No legal obligation

There is no legal obligation to comply with the insurer's request to source non-genuine parts, as the repairer, not the insurer, ultimately bears the risks and liability if something goes wrong.



## Assess your comfort level

Only accept work if you are comfortable with the associated risks. Always refuse to supply and fit parts you believe are unsafe.

## CONCLUSION

While non-genuine parts can offer practical and cost-effective solutions in some cases, their use should be approached with caution and discussed with the customer. If you choose to use non-genuine parts, ensure they meet quality standards, comply with regulations, and are utilised with the customer's informed consent. By carefully evaluating these factors, you can make informed decisions about when and how to incorporate non-genuine parts in vehicle repairs.

## CONTACT

For further information contact your local state member association.