

## **RESPONSIBILITIES OF SELLERS AND MANUFACTURERS**

### **Introduction**

This information brochure:

- contains information about statutory consumer guarantees;
- outlines a procedure to be followed by carpet manufacturers, carpet sellers and other contractors in the event of a dispute or customer complaint relating to a consumer purchase, including installation of a manufacturer's product; and
- contains in the Attachment information about carpet characteristics

The information in this brochure is not legal advice. You must obtain your own independent legal advice in relation to any issue which may arise in your business and you should not rely on this brochure for legal advice.

In this information brochure a carpet retailer or other contractor is collectively referred to as 'the seller'.

### **Statutory Obligations**

#### **Australian Consumer Law**

Consumers are entitled to statutory consumer guarantees under the Australian Consumer Law (Schedule 2 to the *Competition and Consumer Act 2010*). Manufacturers and sellers may not exclude or limit those consumer guarantees.

Rights and obligations granted by the Act may not be excluded, restricted or modified and any attempt to do so is a breach of the Act. The Act prohibits false or misleading representations concerning the existence or effect of warranties, rights and remedies.

The following summary of statutory obligations is a guide only and is not legal advice. Sellers and Manufacturers should obtain their own independent legal advice in relation to any Competition and Consumer Act issue which may arise. You should not rely on this document for legal advice.

#### **Consumer Guarantees**

The Competition and Consumer Act 2010 (Act) provides rights to consumers who purchase carpet for personal, domestic or household use or consumption.

The Act includes certain consumer guarantees in respect of the sale of goods including (but not limited to):

- the goods must be of acceptable quality, appearance and finish;
- the goods must be fit for purpose;
- the goods must be fit for any purpose disclosed to the seller at the time of supply;
- if goods are sold by description, sample or demonstration model, the goods supplied must match that description, sample or demonstration model; and
- goods must be supplied within a reasonable time.

Goods will not fail to be of acceptable quality:

- if the goods are sold as a 'second', where the reason that the goods are a 'second' was drawn to the consumer's attention prior to the purchase;
- if the goods are sold in the condition 'as inspected', where the consumer has taken steps to inspect the goods before purchase; or
- if the consumer to whom the goods are supplied causes them to become of unacceptable quality or fails to take reasonable steps to prevent them from becoming of unacceptable quality or they are damaged by abnormal use.

### **Consequences of breach of consumer guarantees**

Where carpet has been supplied for personal, household or domestic use and the carpet does not comply with the requirements of the Act, the consumer may claim compensation from the seller, the manufacturer or the importer for loss or damage.

Compensation could include repair, replacement, refund of the purchase price or damages in certain circumstances. If a claim is made for repair/replacement and or refund, the supplier refuses or otherwise fails to remedy the breach of the consumer guarantee within a reasonable time, the consumer may:

1. have the failure remedied and, by action against the supplier, recover all reasonable costs incurred in having the failure so remedied; or
2. notify the supplier that the consumer rejects the goods (where a consumer legitimately rejects a good, the supplier is required by law, at the election of the consumer, to either provide a refund or replace the rejected goods).

For a major failure the consumer may elect to receive a full refund. A major failure is where:

- the goods would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure;
- if they were supplied by description or sample, the goods are different in one or more significant respects from the description or sample;
- the goods are substantially unfit for the purpose for which goods of the same kind are commonly supplied and they cannot easily and within a reasonable time be remedied to make them fit for purpose;
- the goods are unfit for a purpose that was made known to the supplier or person with whom the negotiations for the purchase were conducted or made and they cannot easily and within a reasonable time be made fit for such a purpose; or
- the goods are not of acceptable quality because they are unsafe.

If a consumer is unhappy with the response from the seller or manufacturer, the consumer may complain to the ACCC on the basis that a consumer guarantee has been breached.

Where the ACCC pursues a seller or manufacturer for a breach of a consumer guarantee the remedy may include an injunction requiring redress to consumers who have suffered loss or damage as a result of the failure to comply with the guarantee. The ACCC may also commence proceedings on behalf of a consumer who is entitled to take action against a supplier for a breach of a consumer guarantee.

There does not need to be any contract directly with the (end) consumer for the consumer guarantees to apply and the (end) consumer can pursue the manufacturer directly for a breach of some of the consumer guarantees. Where goods are imported into Australia, the importer is defined in the Act to be the manufacturer of the goods.

