



## **What is Arbitration?**

Arbitration occurs when a dispute or difference between two or more parties is referred to an independent person to resolve under the provisions of the State Commercial Arbitration Law. The independent person is known as the Arbitrator and he or she will be knowledgeable about the products and services of the industry and will understand the technical and commercial nature of the dispute. The Arbitrator conducts a Hearing, takes evidence from each of the parties (witnesses may be called if required) on oath or affirmation, and then hands down a written Award or judgement. It is usual that the parties represent themselves, but under certain circumstances legal representation is permitted.

The decision of the Arbitrator (the Award) is legally binding on all parties and can only be appealed under special circumstances and to a Court of Appeal (typically the State Supreme Court).

The advantages of Arbitration are:

- the proceedings are conducted in privacy (there is no media reporting);
- the process is relatively informal compared to other legal procedures such as settlement through the Law Courts or litigation conducted through solicitors;
- it is a quick and inexpensive means to settle disputes; and,
- the dispute is resolved by an independent expert in the field who understands the technical and commercial nature of the problem.

## **The Carpet Industry Arbitration Service**

The Carpet Institute of Australia administers the Carpet Industry Arbitration Service. The Service aims to provide prompt, fair and low cost resolution to carpet disputes that may involve retailers, manufacturers and consumers.

The Service has been operating since 1984 and since that time has helped resolve hundreds of carpet disputes. About 30 disputes are resolved by formal Arbitration each year although considerably more disputes are notified to the Service. The bringing together of the parties through the Service is often the catalyst that helps resolve the dispute. Significant proportions of disputes referred to the Service are conciliated by agreement between the parties rather than through a formal Arbitration.

The Service has a roster of experienced and suitably qualified Arbitrators, one of whom is appointed to a dispute when all parties agree to resolve the matter through Arbitration. The Arbitrators used by the Service are totally independent from manufacturers or retailers. CIAS Arbitrators are required to have at least seven years experience in some aspect of the carpet industry and be members of the Institute of Arbitrators of Australia.

## **The Process of Arbitration - steps for users of the Service**

- a manufacturer, retailer or consumer notifies the Service that a dispute exists and they wish to use Arbitration as a possible means to settle the dispute.
- the Service contacts the parties to confirm that a dispute exists and ascertains what steps have been taken to resolve the dispute, explains the Arbitration procedure if necessary, and sends copies of the Standard Agreement to Arbitrate Form and information on the Service to the parties.
- the carpet in dispute must be fully paid for before proceeding with Arbitration. If any monies are owing on the transaction, the Service can request that the amount outstanding be paid into "Trust" held by the CIAS. Following the Hearing the Arbitrator would redirect the monies as part of the Award.
- the Service normally requires each party to lodge \$330 (incl. 10% GST) as surety to cover the cost of the Arbitrators fee and administrative costs in organising the Arbitration. In some instances, the service and/or the Arbitrator may impose other conditions, including higher surety amounts, as they see fit. For example, if an Arbitrator is required to travel an extended distance from their home base to convene a hearing, a charge to cover additional travelling expenses may be sought upfront and the additional cost would be shared equally by the parties. Any special conditions will be communicated to the parties by the Service or Arbitrator before an Arbitration is conducted.
- when the Service receives all signed Agreement forms and surety monies, an Arbitrator is appointed from a roster of available Arbitrators.
- the Arbitrator contacts the parties directly to notify them of his or her jurisdiction to resolve the dispute and arranges a time to conduct a Hearing. At the Hearing, the Arbitrator will inspect the carpet, receive evidence from the parties and question the parties in relation to their evidence. The parties may call witnesses and/or seek legal representation.
- the Arbitrator adjourns the Hearing to consider the facts and evidence presented by the parties.
- The Arbitrator comes to a decision, in the form of a written Award, which is presented to the Service within 21 days of the Hearing.
- the Service sends a copy of the Award to each of the parties within 30 days of the Hearing.
- the directions of the Arbitrator's Award are complied with by the parties.

## **Is Arbitration an option for you?**

Some questions and issues you should be aware of before proceeding to Arbitration.

- Have you explored all avenues to resolve the dispute directly between the other parties? The CIAS will not assist to convene an Arbitration unless the parties have made prior attempts to settle the dispute.
- If the dispute can be settled without the need to go to Arbitration, all parties are likely to be more satisfied with the outcome. Arbitration will probably involve winners and losers. If you cannot see the dispute being resolved through direct negotiation, then Arbitration is probably the best means to settle the dispute.

- **As commercial arbitration is voluntary, the consent and support of all parties is essential.** It is your decision to use an Arbitrator to settle the dispute. You should feel free to contact the Service to discuss any concerns you may have.
- If you agree to use Arbitration you must be committed to accepting the Arbitrator's decision. An Arbitrator's Award is legally binding on all parties and can only be appealed against to a Court of Appeal, which usually means the Supreme Court in your State. This can be an expensive process. While the Arbitration process may appear relatively informal, it is a judicial process carrying the full weight of the law.
- Once the parties agree to have the dispute Arbitrated (once signed Agreement forms are lodged with the Service), the parties have contracted between themselves to have the dispute settled by Arbitration. If you are unsure that Arbitration is the path you wish to follow, do not lodge the signed Arbitration agreement form.
- If you have commenced proceedings in any of the Small Claims Courts, you cannot use Arbitration to settle the dispute. Likewise, if you contract between one another to solve the dispute through Arbitration, you cannot subsequently use the Small Claims Court or similar jurisdictions.

For further information contact the Service on (03) 9804 5559 or 1800 188 822.

Please note that where terms in the Standard form of Agreement to Arbitrate differ from provisions in this note the Agreement takes precedence.

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Carpet Industry Arbitration Service