

# Legal Obligations for Builders and Homeowners under Clause 17 of the NSW HIA Lump Sum Contract

The NSW HIA Lump Sum contract in NSW uses Clause 17 for progress payments. This explains legal obligations under Clause 17, including payment schedules and claims, for a comprehensive understanding. This article will provide an overview of the legal obligations for builders and homeowners under Clause 17 of the NSW HIA Lump Sum contract, including how progress payments work, the progress payment process, and the importance of progress payment schedules and claims.

## Understanding Progress Claims

If you are a homeowner building your dream home with a builder under the NSW HIA Lump Sum Contract, it is important to understand progress claims. A progress claim is a written request for payment made by a builder for work completed to date. In the construction industry, progress claims are used to facilitate payments from the client to the builder, in stages, throughout the construction process. The payment process can be complex and is subject to legal obligations for builders and homeowners. Understanding how progress claims work, the difference between progress claims and payment claims, and the requirements for a valid progress claim, can help you to navigate the payment process and avoid disputes.

## Legal Obligations under Clause 17 of the NSW HIA Lump Sum Contracts

Homeowners and builders have legal obligations under Clause 17 of the NSW HIA Lump Sum Contract. This clause outlines the requirements for [progress payments](#) and progress claims in the construction process. Here are some key points to keep in mind:

- The builder must submit a progress claim for payment when certain stages of the project are complete.
- The progress claim must be in writing and include details such as the amount claimed and the work completed.
- The homeowner has 10 business days to respond to the progress claim by providing a payment schedule.
- The payment schedule must include the amount the homeowner proposes to pay and the reasons for any withheld payments.

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- If the homeowner fails to provide a payment schedule, they may be required to pay the full amount claimed by the builder.
- If a payment dispute arises, the builder or homeowner can seek adjudication under the Security of Payment Act 1999 (NSW).

It is essential that both parties understand their legal obligations under Clause 17 to avoid payment disputes and legal issues during the construction process.

### Clause 17. Progress Payments

- 17.1 The **owner** must pay the deposit stated in Item 2(b) of Schedule 1 on the later of the day that:
- this **contract** is signed by the **owner**; and
  - warranty insurance described in Schedule 6 is in force and the **owner** is provided with a certificate of insurance for such insurance.
- The deposit is brought to account with the first progress payment.
- 17.2 The **owner** must pay the **contract price** progressively as claimed by the **builder**.
- 17.3 The **builder** must give the **owner** a written claim for a progress payment for the completion of each **stage**.
- 17.4 A progress claim is to state:
- the amount claimed and not paid for the **stage** completed;
  - the amount claimed and not paid for **contract price adjustments**;
  - the amount claimed and not paid for **variations**; and
  - the sum of the above amounts.
- 17.5 The **owner** must pay a progress claim within 5 **working days** of the **builder** giving the claim.

*Payment does not mean that the owner accepts the work is done in accordance with the contract. The owner cannot hold any money back on a progress claim.*



- 17.6 Other than in relation to the final progress claim:
- payment of a progress claim is on account only; and
  - the **owner** has no right of set off.

## Progress Payment Schedules

[Progress payment schedules](#) play a critical role in the NSW HIA Lump Sum contract. As per Section 14 of the Building and Construction Industry Security of Payment Act 1999 (NSW), a respondent (usually the homeowner) may reply to a payment claim by providing a payment

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schedule to the claimant (usually the builder). Here are some key points to keep in mind regarding progress payment schedules under the HIA contract:

- A payment schedule must identify the payment claim to which it relates and indicate the scheduled amount.
- If the scheduled amount is less than the claimed amount, the schedule must specify the reasons for the difference.
- If the respondent fails to provide a payment schedule within the required time, they become liable to pay the claimed amount on the due date.
- The HIA contract specifies the timeframe within which the progress payment schedule must be provided.
- If a progress payment schedule is not provided, the contractor has the right to suspend work until the schedule is provided.

It is important for both the homeowner and builder to understand their obligations regarding progress payment schedules to avoid any disputes or delays in the construction process.