If a consumer has claimed compensation from the seller under the Act, but it is the manufacturer or importer who is at fault, the manufacturer or importer has an obligation to indemnify the seller.

### **Term of consumer guarantees**

Consumer guarantees do not have a specified term. However, a consumer is entitled to reject goods only within the rejection period.

The rejection period is defined in the Act as the period from the time of the supply of the goods to the consumer within which it would be reasonable to expect the relevant failure to comply with a consumer guarantee to become apparent having regard to the:

- type of goods;
- use to which the consumer is likely to put them;
- length of time for which it is reasonable for them to be used; and
- amount of use to which it is reasonable for them to be put before such a failure becomes apparent.

Further information is available from the Australian Competition & Consumer Commission website at [www.accc.gov.au](http://www.accc.gov.au) or at [www.consumerlaw.gov.au](http://www.consumerlaw.gov.au)

## **MINIMISING POTENTIAL FOR COMPLAINTS**

### **Minimising Potential for Complaints**

#### **Important sale procedures**

To avoid complaints about breach of consumer guarantees, it is recommended that prior to purchase:

#### **Natural carpet characteristics**

Consumers should be made aware of the natural characteristics of carpet. Information about natural characteristics of carpet is contained in this brochure and is available in a separate

brochure for consumers titled “Carpet Characteristics” which can be downloaded from the website of the Carpet Institute of Australia Limited.

It is recommended practice that the Carpet Characteristics brochure is supplied by the seller to each consumer prior to sale, and the written acknowledgement found as a separate attachment at the end of this document is completed prior to sale.

#### Goods sold as a second

If goods are sold as a 'second', the reason that the goods are a 'second' must be drawn to the consumer's attention prior to the purchase.

#### Goods sold as inspected

Where goods are sold in the condition 'as inspected', the consumer must be given the opportunity to inspect the goods before purchase.

#### Wear and maintenance

The consumer should be informed at the time of purchase that the carpet must be maintained in accordance with the relevant Australian Standards and manufacturer's recommendations.

Carpet sellers and manufacturers cannot be held responsible for any deterioration in carpet appearance due to poor or inappropriate maintenance or that expected through normal wear. Sellers and manufactures should ensure that consumers are properly informed about what constitutes normal wear.

Recommended maintenance procedures for both residential and commercial installations are readily available from carpet manufacturers and fibre marketing organisations. The Australian and New Zealand Standard *AS/NZS 3733 – Textile floor coverings – Cleaning maintenance of residential and commercial carpeting* - can be purchased from a Standards Australia Office in State Capitals.

The consumer should be informed at the time of purchase that carpet purchased for installation in areas which are likely to be subjected to heavy wear and use, may wear at an increased rate, and the purchase of additional reserve stock is recommended for those areas.

#### Goods fit for disclosed purpose

Retailers will need to ensure that carpet products purchased by a consumer are fit for any purpose disclosed by the consumer otherwise the retailer risks being liable for breach of a consumer guarantee which does not apply to the manufacturer.

If the customer discloses any particular purpose for their purchase of carpet, the seller should make a written record of the specific purpose and retain that record. It is essential that the carpet sold be fit for that specific purpose.

#### Pre-delivery check

The seller should ensure that a check is made of all merchandise for correct size, colour and dye lot before cutting and installing.

### Goods Damaged in Transit

Claims for damages in transit or delay in shipment should be made by the seller against the carrier except where a contract states that the goods are to be delivered 'free into store'.

Where 'free into store' contracts apply, the seller shall notify the manufacturer of claims for damaged goods within 5 working days.

### Installation

Australian and New Zealand Standard AS/NZS 2455 - *Textile floor coverings - Installation practice* describes recommended installation techniques and practices for carpets. As an adjunct to AS/NZS 2455, manufacturers may provide installation advice specific to the products they make. If, in a dispute situation, evidence is found showing non-compliance to the requirements of AS/NZS 2455 or disregard for manufacturer advice on installation, this may provide the basis for the rejection of a consumer or seller claim against the manufacturer.

### Australian Carpet Classification Scheme (ACCS) Rating

Each manufacturer of a carpet may offer its own warranty as to the look and durability of that manufacturer's carpets. The Carpet Institute of Australia Limited administers the ACCS but does not provide any warranty in respect of ACCS graded carpets.

