

Due Care and Skill: Section 18B(1)(a) Home Building Act Explained

When embarking on residential building projects, homeowners often envision a smooth process leading to the realisation of their dream homes. However, the journey from blueprint to build can be fraught with challenges, chief among them being disputes over the quality of workmanship. Central to these disputes is the concept of "due care and skill," a legal standard embedded in both the Home Building Act 1989 (NSW) and the Australian Consumer Law (ACL). Understanding this standard is crucial for homeowners navigating the complexities of [building disputes](#).

The Home Building Act 1989 (NSW), Section 18B(1)(a)

This plays a pivotal role in safeguarding homeowners' interests. This section implies a warranty in every residential building contract, mandating that the work must be executed with due care and skill and according to the plans and specifications laid out in the contract. It serves as a protective measure, ensuring that builders uphold a high standard of workmanship and adhere strictly to the agreed-upon plans.

Complementing this, Section 60 of the ACL guarantees that services, including building and construction, will be rendered with due care and skill. This legal provision broadens the consumer safety net, covering a range of services beyond just building work. The interplay between the Home Building Act and the ACL creates a framework for homeowners to hold builders accountable for the quality of their work.

The notion of "due care and skill" is not just a legal requirement; it's a benchmark against which the work of builders is assessed. However, the interpretation of this standard can be complex, often requiring [adjudication](#) in legal disputes. As we delve into this topic, we will explore how courts have interpreted and applied this standard in various cases, offering insights and guidance for homeowners facing building disputes.

In this article, I aim to demystify the legal concept of due care and skill, guiding homeowners through the intricacies of building contracts and disputes. With an informed understanding of their rights and legal standards, homeowners can more confidently navigate the challenges of building disputes, ensuring their dream homes are built to specification and with the quality and care they expect.

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Understanding Section 18B(1)(a) of the Home Building Act

Navigating the realm of residential buildings can be daunting for homeowners, especially when it comes to understanding legal protections and standards. A key piece of legislation in this landscape is the [Home Building Act 1989](#) (NSW), particularly Section 18B(1)(a). This section is crucial in defining the quality and standard of work homeowners can expect from their builders.

Section 18B(1)(a) of the Home Building Act 1989 (NSW) states that in every contract to do residential building work, there is an implied warranty that the work will be done with due care and skill and by the plans and specifications set out in the contract. This implies that builders are legally bound to carry out their work with a high level of skill and attention and in strict adherence to the agreed-upon contractual terms. The implications of this are significant for both builders and homeowners.

For homeowners, this section offers a layer of protection. It assures them that the builder will meet a certain standard of work, aligned with professional norms and contractual agreements. Homeowners have legal grounds to seek remediation or compensation if the builder fails to meet these standards. This warranty acts as a safeguard, ensuring that the homeowners' investment in their property is protected against substandard workmanship.

For builders, this section sets a clear benchmark for the quality of work expected. It mandates a level of professionalism and skill that must be adhered to, ensuring that building practices meet industry standards. This not only helps in maintaining the integrity of the building profession but also in building trust with clients.

Understanding this warranty is crucial for homeowners, particularly in a dispute. If a homeowner believes that the work has not been carried out with due care and skill, or that it deviates from the contract plans and specifications, they can claim a breach of warranty under the Home Building Act. However, proving such a [breach](#) requires thoroughly understanding what constitutes 'due care and skill' in building work.

The 'due care and skill' standard is not a call for perfection but a reasonable expectation of competency and adherence to professional norms. It's an objective standard, meaning that it's based on what a competent professional in the building industry would reasonably do under similar circumstances. This standard considers various factors such as the work's complexity, the contract's agreed terms, and the building industry's professional norms.

In conclusion, Section 18B(1)(a) of the Home Building Act 1989 (NSW) is a cornerstone of legal protection for homeowners undertaking building projects. It ensures that building work is carried out with professional care and skill and by the contract. For homeowners, understanding this

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warranty is vital to ensuring that their rights are protected and that they have recourse in the event of substandard building work.

The Role of Australian Consumer Law

In the context of residential building disputes, the Australian Consumer Law (ACL) plays a pivotal role, complementing the protections offered by the Home Building Act. One of the key provisions relevant to homeowners in building disputes is Section 60 of the ACL, which guarantees that services, including residential building work, are rendered with due care and skill. This segment of the ACL is instrumental in offering an additional layer of security and recourse for homeowners.

Section 60 of the ACL states that if a person supplies services to a consumer in trade or commerce, there is a guarantee that these services will be rendered with due care and skill. This provision covers a broad range of services, encompassing the construction and renovation of residential properties. The essence of this guarantee is that the services provided must meet a basic level of quality and professionalism that a reasonable consumer would expect from a competent professional in that trade.

