

Important information - please read

Insurance Regulations – ‘Claims handling and settling service’

Dear Member

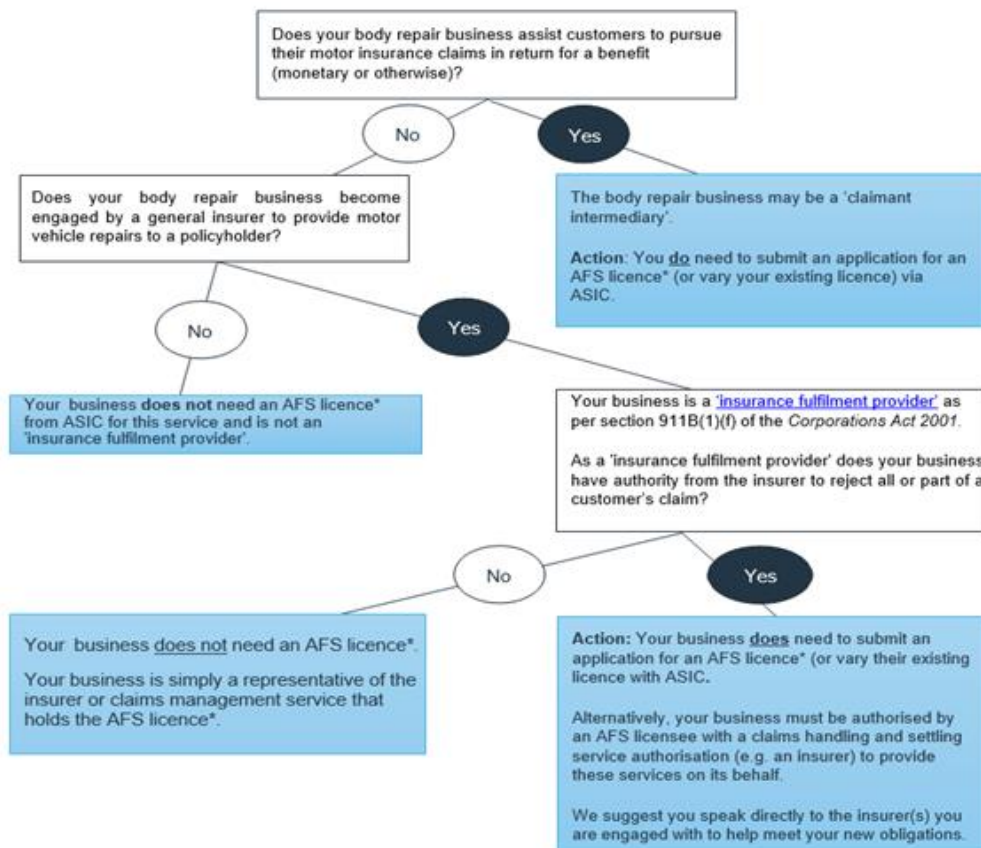
Background

If your body repair business undertakes certain activities in relation to a motor insurance product, you are providing insurance claims handling and settling as a **financial service** (a ‘*claims handling and settling service*’). For example, a body repairer who is engaged by an insurer to repair vehicles under the insurer’s liability to the insured, but who does not have authority to reject claims.

Further to our **Bulletin** issued on [26 April 2021](#), VACC reminds body repairers their business is identified as a “**insurance fulfilment and other service provider**”: under section 911B(1)(f) of the Corporations Act. ASIC [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 for motor vehicle repairs:

1. Do not need to hold an Australian Financial Services Licence (AFSL) and
2. A body repairer is not an “authorised representative” of the insurer, unless the business has the authority from the insurer to reject claims.

We encourage you to use the **decision tree** below to identify what action you may need to take.



Providing services efficiently, honestly and fairly

An insurer is obliged under section 912A(1)(a) of the Corporations Act to do all things necessary to ensure that their financial services are provided efficiently, honestly and fairly. **Your business may receive information from various insurers, if not already, asking you to take reasonable steps to ensure your body repair business provides efficient, honest and fair claims handling and settling services as an ‘insurance fulfilment provider’.**

ASIC’s [INFO 253](#) confirms insurers do not need to have arrangements to supervise and monitor the conduct of their representatives who are ‘insurance fulfilment providers’. However, as an AFS licensee, the insurer is still responsible for the conduct of your business as you are their representative whilst repairing the vehicle – regardless of whether your conduct was within the authority the insurer gave you or not.

This means that, to satisfy an insurer’s **obligation**, an insurer will generally need to handle and settle insurance claims:

- in a timely way
- in the least onerous and intrusive way possible
- in a way that supports consumers, particularly ones who are experiencing vulnerability or financial hardship.

How do the above insurer obligations impact my body repair business given that I am an ‘insurance fulfilment provider’?

In a timely way

As an insurance fulfilment provider, you may be sufficiently overseen by the insurer to ensure you do not cause delays in the repair process. This includes insurers being responsive to complaints about the quality and timeliness of work your business performs. Industry codes of practice set timeframe obligations on insurers for various activities relating to claims handling and settling, like the General Insurance Code of Practice 2020. The timeframes for handling claims set out in industry codes are useful indicators of what industry considers to be appropriate standards.

In the least onerous and intrusive way possible

The insurer is responsible to assess claims in the least onerous and intrusive way reasonably possible in the circumstances.^[1] When assessing a claim, ASIC expects that requests for information by insurers would only be made if strictly relevant to the claim. It is not acceptable to issue a standard template request with a long list of requirements to all claimants.

A body repairer is required to deliver the claims handling service in the least onerous and intrusive way possible to the claimant, requesting only the information needed for the claim and repairs.

In a way that supports consumers, particularly ones who are experiencing vulnerability or financial hardship.

All motor vehicle insurers are required to have a publicly available family and domestic violence policy in addition to making available information on how the insurer can assist the claimant if the claimant requires financial hardship assistance.^[2] A body repairer can inform the insurer if the claimant discloses, or the body repairer reasonably identifies, such matters during the course of the repairs.

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 because a body 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 bulletin 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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[\[1\]](#) Information Sheet INFO 253: Claims handling and settling: How to comply with your AFS licence obligations, April 2021, page 13.

[\[2\]](#) General Insurance Code of Practice 2020, page 1.