A warranty provided by a manufacturer is subject to proper installation and correct care of the carpet in line with the manufacturer's recommendations.

Exclusions from the ACCS rating scheme include:

- Permanent Pile Reversal Shading (PPRS);
- carpet subject to localized severe wear environments for the reason that the performance life of the carpet can be significantly reduced. Severe wear environments include:
  - carpet installed on multi step stairs
  - carpet subject to frequent use by furniture with castor wheels such as office chairs (A chair pad is essential to protect the carpet pile and its backing structure.)
  - carpet in front of chairs where there is constant scuffing and grinding motion of footwear. (Protective mats are recommended.)

### Permanent Pile Reversal Shading (PPRS)

Customers intending to purchase a carpet which has the potential for PPRS to occur should be provided, prior to purchase, with a document explaining the PPRS phenomenon.

A document explaining shading and PPRS is available from the Carpet Institute website at [www.carpetinstitute.com.au](http://www.carpetinstitute.com.au)

Carpets in which PPRS may occur should also bear a manufacturer's label which explains this phenomenon. However, a manufacturer's label alone may not provide adequate notice to a customer prior to purchase that PPRS may occur in the type of carpet that they have selected. Manufacturers' labels should state the following (or something similar):

Permanent Pile Reversal (Shading) in Cut-Pile Carpets

'Some installations of cut-pile carpeting develop irregular light and dark areas. These are caused by some pile yarns changing their original direction of lay and thereby changing the way light is reflected or absorbed from their surface. The occurrence of permanent pile reversal is random and its causes are largely unexplained. Apart from affecting appearance, it has no detrimental effect on the durability of the carpet. Please consider this characteristic when purchasing a cut-pile carpet.'

It is important that adequate records are maintained by sellers and manufacturers of any information exchanged with the customer in relation to PPRS, including any signed written acknowledgements and a copy of, or description of, any documents provided to customers.

To document the exchange of information, the seller is recommended to ask the customer to sign an acknowledgement before purchasing a cut-pile carpet, something similar to:

I/We are considering purchasing a carpet in which permanent pile reversal (shading) may occur. I/We understand the effects of permanent pile reversal (shading) on cut-pile carpets and that this characteristic has no detrimental effect on the durability of the carpet. I/We understand that permanent pile reversal (shading) cannot be predicted or prevented and that the manufacturer and [name of retail outlet] do not provide any voluntary warranty against defects which covers permanent pile reversal (shading).

**Recommended Claim Procedures**

**Complaint Response**

When a complaint is received from a consumer the seller should inspect the installation within five working days.

If, after inspection, the seller decides that further investigation is required or that the claim relates to a manufacturing fault, the seller should notify the manufacturer within five working days from the date of the seller's inspection. The notification to the manufacturer should be in writing and include:

- the consumer's name, address and home and business telephone numbers;
- details of the carpet including any ACCS grading, quality name, colour, the quantity supplied and the retail price per lineal or square metre paid by the consumer;
- the date of installation;
- the invoice number and date;
- product identification of the carpet by reference to relevant invoices and stock documents; and
- a brief description of the grounds upon which the consumer has complained with relevant comment from the seller.

Any disputes which may arise between the manufacturer and the seller should be separated from the consumer's complaint and dealt with as a separate issue.

### **Inspection by manufacturer**

Subject to approval by the consumer and after receipt of notice of a complaint from the seller, if the manufacturer believes that further investigation is required to consider the claim, the manufacturer should inspect the goods, the subject of the complaint, within ten working days for metropolitan areas and within twenty one days for county or remote areas.

The manufacturer may send as its representative an independent carpet consultant from the list of arbitrators registered with the Carpet Industry Arbitration Service.

Within ten working days of the manufacturer's inspection the manufacturer should inform the seller of the results of the inspection setting out:

- the date of inspection;
- the result of the inspection;
- their view of the status of the complaint.

The ten working days requirement to inform the seller may be extended to a mutually agreed period if laboratory testing is required on any sample or specimen of the carpet.

### **Arbitration Requirement**

Should any party request Commercial Arbitration of the dispute, that Arbitration shall only be convened if both the seller and manufacturer have made prior inspection of the carpet.

### **Right to Legal Action**

The consumer always has the right to take legal action against the seller or the manufacturer directly.

