

Claims handling and settling: Making 'handling and settling under an insurance claim' a '*financial service*' - What does it mean for Body Repairers?

Background

It has been two years since Commissioner Kenneth Hayne delivered his Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

Recommendations from the Final Report have been implemented with the enactment of the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* (Cth) (**FSR Act**).

The FSR Act commenced on 1 January 2021 and includes amendments to the *Corporations Act 2001* (Cth) (Corporations Act) – to make **claims handling and settling a '*financial service*'**.

In April 2021, ASIC issued [Information Sheet 253 \(INFO 253\)](#) for anyone who provides claims handling and settling services for insurance products regulated by the *Australian Securities and Investments Commission* (ASIC). These services were previously excluded from the definition of '*financial service*' in the Corporations Act and persons who provided these services were not required to hold an Australian Financial Services (AFS) licence. This exclusion has now been removed.

INFO 253 explains that for a body repairer (referred in the information sheet as smash repairers), a general exemption applies. This 'general exemption' means that body repairers who are often involved in the claims handling process **do not need to hold an AFS licence**, (unless they are authorised to reject claims).

Can Body Repairers provide services on behalf of an AFS license (for this example, an AFS Licensee is an insurer)

Body Repairers come under "insurance fulfilment and other service providers": section 911B(1)(f) of the Corporations Act.

Insurance fulfilment providers are deemed to be acting on the insurer's behalf when providing services or goods to satisfy an insurer's liability: see section 910D of the Corporations Act. Body repairers are the insurer's representatives *by law* because they provide claims handling and settlement services on the insurer's behalf. Body repairers who are engaged by an insurer to repair cars under the insurer's liability to the insured, **but** who do not have authority to reject claims, do not need an AFS License. In addition, the insurer does not need to appoint the body repairer as their authorised representative, and there is no process the insurer needs to follow under the Corporations Act to engage the body repairer to provide claims handling services on their behalf.

Example No. 2, Page 29 - ASIC Information Sheet (INFO 253): Specific to Body Repairers (Smash Repairers).

Scenario

Hendrik operates a smash repair business and is an approved smash repairer for an insurer. When an insured lodges a claim, the insurer refers them to Hendrik. Under an agreement with the insurer, Hendrik is authorised to approve claims and start repairs of damage that he assesses to be under \$1,500 and covered by the insurance policy. If the damage is over \$1,500, or there are other issues, he prepares a quote for the insurer. If accepted by the insurer, it authorises Hendrik to do the repairs.

Commentary

Hendrik is providing a claims handling and settling service when he provides repair services to satisfy the insurer's liability. He does so as a representative of the insurer because, as an *insurance fulfilment provider*, Hendrik is treated as acting on behalf of the insurer by section 910D. Hendrik can provide this claims handling and settling service on behalf of the insurer under section 911B(1)(f). Hendrik does not need an AFS licence or to be an authorised representative of the insurer because he does not have authority from the insurer to reject claims.

VACC advises its body repair members, that insurers may seek to amend current contracts, with the intention of placing onerous and contentious demands on repairers as a result of making a body repairer **believe** they are an "authorised representative". A body repairer is an insurer's "fulfilment provider" only, and as the example provided by ASIC explains, the body repairer is providing a claims handling and settling service on behalf of the insurer under section 910D of the Corporations Act. The repairer can provide the claims handling service on behalf of the insurer under section 911B(1)(f) and does not need to be subjected to onerous clauses under Chapter 7 of the Corporations Act or made to believe they are or should be an authorised representative by the insurer.

Key take aways

- A body repairer is acting on behalf of the insurer under section 910D of the Corporations Act.
- A body repairer can provide the claims handling service under section 911B(1)(f) of the Corporations Act.
- A body repairer is not required to hold an AFS License.
- A body repairer is not an "authorised representative" of the insurer. This is due to the fact that the repairer cannot and does not have the authority to reject/deny a claim.
- Section 766 of the Corporations Act is limited for the purposes of the repairer, and the repairer should not be subject to onerous clauses under Chapter 7 of the Corporations Act, with the belief they are acting under the insurer as an "authorised representative".
- A body repairer is an "insurance fulfilment provider" under section 911B(1)(f).
- The benefit to the body repairer and consumer, due to claims handling as a financial service becoming law, from 1 January 2021, are the strict obligations for the insurer as listed on page 11 and 12 of the ASIC Info Sheet 253. The same strict obligations are found under section 912A and 912B of the Corporations Act.

Please take this [link](#) to ASIC Information Sheet (INFO 253): Claim's handling and settling.

Important Notice

Please note that the information is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice.

You should also note that because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases, your particular circumstances must be considered when determining how the law applies to you.

If you need further information, please contact me on 03 9829 1142.

Kind regards

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