The significance of Section 60 for homeowners must be balanced. It provides an overarching standard that all service providers must meet, including builders and contractors. This standard is not just a guideline but a legal obligation. It means that when a builder undertakes a residential construction project, they are legally bound to perform their work with reasonable care, skill, and technical knowledge. The implication is clear: if the work is performed carelessly, without the requisite skill, or is substandard, the builder may breach the ACL.

An essential aspect of this guarantee is that it applies regardless of any contract between the homeowner and the builder. This means that even if the contract does not expressly state these standards, the ACL still implies them. Therefore, homeowners have a safety net that goes beyond the specific terms of their building contract.

The Home Building Act's objective standard for due care and skill is comparable to that set by the ACL. It is based on what a reasonable person would expect from a competent professional in the field. This standard considers the nature of the service, the price paid, and any [representations](#) made by the builder about the quality or standard of the work.

In legal disputes, courts and tribunals often refer to the ACL to determine whether a service provider has failed to meet the requisite due care and skill standard. The courts assess each case based on the specific circumstances, including the nature of the work, the expectations set out in the contract, and industry standards.

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In conclusion, the Australian Consumer Law provides a vital framework for ensuring quality and professionalism in residential building services. For homeowners, it offers an added level of protection and a clear standard against which the work of builders can be measured. Understanding the role of the ACL in building disputes empowers homeowners to better protect their rights and interests in the event of substandard or negligent building practices.

Case Analysis: Interpreting Due Care and Skill

Understanding how courts interpret 'due care and skill' is crucial in building disputes. Several cases provide insights into this standard, helping homeowners discern what they can reasonably expect from their builders. Let's delve into these cases and extract the key principles that guide the interpretation of due care and skill in residential building work.

Let's Go Adventures Pty Ltd v Barrett [2017] NSWCA 243

In this case, the NSW Supreme Court of Appeal equated the standard of "due care and skill" with the common law duty to take reasonable care. The court observed: "The plaintiff's pleading assumed, no doubt correctly, that the standard set by the guarantee of 'due care and skill' could properly be equated with the common law duty to take reasonable care, if the scope of the services was adequately identified."

Principle Established: This case reinforces that 'due care and skill' in a building context is akin to the general legal standard of reasonable care, making it a benchmark for assessing builders' work.

Panico v Mollier Enterprises Pty Limited [2021] NSWCATCD 56

This case clarified the phrase "due care and skill" in Section 60 of the ACL, highlighting its equivalence to the common law duty of reasonable care. The judgement stated: "Therefore, the consumer guarantee that services be provided with due care and skill that is implied into consumer contracts is a guarantee that the services will be performed in a 'careful, skilful, and workmanlike' manner."

Principle Established: The standard under the ACL is not perfection but meeting an objective standard of due care and skill based on contract terms and professional norms.

Pollock v New South Wales Trustee & Guardian [2022] NSWSC 923

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The NSW Supreme Court provides insights into evaluating evidence in disputes, particularly memory and witness testimony. The court observed: “Memory is a constructive and reconstructive process... Memories can be altered, deleted, and created by events that occur during and after the time of encoding, during the period of storage, and any attempts at retrieval.”

Principle Established: In building disputes, the court considers the subjective nature of memory and testimony, focusing on the plausibility and consistency of evidence.

Deacon v National Strategic Constructions Pty Ltd [2017] NSWCATAP 185

This case emphasises the role of expert evidence and industry standards in determining whether work is performed with due care and skill. The court stated: “Evidence of work not being carried out in a proper and workmanlike manner would, in my view, involve identification of the work in question, a statement of how the expert would expect it to be carried out in a proper and workmanlike manner, and then identification of the factors that establish that how the work has been carried out falls short of it being carried out in a proper and workmanlike manner.”

Principle Established: Expert evidence is crucial in establishing whether a builder has breached the duty of due care and skill, particularly about industry standards.

Duran and Duran v Taфра Pty Ltd [2015] NSWCATCD 110

This case highlighted the necessity of expert evidence in substantiating claims of inadequate service. The judgement reads: “There is no expert evidence, such as a report by another real estate agent, that an agent acting in a reasonably diligent manner would have managed the property differently... The Tribunal cannot appoint itself as an expert, and find that an earlier notice to terminate should have been issued, without any expert evidence to support such a finding.”

Principle Established: Expert evidence is essential for proving a failure to exercise due care and skill, underscoring the need for objective assessment in disputes.

