

# Dealing with Delays in Practical Completion: A Guide for Homeowners Under the HIA Contract

Building your dream home is exciting, but can be stressful and overwhelming when dealing with delays and defects during Practical Completion. This article explains [Clause 21 of the Housing Industry Association \(HIA\) Contract](#), answering common questions and offering advice to homeowners facing residential construction delays.

## Understanding Practical Completion

In a residential building contract, practical completion is an important milestone that marks the point where the construction work is substantially complete and ready for use. The HIA Contract provides a definition of [Practical Completion in Clause 21](#), which states that practical completion is achieved when the work has been completed in accordance with the plans and specifications to a stage where it can be used for its intended purpose. However, achieving Practical Completion does not necessarily mean that the work is defect-free, as minor defects or omissions may remain. It is important for homeowners to understand what Practical Completion means, as it triggers important contractual obligations for both the homeowner and the builder, including the issue of the Notice of Practical Completion and the start of the defects liability period.

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## Clause 21. Practical Completion

*Refer to the definition of practical completion in Clause 1.*

- 21.1 The **builder** must give the **owner** a **notice of practical completion** at least **5 working days** prior to **practical completion** being reached.
- 21.2 The **notice of practical completion** is to:
- state the **builder's** assessment of the **date of practical completion**;
  - state the date and time for the **owner** to meet the **builder** on the **site** to carry out an inspection of the **building works**; and
  - have attached the **builder's** final progress claim.
- 21.3 The **owner** must meet the **builder** on the **site** for the inspection at the date and time stated by the **builder** in the **notice of practical completion** or at a date and time otherwise agreed with the **builder** and either:
- pay the amount of the final progress claim; or
  - if the **owner** believes that the **building works** have not reached **practical completion** give the **builder** a written notice detailing anything to be done to reach **practical completion**.
- 21.4 If the **owner** pays the amount of the final progress claim under sub-clause 21.3(a) the **date of practical completion** stated in the **notice of practical completion** is deemed to be the **date of practical completion**.
- 21.5 If the **owner** gives the **builder** a notice under sub-clause 21.3(b) of work to be completed:
- the **builder** must carry out any work required for **practical completion** and give the **owner** a further **notice of practical completion**;
  - if the **builder** does not agree that there is any further work to be carried out to reach **practical completion** the **builder**:
    - must give the **owner** written notice rejecting the **owner's** notice. In this case, such a notice will also serve as notice of the matters in dispute for the purposes of Clause 35;
    - is not obliged to carry out any further work on the **site** while the dispute remains unresolved.
- 21.6 If the **owner** does not pay the amount of the final progress claim under sub-clause 21.3(a) or give the **builder** a notice under sub-clause 21.3(b):
- the amount of the final progress claim is deemed to be a debt due and owing from the **owner** to the **builder**;
  - the **date of practical completion** stated in the **notice of practical completion** is deemed to be the **date of practical completion**; and
  - the **owner** acknowledges the **building works** have reached **practical completion**.
- 21.7 On the **owner** paying the final progress claim, the **builder** must give the keys, certificates, warranty documentation and other documents pertaining to the **building works** to the **owner**.

*The owner is responsible to insure the building works from the date of practical completion. See Clause 38.7*

*For dispute resolution refer to Clause 35.*



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## Delays in Practical Completion

Delays during Practical Completion are a common issue faced by homeowners who have signed a residential building contract under the HIA Contract. There are many different causes of [delays](#), including inclement weather, a lack of supplies, a labour shortage, or unexpected circumstances.

## Your Legal Rights as Homeowner

As a homeowner, you have certain legal rights when it comes to Practical Completion of your building project under the HIA contract. The [Home Building Act 1989 \(NSW\)](#) provides protection to homeowners and sets out the rights and obligations of builders.

You might have the right to ask the contractor to correct any defects in the completed work. The builder must correct defects in accordance with the HIA contract within a specific time period. You may be entitled to compensation or the option to file a legal action if the builder declines to correct those defects.

If there are delays in completing the work, you may also have the right to claim compensation. The HIA contract provides for liquidated damages to be paid to the homeowner in the event of delays. This is an agreed sum of money that the builder agrees to pay for each day that the project is delayed beyond the practical completion date.

Remember, it is important to keep records of all communications with your builder and to take photographs of any defects or incomplete work. This will be helpful in any legal action or dispute resolution process.

## Dealing With Disputes

If a dispute arises between a homeowner and a builder about practical completion, there are several steps that can be taken to resolve the matter.

Firstly, it is important to try to resolve the dispute directly with the builder. This can be done through negotiation or mediation. If this is not successful, the homeowner can seek assistance from the Office of Fair Trading, which can provide advice and assistance in resolving disputes.

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If the dispute cannot be resolved through negotiation or mediation, the homeowner can apply to the NSW Civil and Administrative Tribunal (NCAT) for assistance. NCAT can hear disputes between homeowners and builders and make orders to resolve the matter.

It is important to note that there are time limits for making a claim in [NCAT](#). For example, claims for defective building work must be made within six years of the completion of the work.

The homeowner may also seek legal advice from a construction solicitor if the dispute includes a breach of a statutory warranty, such as a defect in the building work. The solicitor can assist in identifying any breaches of the Home Building Act 1989 (NSW) and advise on the best course of action to take

## Handover and Final Completion

Once the builder has rectified all defects and completed any outstanding works, the final stage is the handover of the property to the homeowner. A final inspection is conducted at this stage to make sure all the work has been finished in accordance with the construction contract, the plans, and the specifications. A Certificate of Final Inspection, which certifies that the building has been finished in accordance with the construction contract and the homeowner may take possession of the property, will be given if the inspector is satisfied.

The homeowner must make sure that the contractor provides every documentation, including warranties, manuals, and compliance credentials, at the time of handover.

## Conclusion

The process of practical completion can be stressful and complex for homeowners, particularly when disputes arise. However, it is essential to understand your rights and obligations under the HIA contract and the Home Building Act 1989 (NSW).

Choose a reputable builder, read and understand your contract, and seek professional advice from a specialist construction lawyer.

Remember that timely communication, documentation, and cooperation between the homeowner and the builder can go a long way towards resolving disputes and achieving a satisfactory outcome for both parties.

[Contracts Specialist](#) is a law firm specialising in construction law, and is led by an experienced industry expert. We provide legal advice to homeowners and builders in NSW, and represent them

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in tribunals and courts. We assist clients in navigating practical completion disputes and advise them on their contractual rights, risks, and obligations.

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