If the dispute is referred to Commercial Arbitration and an Award is subsequently handed down to the parties that Award is final and binding except through appeal to a higher court.

### **Definition of Defects**

#### **Visible Defects**

Consumers may be entitled to repair, replacement or refund depending on the extent and cause of a visible defect. The appropriate method of correction should be discussed with the seller or manufacturer.

Where the consumer has had the opportunity to properly examine the carpet before supply and that examination should have revealed any visible defects and the consumer accepts the goods following that examination, the seller and the manufacturer may not be required to repair, replace or refund the purchase price of the goods.

Once a visible defect is reported to the manufacturer, the manufacturer should consult with the seller or contractor to agree on an acceptable method of correction.

**Latent Defects**

If a latent defect becomes apparent after installation, the consumer may be entitled to repair, replacement or a refund depending upon the extent and cause of the latent defect.

Any consumer or seller complaints concerning 'visible' or 'latent' defects that cannot be satisfactorily resolved should be directed to the Carpet Industry Arbitration Service.

**Further Information**

Please contact me if there are any queries about this note.



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## **CARPET CHARACTERISTICS**

Carpet is by far the most popular and versatile floor covering solution on the market and it is easy to see why. Carpet offers décor versatility, warmth, insulation, energy savings, comfort, excellent noise dampening properties, a safe; non slip surface, ease of maintenance and value for money. A well-constructed carpet, correctly chosen for the intended use, can sustain a good deal of wear if properly maintained.

Carpet has characteristics or inherent features that can affect the appearance of the product. It is important that these carpet characteristics are understood by customers.

### Colour Variation

It is common for an installed carpet to show small amounts of colour variation, either from the selling sample or variation between carpets sourced from different production runs.

Manufacturers make every effort to accurately repeat colours between batches, but small differences can sometimes be unavoidable. Warnings to this effect are commonly displayed on the labels of carpet samples.

It should also be noted that colour assessment is largely subjective and may be affected by lighting conditions and/or small changes in the carpet texture. Prior to purchasing carpet, the Carpet Institute recommends that carpet samples be viewed in different lighting conditions at the installation site.

### Appearance change

Carpet will gradually change in appearance over time due to normal use and fading from exposure to ultra violet radiation from sunlight. While sunlight is the most common cause of fading, household chemicals can also contribute to change in colour. Similarly, high temperature and humidity conditions may accelerate the onset of fading.

The Carpet Institute recommends that carpet be protected from periods of direct sunlight by use of shading devices such as window reflective films, curtains, awnings and blinds.

### Pile reversal shading

Pile reversal shading is an optical effect – an apparent colour difference caused by light reflected or absorbed from disturbed carpet pile. When caused by foot marking and vacuuming, pile reversal shading is temporary and can be reversed by vacuuming or brushing the carpet in the normal direction of pile lay.

Permanent pile reversal shading (PPRS) - also referred to as watermarking, pooling or puddling - appears as irregular shaped light and dark patches in a cut-pile carpet. It is not a change in colour but a change in pile direction that sometimes randomly appears, generally after use. The cause is unknown and the phenomenon is unpredictable.

### Pile crush or flattening

Carpet pile will crush to some extent due to normal use. Regularly vacuuming and periodic professional cleaning will reduce the degree of crush.

### Matting

Matting is a wear-induced characteristic that is seen as the merging together of carpet tufts to the stage where they may become less defined. Matting occurs in all carpets to some extent and is not considered a manufacturing defect unless it occurs rapidly or to an unacceptable degree.

### Missing or damaged tufts

Missing or damaged tufts in new carpet can be replaced by hand sewing. It is recommended that the carpet manufacturer be given an opportunity to manually replace missing tufts or small areas of tuft damage. A tuft repaired in this manner by an experienced technician will not detract from the quality or the durability of the carpet.

### Shedding

Shedding is the term used to describe the release from the carpet yarn of very small fibres that collect on the surface of the carpet. Shedding is activated by foot traffic and vacuuming and is usually only seen in new carpet installations. As a carpet 'settles' or 'beds down', shedding becomes less and less noticeable.

### Sprouting

Sprouting is the release onto the carpet surface of extra-long tuft legs that are trapped within the carpet pile during manufacture, installation or use. Sprouts can be carefully trimmed with napping shears/scissors without damaging the carpet.