## Calculating Progress Payments

Progress payments under the NSW HIA Lump Sum Contract are typically calculated based on the percentage of work completed. The contract should specify how progress payments are to be calculated and when they are due. Here are some things to keep in mind when calculating progress payments:

- Make sure the progress payment schedule is followed and payments are made on time
- Check the contract to determine what is included and excluded in calculating progress payments
- Ensure that the builder provides accurate and detailed invoices to support their progress claims
- Consider obtaining expert advice to assess the value of the work completed and ensure that the builder's progress claims are fair and reasonable

It is important for homeowners to understand how progress payments are calculated to ensure that they are being charged fairly and that the builder is not overcharging or undercharging for the work completed.

## Progress Payment Claims:

A progress payment claim is a formal request made by the builder to the homeowner for payment for the work completed. It is usually made at a predetermined interval and must comply with the requirements of the contract and relevant legislation.

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Under the NSW HIA Lump Sum Contract, progress payment claims must be made in writing and specify the amount claimed for the completed work. The claim should also include the due date for payment, which must be at least 10 business days from the date the claim is served.

If the progress payment claim is made under the Building and Construction Industry Security of Payment Act 1999 (NSW), the claimant must follow specific procedures and timelines. Failure to comply with these requirements can result in the claim being invalid.

It is important for homeowners to review progress payment claims carefully to ensure that the claimed amount is reasonable and that the work has been completed in accordance with the contract. Homeowners should also seek professional advice if they have any doubts or concerns about a progress payment claim.

## Security of Payment Act NSW

The [Security of Payment Act 1999 \(NSW\)](#) (the Act) is a crucial piece of legislation that protects the interests of builders and contractors by ensuring they receive timely and fair payment for the work they have done. The Act applies to construction contracts in New South Wales, including the NSW HIA Lump Sum Contract, and provides a streamlined process for making and responding to progress payment claims.

Under the Act, builders and contractors have the right to make a payment claim if they are owed money for work carried out on a construction project. The Act also sets out strict timeframes for making and responding to payment claims, and provides for adjudication of disputes related to progress payments.

It is important for homeowners and builders to understand their rights and obligations under the Act, as non-compliance with its provisions can result in penalties and legal disputes. An experienced [construction lawyer](#) can provide guidance on how to comply with the Act and can assist with making and responding to progress payment claims.

## Dispute Resolution

In any construction project, disputes can happen, and having a [dispute resolution](#) process is crucial. In the NSW HIA Lump Sum Contract, conflicts related to progress payments can be settled through the Security of Payment Act 1999 (NSW) or other dispute resolution mechanisms provided in the agreement. To resolve a dispute, both the homeowner and builder should initially attempt informal negotiations or [alternative dispute resolution](#) methods such as mediation or arbitration. If informal negotiations fail, legal action may be required to resolve the dispute. It's advisable for homeowners and builders to seek legal advice early on in the dispute resolution process to ensure

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they understand their legal rights and obligations and receive guidance on the best course of action to resolve the dispute quickly and cost-effectively.

### Clause 35. Dispute Resolution

- 35.1 If a dispute arises then a party must give written notice to the other party setting out the matter in dispute.
- 35.2 The **builder** and the **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 so doing.
- 35.3 If the dispute is resolved the parties must write down the resolution and sign it.
- 35.4 The parties agree that anything done or said in the negotiation cannot be revealed in any other proceeding.

## Conclusion

In conclusion, understanding your legal obligations and rights under the NSW HIA Lump Sum Contract is crucial when it comes to progress payments and progress claims. As a homeowner, it is important to familiarise yourself with the terms of the contract, particularly Clause 17, to ensure that your interests are protected.

If you have received a progress claim and are unsure of your legal rights, it is always advisable to seek professional advice from a solicitor who specialises in construction law. They can advise you on the best course of action and help you navigate the complex legal landscape surrounding construction contracts and payments.

Remember, if you believe that a progress claim is invalid or that a builder is not entitled to payment, you have options. The Security of Payment Act NSW provides avenues for dispute resolution, and it is essential to seek legal advice to ensure that your rights are protected.

As a homeowner, it is your responsibility to ensure that progress payments are made in accordance with the contract and that you are not left vulnerable to any legal disputes or claims. By staying informed and working with professionals who have experience in construction law, you can ensure that your dream home is built to your expectations, and that the construction process goes smoothly.

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