

# The Difference between Quantum Meruit Claims and Variations under the HIA NSW Residential Building Contract

When embarking on a construction project, understanding the legal intricacies of your contract is crucial. This article delves into two key concepts: [Quantum Meruit claims](#) and Variations in the HIA NSW Residential Building Contract. We'll explore what they mean, how they differ, and their implications for both homeowners and builders. Whether you're a homeowner building your dream home or a builder navigating contract complexities, this guide will provide valuable insights to help you navigate your contractual obligations and rights.

## Understanding Contract Variations

In the realm of construction, a [contract variation](#), or simply a 'variation', refers to any change or alteration to the agreed scope of work in a contract. This could include additions, deletions, or other modifications to the original plans, specifications, or contract documents.

Under the HIA NSW Residential Building Contract, a [variation](#) must be in writing and signed by both the builder and the homeowner (Clause 18.1). Either party can propose a variation, but it's important to note that the builder has the right to refuse a variation without providing any reasons (Clause 18.3b).

The process of requesting a variation involves the homeowner asking for a change, to which the builder must respond in writing as soon as reasonably possible (Clause 18.2). The builder's response can either be an offer detailing the work required, the price, and any extension of time needed (Clause 18.3a), or a refusal to carry out the variation.

If the price of a variation isn't agreed upon before it's carried out, the price includes the reasonable cost of all deletions from the building works and the total cost of all extra work plus the builder's margin applied to that cost (Clause 18.5).

Understanding variations is crucial as they can significantly impact the project's cost, timeline, and overall outcome.

## The Process of Requesting a Variation

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Under the HIA NSW Residential Building Contract, the process of homeowner-requested variations begins when the homeowner asks the builder for a variation (Clause 18.1). The builder must then respond in writing as soon as reasonably possible (Clause 18.2).

The builder's response can take two forms. It can either be a signed written offer detailing the work required for the variation, the price, and any extension of time needed (Clause 18.3a), or it can be a refusal to carry out the variation without any obligation to provide reasons (Clause 18.3b).

If the homeowner does not accept the builder's offer within five working days, the offer is considered withdrawn (Clause 18.4). If the price of a variation is not agreed upon before it's carried out, the price includes the reasonable cost of all deletions and the total cost of all extra work, plus the builder's margin (Clause 18.5).

Related Content: [The Process for Requesting Variations in Building Contracts](#)

## Quantum Meruit Claims Explained

Quantum meruit, a Latin term meaning "as much as he has earned", is a legal principle used when a person expects to be paid for services or work done outside the scope of a contract. In the context of construction law, a quantum meruit claim can arise when a builder performs work that falls outside the agreed contract, and expects to be paid for it.

Under the [Home Building Act 1989](#) (NSW), any agreement to vary the contract must be in writing and signed by each party. However, there are circumstances where work is performed outside the contract without a formal agreement. This is where quantum meruit claims come into play.

For a builder to successfully claim quantum meruit, they must establish several elements. These include proving that the work was outside the contract, the homeowner had knowledge of the variation, the homeowner knew it was outside the contract, the homeowner knew the builder expected to be paid, and that the amount claimed was fair value (*Durastyle Homes Pty Ltd v Gosling; Gosling v Durastyle Homes Pty Ltd* [2022] NSWCATCD 106).

Understanding quantum meruit claims is crucial for both homeowners and builders, as it can significantly impact the financial aspects of a construction project.

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**Related content:** [Non-Contractual Variations: What Owners Need to know about Quantum Meruit](#)

## The Difference between Quantum Meruit Claims and Variations

While both quantum meruit claims and variations relate to changes in the scope of work in a construction project, they are fundamentally different in their nature and implications.

Variations are changes or alterations to the agreed scope of work that are formally requested and agreed upon by both parties. They are documented in writing and signed by both the builder and the homeowner, as per the HIA NSW Residential Building Contract. Variations can include additions, omissions, or other modifications to the original plans, specifications, or contract documents.

On the other hand, Quantum Meruit Claims arise when work is performed outside the agreed contract without a formal agreement. The builder expects to be paid for this work and can make a quantum meruit claim to recover the costs. However, the builder must prove several elements, including that the homeowner had knowledge of the variation and that the work was outside the contract.

In summary, variations are changes agreed upon by both parties and documented in the contract, while quantum meruit claims involve work performed outside the contract without a formal agreement. Understanding these differences is crucial for both homeowners and builders to manage their contractual obligations and rights effectively.

## Frequently Asked Questions

### 1. What causes contract variations?

Contract variations are typically caused by changes in the project's scope, such as additions, omissions, or modifications to the original plans, specifications, or contract documents.

### 2. What is an example of a variation clause in a contract?

An example of a variation clause is Clause 18 in the HIA NSW Residential Building Contract, which outlines the process for requesting, agreeing upon, and carrying out variations.

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## 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**.

### 3. What is a contract variation request?

A contract variation request is a formal request made by either the builder or the homeowner to change or alter the agreed scope of work in the contract.

### 4. Does a contract variation need to be signed?

Yes, under the HIA NSW Residential Building Contract and the Home Building Act 1989 (NSW), any agreement to vary the contract must be in writing and signed by both parties.

### 5. What are the conditions for a quantum meruit claim?

A builder must establish several elements to make a quantum meruit claim, including that the work was outside the contract, the homeowner had knowledge of the variation, and that the amount claimed was fair value.

### 6. In which circumstances is the principle of quantum meruit applicable?

The principle of quantum meruit is applicable when work is performed outside the agreed contract without a formal agreement, and the builder expects to be paid for this work.

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## Conclusion

Understanding the differences between quantum meruit claims and variations under the HIA NSW Residential Building Contract is crucial for both homeowners and builders. These concepts can significantly impact the cost, timeline, and overall outcome of a construction project. If you're navigating these complexities, professional advice can be invaluable. As a solicitor and construction lawyer with over 10 years of experience specializing in construction law, I can help you understand your contractual and legal rights. I've advised numerous homeowners, builders, and contractors on these matters and represented them in tribunals and courts across NSW, Australia. Don't hesitate to reach out for expert advice tailored to your unique situation.

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