

Repairer's Liens - What you need to know

This document is prepared for the benefit of the VACC and its members. It is for information purposes only and not intended to be legal advice. If you have any questions concerning your rights arising from this document, you should seek legal advice.

Dear member

The following advice has been prepared for VACC members dealing with challenging customers and law enforcement authorities. Consumers are struggling with increasing costs of living pressures which is having a negative impact on member businesses. The VACC is aware of instances where law enforcement has intervened in a civil matter, forcing members to release vehicles in their possession to which they are owed money.

VACC reminds members to be vigilant when taking on costly repairs and to be aware of your rights.

1. What is a repairer's lien?

A repairer's lien is a legal right that allows you, as the repairer of a customer's vehicle, to retain possession of the vehicle you are repairing as security until the customer pays you for the costs of the repairs.

2. Do I have a repairer's lien?

You will likely have a repairer's lien if the following conditions are satisfied:

- The vehicle was given to you for the purpose of repair or improvement;
- The vehicle was given to you by the owner or someone with authority over the vehicle;
- You are a skilled tradesperson (e.g. a qualified mechanic);
- You have improved the vehicle or increased its value by undertaking repairs to the vehicle; and
- You are in possession of the vehicle (and did not relinquish possession at any time while you had custody of the vehicle).

3. What happens to a repairer's lien if you no longer have possession of the vehicle?

A repairer's lien is a 'possessory' lien, meaning that if possession of the vehicle is lost - either voluntarily or involuntarily - the lien is lost. If the lien is lost, you would need to rely on your rights to recover the repair charge in other ways e.g. as a debt through the court system.

4. Does a repairer's lien allow me to charge for storage or maintenance fees?

No, a repairer's lien does not entitle you to charge for the costs of storing or maintaining the vehicle. In choosing to exercise a lien, you are responsible for these costs. However, if a customer has agreed to pay for these costs under your terms and conditions (assuming you have these in place), you may be able to charge for these costs. Your terms and conditions would have to make this clear, and the costs would have to be a genuine estimate of your loss. You may also be able to recoup these costs if you sell the vehicle as 'uncollected goods' under state laws (see question 8 below).

5. What if a customer disputes the cost or the repairs performed?

If a customer disputes the cost of repairs, citing reasons like unapproved costs or unauthorised repairs, this may impact the enforceability of a repairer's lien. For this reason, it is important to document as much as possible your interaction with a customer, particularly:

- written approval of your costs estimate or quotation in writing, which should ideally set out the repairs you propose to undertake (e.g., course of action, spare parts to be used, etc.);
- written authorisation for any additional work that is required after the costs estimate or quotation has been approved (e.g., resolution of a second issue that only becomes apparent after the first issue is resolved); and
- written authorisation for any other actions you propose to undertake that may be unusual or give a customer cause for concern (e.g., transport of vehicle from one warehouse to another, use of spare parts, prolonged delay of repairs).

6. What should I do if ordered to release a vehicle by the Victorian Police?

The Victorian Police can only order you to release a vehicle if empowered by legislation or a court order. If requested by a police officer to release a vehicle, you should seek to confirm the basis for the request and inform the police officer that you are exercising a repairer's lien over the relevant vehicle. For example, you might say:

'This is not a criminal matter; this is a civil matter. We performed repairs on this vehicle totalling \$[#] and have not received payment from the customer. We are exercising our lawful right to retain possession of the vehicle as security until full payment for the repairs is received.'

'Can you provide further information on this request; is there a court order or particular legislation you are acting in accordance with?'

'We have a legal right to retain possession of this vehicle under a common law repairer's lien. Please see this [letter/email] we sent to the customer exercising our rights.' Please see [here examples of communication](#).

Where possible, you should keep detailed notes of your interactions with the police, recording the time and date, the events that took place, and the name, rank, and station of the police officer.

There are avenues to dispute action taken by the police. If you feel that a member of the Victorian Police is acting outside of their authority or acting unreasonably, a complaint can be made to the Police Conduct Unit here: <https://www.police.vic.gov.au/complaints>.

7. Do I need to register a security interest when exercising a repairer's lien?

A repairer's lien is a common law right and does not need to be registered as a security interest on the Personal Property Securities Register (**PPSR**). In almost all cases, it will take priority over a registered security interest on the PPSR.

8. Can I sell the vehicle to recover my costs?

A repairer's lien does not give you the right to sell the vehicle, unless ordered by a court.

However, you may have the right to sell the vehicle as 'uncollected goods' under the *Australian Consumer Law and Fair Trading Act 2012 (Vic)* (**FTA**), which refers to (among other types of goods), goods over which a 'relevant charge' has not been paid by the person who provided the goods within a reasonable time after being informed that the goods were ready for delivery.

While each case would need to be considered on its facts, generally speaking the FTA gives you the right to dispose of uncollected goods, subject to the following specific exceptions:

- The uncollected goods regime in the FTA will not apply where there is already an **agreement** between the parties that deals with the disposal of the relevant goods. An example of this type of 'agreement' might be a dealer's standard terms and conditions, which direct that any vehicles sold but not collected within 30 business days will be returned to the dealer's stock and the purchaser will be liable for any storage and maintenance costs incurred in relation to the vehicle for those 30 days. Where there is an agreement like this between the parties, the terms of that agreement will prevail over the FTA; and
- The uncollected goods regime in the FTA does not allow you to dispose of uncollected goods if a dispute exists between you and the customer relating to the 'relevant charge' (i.e. the cost of repairs), including a dispute about the condition of the vehicle or the nature or quality of the repairs.

Where an agreement does not apply, and there is no dispute preventing you from disposing of the uncollected vehicle, you may exercise your rights to dispose of the uncollected vehicle provided that you first comply with the following obligations under the FTA:

1. Obtain a search in relation to the vehicle from the Personal Property Securities Register (**PPSR**);
2. Give the customer (where different to the owner of the vehicle), the owner of the vehicle, any person who has a publicly registered interest in the vehicle and any other person having or claiming an interest in the vehicle, written notice of your intention to dispose of the vehicle;
3. If the customer or the owner of the vehicle has not taken delivery of the vehicle within 28 days from the date of the notice, dispose of the vehicle by way of public auction or private sale, with reasonable care to ensure the vehicle is sold for the best price that can be reasonably obtained; and
4. Ensure that any public auction is advertised 7 days in advance or held over a period of at least 7 days and any private sale only proceeds on your belief that the best price could only be achieved by private sale and that reasonable care is taken to ensure that the vehicle is sold for the best price that can be reasonably obtained.

This assumes the value of the vehicle in each case is over \$1,000.

The FTA also sets out certain requirements around dealing with the proceeds of sale of uncollected goods and related record keeping requirements.

If you believe you have the right to sell a vehicle as uncollected goods under the FTA, you should seek legal advice to ensure that you have the right to sell the vehicle and to guide you on the processes of notification, disposal, distribution of proceeds and record keeping.

To help you with the process, VACC has developed a "Disposal of uncollected goods kit" which is available for you to purchase from [OurAutoistore](#).

Please contact VACC should you have any questions, need general advice, or if you have been forced to hand back a vehicle or goods in your possession.

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