

HIA VARIATIONS: A Home Owner's Guide

Variations in home building projects are a major source of building disputes in NSW. This article explains how variations are properly made under the 2021 HIA NSW Residential Building Contract for New Dwellings, and what to do if variations lead to dispute.

What are variations?

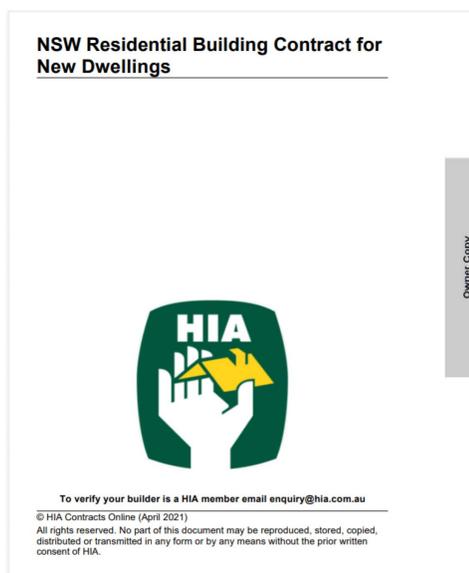
Variations are changes or alterations made to the work, which are outside of, or contrary to, those specified in the scope of works.

These include changes to:

- design
- materials
- quantities
- quality
- work sequence

Who may ask for variations?

Under the HIA NSW Residential Building Contract for New Dwellings (2021), either the owner or the builder may ask for variations.



You Can Be Confident That You Are Getting
the Right Legal Advice

Contracts Specialist is a Sydney-based construction law firm that deals with Building Disputes, Construction Contracts, Debt Recovery, and Security of Payment. With Contracts Specialist, you are ensured that you are in good hands.

Variations by the builder

These are variations asked for by the builder, as for example, changing the flooring from one material to another, because of unavailability of supply of materials as originally laid out in the plans and specifications.

This may lead to an increase or decrease in the contract price, although it's usually the former.

Variations by the owner

The *owner* is the person contracting the builder to commence building works - in this case - you.

You may request the builder to deviate from the plans, subject to the builder's agreement or refusal. There is a process you need to follow if you want to request for variations. If you are using the April 2021 edition of the HIA NSW New Dwellings Contract, it should be covered by Clause 18.

Variations clause

Clause 18. Variations

*Variations may change the contract price.
Refer to Clause 40 for Mandatory Conditions.*

The builder may ask the owner for evidence of ability to pay for the variation. See Clause 7.2.

18.1 A **variation** must be in writing and signed by or on behalf of the **builder** and the **owner**. Either the **owner** or the **builder** may ask for a **variation**.

18.2 If the **owner** asks for a **variation**, the **builder** must reply in writing as soon as is reasonable.

18.3 The reply is to be either:

(a) a signed written offer to carry out the **variation** detailing:

(i) the work required to carry out the **variation**;

(ii) the price of the **variation**; and

(iii) any extension of time to the **building period** as a result of carrying out the **variation**; or

(b) a refusal to carry out the **variation**. The **builder** does not have to give any reasons for refusing to carry out a **variation**.

18.4 If the **owner** does not give to the **builder** signed written acceptance of the **builder's** offer within 5 **working days** of the **builder** giving the reply, the **builder's** offer is deemed to be withdrawn

18.5 If the price of a **variation** is not agreed prior to it being carried out that price includes:

(a) the deduction of the reasonable cost of all deletions from the **building works**; and

(b) the addition of the total cost of all extra work plus the **builder's margin** applied to that cost.

18.6 The price of a **variation** is due and payable at the next progress payment after it is carried out unless a different time is agreed.

18.7 The **owner** must not unreasonably withhold consent to any **variation** which is required for the **building works** to comply with the law or a requirement of any **statutory or other authority**.

18.8 The **owner** acknowledges that the colour and grain of timber, granite and other natural materials can vary. The **builder** is to use reasonable endeavours to match the colour or grain of any sample selected by the **owner** but is under no liability if there is a difference and such difference is not a **variation**.

