

## Responsibility Timeframe for Repair Certifiers How Long Repair Certifiers Are Responsible for Their Decisions



Supporting New Zealand's Repair Certification Industry

### **About RepairCert NZ Information Sheets**

*These Information Sheets have been developed to provide operational information to Repair Certifiers, to assist them in correctly carrying out their repair certification responsibilities.*

## **Purpose of this Information Sheet**

The purpose of this Information Sheet is to help Specialist Light Vehicle Repair Certifiers (Repair Certifiers) understand the length of time during which they remain responsible for their repair certification decisions.

This area of responsibility is considered a 'cornerstone' principle, and having a clear understanding of this will help Repair Certifiers to make decisions that are correct, and legally supported.



## **Background**

Some Repair Certifiers have been uncertain about how long they remain responsible for their repair certification decisions. Amongst other beliefs, some Repair Certifiers have understood that they are responsible for their certifications for the life of the vehicle, while others have understood that they are responsible for their certifications for a period of six years.

This uncertainty has caused concern and a lack of confidence amongst some Repair Certifiers, and consequently, this has influenced inconsistent and inappropriate repair certification outcomes in some cases.

This Information Sheet provides clarification on how long Repair Certifiers remain responsible for their repair certification decisions.

## Legal Obligations of a Repair Certifier

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### No Specific Timeframe

The short answer is that there is no specified timeframe during which Repair Certifiers remain responsible for any of their certification decisions.

The six-year period understood by some is in fact just an assumption, possibly based on the timeframe for the statute of limitations (the period during which a person can be held accountable for their actions), which is also the timeframe within which a Repair Certifier must keep their records (as required by their *Notice of Appointment* from the New Zealand Transport Agency [NZTA]).

Given that vehicle manufacturers are only responsible for their vehicles for a handful of years, and that the statute of limitations (generally) removes a person's responsibility for anything beyond six years, to then say that a Repair Certifier remains responsible for the life of the vehicle is neither correct nor reasonable.

### Must Apply a Duty of Care

When providing a service to customers, a Repair Certifier owes a 'duty of care' to do their job with the care and skill of a reasonable and prudent Repair Certifier. This requirement to perform a function 'with reasonable care and skill' is an overarching requirement of any person providing a service to the public, and comes from civil law (for example, the law of negligence) or from legislation (for example, the Consumer Guarantees Act). A Repair Certifier has no more or less responsibility than any other person in business who is providing a product or a service to the public. Any business owner's actions are governed by law, and this is part of being in business.

If a customer suffers a loss and can prove that the loss was caused by a Repair Certifier failing to do their job with reasonable care and skill, then the customer may be able to claim compensation from the Repair Certifier. Conversely however, if a Repair Certifier has provided the service lawfully, and with reasonable care and skill, that should ensure a successful defence against any claim.

### At the Time of the Repair Certification Inspection

A Repair Certifier's decisions can only be assessed as they were applied at the time of the repair certification inspection. A Repair Certifier cannot be held liable for something that may happen, by way of deterioration for example, to a vehicle after the time of the repair certification inspection. However, if in the future it can be established that the Repair Certifier's decisions were incorrect at the time of the repair certification, the responsibility timeframe may be indefinite.

In New Zealand, the warrant of fitness system provides a periodic inspection process to ensure that vehicles are well maintained, and that progressive wear and deterioration is monitored, and where necessary repaired. So, 'future-proofing' a vehicle during repair certification is not necessary.

## Ensuring Legal Obligations Are Met

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### Providing Service Lawfully, Reasonable Care and Skill

A Repair Certifier's legal obligations can be met by providing the service lawfully, and by applying reasonable care and skill. For clarification of these two terms:

- 'providing the service lawfully' means, in this context, that a Repair Certifier has applied the applicable requirements, and followed any applicable instructions and guidance that have been provided by either NZTA or RepairCert NZ; and
- 'using reasonable care and skill', in this context, means that a Repair Certifier has made sound decisions which are consistent with, as appropriate, either OEM Information, Repair Industry Information, or Best-practice Guidance.

What this practically means is that a Repair Certifier should always be legally protected if the applicable requirements are applied, and any applicable instructions and guidance issued to them by either NZTA or RepairCert NZ are followed.

If a Repair Certifier operates 'within the system' and there is a failing, the failing will most likely rest with the system, rather than with the individual Repair Certifier. If a Repair Certifier chooses to operate 'outside of the system' then there will be little or no protection if something goes wrong.

### Protection Via Good Repair Certification Files

The best way for a Repair Certifier to show that their legal obligations have been met is to provide a good Repair Certification File.

A high-quality Repair Certification File, which includes correctly filled-out Forms and Form-sets, all necessary supporting information to support the certification decisions, relevant and sufficient photographs, and a well-documented inspection process, will provide clear evidence that the Repair Certifier has provided the service lawfully, and that the inspection and decisions involved the application of reasonable care and skill.

When considering minor damage or deterioration present at the time of inspection, which could further deteriorate over time, *RepairCert NZ Information Sheet # 02-2024 (Establishing What Requires Repair Certification)* should also be taken into account. This Information Sheet details the aspects of a vehicle that require repair certification, and the extent of damage and deterioration which requires repair certification.

### In Summary

The following points summarise the subject of responsibility timeframe:

- there is no specific timeframe within which a Repair Certifier is responsible for their repair certification decisions; and
- a Repair Certifier has the same legal obligations as any other person in business who is providing a product or a service to the public; and
- making good decisions, applying applicable requirements, and following any guidance and instructions is the best form of protection for a Repair Certifier; and
- providing a high-quality Repair Certification File will prove the quality and compliance of a vehicle that comes into question; and
- a Repair Certifier's decisions will only be considered as they applied at the time of the repair certification inspection; and
- the responsibility timeframe for a repair certification involving incorrect repair methodology may be indefinite.

By following this Information Sheet, a Repair Certifier's decisions will be aligned with the applicable requirements, and will be consistent with the decisions of other Repair Certifiers.

If a Repair Certifier has difficulty in making a decision relating to responsibility timeframes, a technical staff member of RepairCert NZ should be contacted for further assistance.



FOR FURTHER INFORMATION PLEASE CONTACT REPAIRCERT NZ.