

# HIA VARIATIONS: A Homeowner's Guide

## Introduction

[Variations](#) in construction contracts are a common source of disputes in NSW. But what exactly are variations, and how do they work under the [HIA NSW Residential Building Contract for New Dwellings](#)? This article will guide you through the contract variation process, explaining the reasons for contract variations, the variation clause in construction contracts, and what to do if variations lead to disputes.

## What are Variations?

Variations are changes or alterations made to the work, outside of or contrary to the specified scope of works under the contract.

## What Causes Contract Variations?

Some contract variations are caused by changes to:

- design
- materials
- quantities
- quality
- manner of carrying out the works.

Understanding variation of contract and the causes of contract variation are crucial, as they often affect the contract price and can lead to disagreements between the builder and owner.

## Dispute Resolution and Legal Remedies

Under the HIA NSW Residential Building Contract for New Dwellings, 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.

## NSW Residential Building Contract for New Dwellings

OWNERS:

JOB:  
LOT:  
SITE:



To verify your builder is a HIA member email [enquiry@hia.com.au](mailto:enquiry@hia.com.au)

© HIA Contracts Online (Revised May 2021.v2)

All rights reserved. No part of this document may be reproduced, stored, copied, distributed or transmitted in any form or by any means without the prior written consent of HIA.

### Variations by the Builder

Builders sometimes send a notice of variation where the builder asks for a variation, such as changing the flooring from one material to another, due to unavailability of supply. This change of work may lead to an increase or decrease in the contract price, although it's usually the former.

Related content: [Risks and Benefits for Builders and Owners under Variations Clause](#)

### Variations by the Owner

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

The owner may request the builder to deviate from the plans, subject to the builder's agreement or refusal. An example of this is when the owner requests the builder to add an additional room or change the material that will be used for a specific work.

You can be confident that you are getting  
the right legal advice.

## Clause 18: Understanding Variations

Depending on the type of construction contract you are using, variation clauses might differ. However, an example of a variation clause in a contract can be found under [Clause 18 of the HIA NSW New Dwellings Contract](#).

Clause 18 details how HIA variations may be properly made, outlining the limitations and obligations imposed on both parties.

### 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**.

### Main points under Clause 18:

1. A contract variation is an agreement. Therefore, it must be:
  - in writing; and
  - signed by both parties.
2. If the owner sends a contract variation request, the builder should reply as soon as is reasonable.

You can be confident that you are getting  
the right legal advice.

3. The builder's reply could be either an offer to carry out the variation or a refusal.
  - a) 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; and
    - any [extension of time](#) to the building period as a result of carrying out the variation
  - b) 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; and
  - addition of the total cost of all extra work plus the builder's margin.
6. The builder may claim the price of variation is due and payable at the next progress payment after it is carried out (unless a different time is agreed).
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](#) to that variation.
8. Owner acknowledges that the colour of grain, timber, granite, other natural materials – may vary.

**Related content:** [Practical Benefits of Variations Clause 18 under HIA NSW Contract](#)

## Why are Variations a Common Source of Dispute?

Variations are a natural part of the construction process, but they can frequently lead to disputes between homeowners and builders. The [variation disputes](#) usually arise due to differing perspectives between the parties.

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.

Among other things, variations always affect the contract price, and questions may arise whether the change is indeed a variation or is inherently, impliedly, or necessarily included in the works. There may also be issues 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 a Dispute Related to Variations**

Under Clause 35, if a dispute arises, a party must give written notice to the other party. Within 10 working days, the parties must attempt to resolve the dispute or agree on methods of doing so.

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 and final 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: Legal Services for Homeowners**

The HIA contract is generally written to favour builders. Hence, it may be a good idea to engage a specialist construction lawyer for [Contract Review and Advice](#). As a solicitor and construction lawyer with more than 10 years of experience specialising in construction law, I have advised and represented homeowners, builders, and contractors in tribunals of NSW, Australia, and all courts of competent jurisdiction. My expertise includes advising on HIA Variations, contract rights, risks, obligations, and negotiating and amending contracts to reflect intentions. Don't leave your legal rights to chance. Book a free consultation with me today and let my experience guide you through the legal maze of construction contracts, ensuring your interests are protected and your build is a success.

**Get More Insights:** [Keeping Projects on Track: A Guide to Variations](#), [Negotiating Contract Variations: A Homeowners Guide](#), [Disputing Variations as a Homeowner: How We Can Help](#)

You can be confident that you are getting  
the right legal advice.