Owner Copy

**You Can Be Confident That You Are Getting
the Right Legal Advice**

Contracts Specialist is a Sydney-based construction law firm that deals with Building Disputes, Construction Contracts, Debt Recovery, and Security of Payment. With Contracts Specialist, you are ensured that you are in good hands.

Clause 18 on Variations details how variations may be properly made, and also gives the limitations and obligations imposed on the parties.

Main points under Clause 18:

1. It is an agreement, therefore, it must be:

- in writing
- signed by the builder and owner

2. If the owner asks for a variation, the builder should reply as soon as is reasonable.

3. The builder's reply could be either an **offer to carry out** the variation, or a **refusal**.

→ If the builder *offers* to carry out the variation, he should state in his reply:

- the work required to carry out the variation
- the price of the variation
- any extension of time to the building period as a result of carrying out the variation

→ If the builder *refuses* to carry out the variation - he does not have to give out reasons.

4. The builder's offer is deemed withdrawn, that is, the variations asked for by the owner will **not** be made if:

- the owner does not give the builder the signed written acceptance of the builder's offer,
- within 5 working days of the builder giving his reply

5. Valuation of variations

→ If the price is not agreed upon prior to the variations being carried out, the price would include:

- deductions of reasonable cost of all deletions from the building works
- addition of the total cost of all extra work plus the builder's margin

6. Price of variation is due and payable at the next progress payment after it is carried out (unless a different time is agreed).

**You Can Be Confident That You Are Getting
the Right Legal Advice**

Contracts Specialist is a Sydney-based construction law firm that deals with Building Disputes, Construction Contracts, Debt Recovery, and Security of Payment. With Contracts Specialist, you are ensured that you are in good hands.

7. If a variation is required for the building works to comply with the law or a requirement of any statutory or other authority, the owner must not unreasonably withhold consent.
8. Owner acknowledges that the color of grain, timber, granite, other natural materials - may vary.

Why are variations a common source of dispute?

Among other things,

- Variations always affect the contract price (valuing the variation)
- Sometimes, questions arise if whether the change is a variation, or if it is inherently, impliedly, or necessarily included in the works (agreeing whether the works constitute a variation at all)
- There is sometimes an issue on variations made by the builder, that the owner did not agree to, or that the owner could not afford

What to do when there is dispute related to variations

Under Clause 35

1. If a dispute arises, a party must give written notice to the other party setting out the matter in dispute
2. Builder and owner must meet within 10 working days of the giving of the notice to attempt to resolve the dispute or to agree on methods of doing so.
3. If the dispute is resolved, the parties must write down the resolution and sign it.
4. The parties agree that anything done or said in the negotiation cannot be revealed in any other proceeding.

You Can Be Confident That You Are Getting
the Right Legal Advice

Contracts Specialist is a Sydney-based construction law firm that deals with Building Disputes, Construction Contracts, Debt Recovery, and Security of Payment. With Contracts Specialist, you are ensured that you are in good hands.

If the dispute remains unresolved

If, following the above, the dispute remains unresolved, recourse may be had with the [Office of Fair Trading](#), where the parties may be instructed to undergo [ADR \(Alternative Dispute Resolution\)](#). If the issue still remains unresolved at the Fair Trading level, the aggrieved party may lodge a complaint with the [NSW Civil and Administrative Tribunal \(NCAT\)](#) where the matter will undergo [directions hearings](#). Finally, if the dispute still remains unresolved, or if you're not satisfied with the tribunal's decision, you can lodge a complaint in court.

How we can help

The HIA contract is generally written to favor builders. Hence, it may be a good idea to engage a specialist construction lawyer for [Contract Review and Advice](#), so that you may be apprised of what you need to negotiate with your builder. Contracts Specialist has expert building and construction lawyers who can do just that. And if you are currently in dispute with your builder about variations you did not agree to, we can help you with that, as well.

You Can Be Confident That You Are Getting
the Right Legal Advice

Contracts Specialist is a Sydney-based construction law firm that deals with Building Disputes, Construction Contracts, Debt Recovery, and Security of Payment. With Contracts Specialist, you are ensured that you are in good hands.