



# Variations

Contract Administration Article Series

## Contract Administration Article Series

This is article two in our 6-part series on contract law and administration. We started the series with a contract law refresher, with articles on time, payment and security of payment, legal implications of contract breaches and post contract award contract management to follow over the course of the next four weeks.

### Variations – a double-edged sword

Contractual variations can assist parties to swiftly navigate unforeseen changes to a contract throughout the life of the project but can also cause major problems if not negotiated and implemented appropriately.

On one hand, variations are an integral contractual mechanism which provide parties with an avenue to amend certain terms or clauses of a fully executed contract without the parties having to enter into a new arrangement.

On the other hand, variations are often a source of disputes in the construction industry. Whether due to unforeseen circumstances, design changes, or ever shifting project requirements, variations can significantly impact project costs, timelines, and ultimately contractual relationships. Understanding the legal and practical framework surrounding variations, and the proper implementation of variations into existing contracts, is essential for all contractors, principals, and contract administrators alike.

This article aims to provide a high-level summary of variations to ensure you are aware of the common pitfalls and to minimise the impact on your construction projects if a variation is required.

## What Are Variations?

A “variation” refers to any agreed variance or change to the obligations of one or both parties under an existing contract. These changes can involve adjustments to the scope of work, price, project timelines, or other contractual terms. It is often through the broad ranging nature of contractual variations that disputes between parties arise – what was the scope or valuation of the variation, or was the variation properly agreed upon, authorised and implemented under the contract?

Most standard form construction contracts, including for instance the commonly used Australian Standards AS4000 General Conditions of Contract for Construction Contracts, provide specific and strict provisions for the handling of variations, which are designed to (if followed correctly) prevent disputes regarding variations. Clause 36 of the AS4000, for example, permits the project superintendent to direct variations in writing, including increasing or decreasing work, altering project specifications, or carrying out additional work. The variation provisions of a construction contract must also clearly define the process by which the parties are to discuss, negotiate, agree upon and implement variations to the contract. Importantly, all variations are to be agreed in writing by both parties before the work the subject of the variation is carried out.

## The Power to Vary

While standard construction contracts will typically grant principals and superintendents the authority to direct variations, this power is not unlimited. Variations must bear a reasonable connection to the original contract, and a principal cannot omit contracted work simply to reassign it to another contractor unless the contract expressly allows it. Construction contracts may also permit contractors to propose variations to the principal for the contractor's own convenience, although such requests may not always result in additional compensation for the varied works being granted unless expressly agreed upon.

## Liabilities and Right to Payment

One of the most contentious aspects of variations concerns the right to payment for variations. To help prevent disputes between parties as to whether a principal is liable to pay the contractor for a variation, construction contracts ought to require strict adherence to procedural requirements pertaining to variations, including for instance an obligation requiring the contractor to obtain written approval from the superintendent before carrying out the variation work. A failure by the contractor to comply with this requirement can result in the contractor losing its entitlement to payment for the variation, even if the contractor has already commenced or completed the work.

Principals must also be cautious to ensure that they understand what it is they are agreeing to when awarding contractual variations, including what impact the variation may have on the project timeline and project costs. Once a variation is granted in writing by the principal the contractor becomes contractually obligated to perform the variation works.

As outlined above, it is crucial for both parties to properly discuss the nature, scope and cost of each variation and have each variation agreed upon in writing in accordance with the terms of the contract before commencing the variation work.

## Valuation of Variations

The valuation of variations is another important consideration in contract administration. Standard contracts typically provide a hierarchy for the pricing of variations, with the order of precedence as follows:

1. Pre-agreed contract rates;
2. rates in a bill of quantities or schedule of rates;  
or
3. a fair and reasonable valuation.

Failure to accurately price variations can lead to disputes, particularly when parties have differing interpretations of what constitutes a "reasonable" valuation. Courts generally favour pricing that reflects the contractor's actual and reasonable costs plus a margin, however it is important for parties to appropriately consider and discuss the valuation of each variation to prevent subsequent disputes.

## Key Takeaways for Managing Variations

- Clearly define the scope of work to be performed under the variation at the outset to avoid ambiguity.
- Follow contractual procedures to ensure all variations are properly documented and approved in writing.
- Request a price before directing a variation to avoid disputes over valuation.
- Ensure variation requests comply with time requirements, as failure to do so can impact payment entitlements.
- Keep thorough records of all variations, including approvals, cost estimates, and communications.
- Do not perform variation works without a proper and written variation agreement in place.

## Contract Administration Series

In our next article in this series we will cover time – another common cause of disputes. Understanding time obligations is an essential aspect of good contract administration and ensuring that your project is completed within desired timeframes. Unfortunately delays to projects can occur, whether it is through the fault of either of the parties, a variation to the contract or for some other reason outside of the parties' control, such as inclement weather or supply chain issues. Whatever the reason, it is important to understand the processes and procedures within contracts that address delays.

Muscat Tanzer offers a comprehensive contract administration training program comprised of 6 sessions delivered either remotely or in person (depending on your preference) on topics including a contract law refresher, variations, time, payment and security of payment, legal applications of contract breaches and the dos and don'ts of contract administration. Each session provides participants with practical knowledge and examples for proper contract administration and is designed to be interactive to maximise retention of the training. If you would like further information on the training program, please do not hesitate to contact us.

In the meantime, if you have any questions in relation to this article or variations generally, please do not hesitate to contact us.



**Joseph Sammut**  
Senior Associate  
[joseph.sammut@muscattanzer.com.au](mailto:joseph.sammut@muscattanzer.com.au)



**Darcey Bidwell**  
Graduate  
[darcey.bidwell@muscattanzer.com.au](mailto:darcey.bidwell@muscattanzer.com.au)



**Paul Muscat**  
Director  
+61 408 234 289  
paul.muscat@muscattanzer.com.au



**Craig Tanzer**  
Director  
+61 403 408 200  
craig.tanzer@muscattanzer.com.au



**BJ Doyle**  
Senior Associate  
+61 419 104 996  
bj.doyle@muscattanzer.com.au



**Joseph Sammut**  
Senior Associate  
+61 428 834 096  
joseph.sammut@muscattanzer.com.au



**Claudia Lizzio**  
Associate  
+61 429 378 593  
claudia.lizzio@muscattanzer.com.au



**India Bennett**  
Associate  
+61 459 684 170  
india.bennett@muscattanzer.com.au



**Sian Phelps**  
Associate & BD Manager  
+61 409 688 169  
sian.phelps@muscattanzer.com.au



**Hugo Sherlock**  
Lawyer  
+61 466 662 121  
hugo.sherlock@muscattanzer.com.au



**Kayla Webb**  
Lawyer  
+61 473 586 473  
kayla.webb@muscattanzer.com.au



**Darcey Bidwell**  
Graduate  
+61 447 921 222  
darcey.bidwell@muscattanzer.com.au



**Layla Montefiore**  
Law Clerk  
layla.montefiore@muscattanzer.com.au



**Isabel Rusovan**  
Office Manager  
+61 473 749 259  
isabel.rusovan@muscattanzer.com.au



**Gillian Want**  
Legal Assistant  
+61 411 469 480  
gillian.want@muscattanzer.com.au



**Jackie White**  
Accounts & Compliance Manager  
+61 409 972 735  
jackie.white@muscattanzer.com.au