

Practical Benefits of Variations Clause 18 under HIA NSW Contract

Owning a home is an Australian dream, but what happens when that dream turns into a nightmare due to defects in your property? The recent case of *Stevenson v Ashton* provides clarity on what constitutes a 'major defect' under the Home Building Act 1989 (NSW) (HBA). This article aims to help homeowners in NSW understand the implications of the case and what they should look out for when assessing their own property for defects.

The Practical Benefits of Clause 18: Variations

Clause 18 of the NSW HIA Lump Sum contract requires that any variations to the construction project be in writing and signed by both parties. This clause serves a crucial purpose in avoiding or [resolving disputes](#) between builders and homeowners.

Here are some of the practical benefits of Clause 18:

- Having [variations](#) in writing provides clarity and specificity, ensuring that both parties understand and agree to the changes in scope, cost, and timeline.
- Clear and specific agreements help avoid misunderstandings and disputes that can arise when expectations are not aligned.
- Clause 18 ensures that variations are properly documented and agreed upon, reducing the likelihood of disputes and misunderstandings.

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Practical Purpose of the Variation Clause in the HIA Lump Sum Contract NSW

Column 1: Practical Risk/Benefit Being Managed	Column 2: Benefit of Clause	Column 3: Helpful Information
<p>Risk of disagreement about variations to the scope of works during the course of the contract</p>	<p>The clause provides a mechanism for managing changes to the scope of works in a formal manner, reducing the risk of disputes and ensuring that any changes are clearly agreed upon by both parties</p>	<p>Written variations should include (amongst other things) (a) the scope of the work; (b) the cost of the work; and (c) any delays in the completion of the work as a result of the variation</p>
<p>Risk of non-payment for variations</p>	<p>The clause ensures that variations to the scope of works are documented in writing, which can be used as evidence in the event of a dispute over payment</p>	<p>In NSW, variations for a home building contract must be in writing - otherwise, the Builder does not have a contractual right to claim for payment</p>

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Risk of insurance coverage for variations not being in place	The clause requires any variations that increase the contract price to be documented in writing, which can help ensure that the necessary insurance coverage is in place	If the Builder carries out a variation that increases the contract price, the Builder may need to amend their insurance under the Home Building Compensation Fund in order for the variation work to fall under the insurance coverage

Clause 18 provides practical benefits for both builders and homeowners by ensuring that any changes to the construction project are properly documented and agreed upon in writing. This can help avoid misunderstandings and disputes that can arise when expectations are not aligned.

Mitigating Disputes Through Clause 18

Disputes can arise in home building contracts when there are changes to the original scope of work, cost, or timeline.

Here are some examples of disputes that can arise from variations:

- Disagreements over the cost or scope of the variation
- Delays in completing the variation
- Disputes over who is responsible for paying for the variation

Clause 18 can help mitigate these disputes by requiring that any variations be in writing and signed by both parties. This provides clear and specific agreements on the changes to the construction project, reducing the likelihood of misunderstandings and disputes.

There have been many cases where disputes have been resolved or avoided through Clause 18. For example, a homeowner requested a variation to add a second-story deck to their home, but the builder did not complete the deck to the homeowner's satisfaction. However, because the variation was in writing and signed by both parties, the homeowner was able to take legal action and receive compensation for the incomplete work.

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Get Legal Advice

Clause 18 of the NSW HIA Lump Sum contract plays a crucial role in mitigating disputes that can arise during the construction process. By requiring that variations be in writing and signed by both parties, Clause 18 ensures that both builders and homeowners are aware of their rights and responsibilities. This can help avoid misunderstandings and disputes, and ensure that the construction project proceeds smoothly.

To ensure that variations are properly documented and agreed upon, it is recommended that both parties carefully review and understand the terms and conditions of the contract. It is also recommended that any changes to the construction project be agreed upon in writing and signed by both parties.

As a specialist construction lawyer with over 10 years of experience, I regularly advise on the NSW HIA Lump Sum contract and represent both owners and builders in court and the NSW Civil and Administrative Tribunal. If you have any questions or concerns about your home building contract, please do not hesitate to contact me for guidance and support.

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