These cases demonstrate that the interpretation of due care and skill is multifaceted. It involves not only a comparison to the common law standard of reasonable care but also a consideration of the specific circumstances of each case, including the nature of the work, the terms of the contract, and industry norms. Expert evidence emerges as a key factor in these disputes, providing an objective measure against which the work can be evaluated. For homeowners, these cases offer valuable guidance on how courts approach due care and skill, empowering them to navigate building disputes more effectively.

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The Importance of Expert Evidence

In the intricate landscape of building disputes, expert evidence becomes indispensable. This article delves into the crucial significance of expert testimony and provides practical tips to empower homeowners facing challenges in disputes over workmanship.

Expert evidence is indispensable in the landscape of [building disputes](#), particularly those revolving around the notion of due care and skill. Expert testimony often becomes the linchpin in determining whether the work meets legal standards. This segment of our discussion will explore why expert evidence is so crucial and how it can influence the outcome of building disputes.

Expert evidence, typically provided by professionals in the building industry, offers an objective assessment of the quality of work performed. These experts draw on their knowledge and experience to evaluate whether the work meets the standards expected of a competent professional. In cases where the quality of workmanship is in question, their input can be critical in determining whether a builder has met their obligations under the Home Building Act and the Australian Consumer Law.

The importance of this kind of evidence is highlighted in cases like *Deacon v National Strategic Constructions Pty Ltd [2017] NSWCATAP 185*, where the court emphasised the need for expert testimony to establish whether work was carried out properly and workmanlike. The court noted that such evidence should include a detailed account of how the work should have been performed versus how it was executed. This comparison helps establish whether there was a deviation from the due care and skill standard.

Similarly, in *Duran and Duran v Tafrā Pty Ltd [2015] NSWCATCD 110*, the absence of expert evidence was a crucial factor in the tribunal's inability to rule in favour of the claimant. This underscores homeowners' need to present well-founded expert evaluations when alleging substandard workmanship.

For homeowners, understanding the value of expert evidence is critical. When facing a building dispute, obtaining a comprehensive report from a credible building expert can significantly strengthen their case. With support from citations to industry standards and best practices, this report should outline the specific areas where the work falls short. Such evidence helps prove a [breach](#) of due care and skill and provides a clear framework for what remedial action is necessary.

In summary, expert evidence plays a pivotal role in building disputes, offering an objective and technical perspective on the quality of workmanship. For homeowners embroiled in such disputes, securing robust expert testimony is a strategic move that can greatly influence the outcome of their case. It provides clarity, supports allegations of inadequate workmanship, and guides the legal process towards a fair and informed resolution.

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Practical Tips for Homeowners

For homeowners entangled in building disputes over the quality of workmanship, navigating the process can be challenging. Here are some practical tips to effectively handle such situations:

- 1. Document Everything:** Keep detailed records from the outset of the building project. This includes [contracts](#), plans, specifications, emails, and correspondence with the builder. Document any deviations from the agreed plan as they occur.
- 2. Conduct Regular Inspections:** Regularly inspect the work being done. Do this with a knowledgeable friend or consultant who can spot potential issues early on.
- 3. Communicate Concerns Early:** If you notice potential issues, raise them with the builder promptly and in writing. This can often resolve problems before they escalate and provide a record of your proactivity.
- 4. Hire an Expert:** If disputes arise, engage an expert in building and construction to assess the work. Their professional opinion can be invaluable, especially if the dispute goes to a tribunal or court.
- 5. Seek Legal Advice:** Understand your rights under the [Home Building Act](#) and the ACL. Early legal advice can be crucial in navigating the dispute process effectively. A building and construction is the best place to advise and represent homeowners in building disputes.
- 6. Stay Informed:** Educate yourself about the building process, common issues in construction, and your legal rights. Knowledge is power, and being well-informed can help you advocate for your interests more effectively.

By following these steps, homeowners can better manage building disputes and protect their investments, ensuring their dream home becomes a reality with the quality and craftsmanship they expect.

Summary and How We Can Help

Navigating the complexities of building disputes as a homeowner can be daunting, but understanding the key legal concepts of due care and skill is paramount. The Home Building Act and the Australian Consumer Law provide a framework that sets out the standards builders must

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adhere to. We gain insights into how these standards are interpreted and applied through case law, emphasising the importance of due care and skill in the building industry.

Expert evidence is a critical element in these disputes, objectively assessing whether the work meets professional standards. For homeowners, this highlights the necessity of being proactive, well-informed, and prepared to [seek professional advice](#) when needed.

Homeowners with knowledge and understanding of their rights under the law are better positioned to ensure their building projects meet the expected standards. By advocating for due care and skill, engaging the right experts, and understanding the legal landscape, homeowners can effectively navigate building disputes, contributing to a smoother, more satisfactory building experience.

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