### Snagging

Snagging is the forceful removal or distortion of tufts from a loop pile carpet. When snagging occurs, displaced tufts can be readily fixed on-site by an experienced technician.

### Pattern matching

Carpet manufacturing processes introduce stresses and pressures on the carpet structure in both the length and width directions. As a result, a repeating pattern may not exactly match along the length of the carpet or across its width, particularly from one production run to another. An experienced installer will make every effort to achieve a reasonable pattern match.

### Smell from new carpet installation

With good room ventilation, the so called 'new carpet smell' should disappear within approximately 4 days of the carpet being installed. For further information, refer to the Carpet Institute's Fact Sheet on Indoor Air Quality at [www.carpetinstitute.com.au](http://www.carpetinstitute.com.au).

### Seam peaking

Seam peaking is normal when joined carpet is stretched into place. Lighting conditions can accentuate a carpet seam and create the impression that the pile on the side closer to the light source is a lighter shade than the pile on the other side of the join. Carpet seams are never

invisible but they should be straight, aligned and as flat as possible. For further information, refer to the Carpet Institute's Fact Sheet on Seam Peaking at [www.carpetinstitute.com.au](http://www.carpetinstitute.com.au).

### Shift Lines

Shift lines are parallel lines appearing on the surface of patterned loop pile carpets at regular intervals. These lines are due to the nature of construction and are sometimes more apparent with 'large' designs and patterns. Shift lines are not a manufacturing fault.

## **NOTES**

### Australian Carpet Classification Scheme

A well-constructed carpet, correctly chosen for the intended use, can sustain a good deal of wear if properly maintained. When buying carpet look for products that have been graded by the Australian Carpet Classification Scheme (ACCS). Carpets graded by the ACCS carry distinctive labels featuring a '6-star' system of rating for residential carpets and a '4- star' system for carpet in contract / commercial installations. The more stars the better the likely appearance retention and performance properties of the carpet.

The ACCS also has an environmental certification component called the ACCS Environment Certification scheme. For further information on the ACCS and ECS, visit the CIAL website: [www.carpetinstitute.com.au](http://www.carpetinstitute.com.au).

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  - o carpet installed on multi step stairs;
  - o carpet subject to frequent use by furniture with castor wheels such as office chairs (A chair pad is essential to protect the carpet pile and it's backing structure.);
  - o carpet in front of chairs where there is constant scuffing and grinding motion of footwear. Protective mats are recommended.

### Measuring, Laying and Installing

Carpet installation is technically demanding and should only be conducted by experienced technicians.

Ideally the area to be carpeted should be measured by your retailer, who will consider the way rooms flow into one another, how ambient light falls, and the way foot traffic will 'funnel.' Your retailer can also advise you on the placement of seams and joins.

Carpet on stairs wears more quickly than other areas. Buy enough extra carpet to re-do stairs at some point.

Carpet manufacturer's warranties require carpet to be installed in accordance with Australian and New Zealand Standard *AS/NZS 2455 – Textile floor coverings – Installation practice*. Ask your retailer to confirm that the installation will be consistent with the requirements of the Standard.

### Carpet Maintenance

Carpet is likely to be subjected to heavy wear and use and must be regularly maintained by following the manufacturer's recommended maintenance procedures, which typically include:

- treating spots and stains as soon as they occur;
- regular vacuuming – weekly in general use areas and more often in high traffic areas such as hallways;
- 'deep' or restorative cleaning every 12 – 18 months to help remove trapped soil.

Detailed information on cleaning maintenance procedures for residential and commercial carpeting is contained in the Australian and New Zealand Standard *AS/NZS 3733 – Textile floor coverings – Cleaning maintenance of residential and commercial carpeting*.

### The Importance of Underlay

Like carpet, underlay is available in various grades and qualities. Ask your retailer about the options available.

An underlay should be firm but comfortable. As a guide, standing on the underlay you should not be able to feel the floor with the heel of your shoe.

If replacing carpet, don't be tempted to use the existing underlay. It will have the same wear patterns as your old carpet and these will quickly appear in a new carpet.

**CONFIRMATION THAT A PURCHASER HAS RECEIVED THE CARPET CHARACTERISTICS STATEMENT**

I / We have received and understand the inherent carpet characteristics described in the document entitled "Carpet Characteristics".

Name: .....

Signature: .....

Dated: .....

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