



# Building Contracts: Can my builder just increase the price of my house?

Building Contracts in South Australia are largely regulated by the [Building Work Contractors Act 1995](#). That legislation sets out how builders are entitled to charge for domestic building work.

There are generally two types of contracts commonly in use in South Australia. One is the fixed price contract, and the other is a rise and fall contract.

## Fixed Price Contracts

In the past decades, it was common for building contracts to be largely of the “fixed price” variety.

Fixed price contracts have a set price, although they also usually have a degree of price variation allowed in them from what are known as “Prime Cost” items.

Prime Cost items are generally materials which are agreed by the builder and homeowner may cost more than anticipated in the contract (or involve more work to install than is allowed in the contract). Therefore the parties agree that there may be a fee increase for those specific items if in fact the

amount allowed for them in the contract is not enough.

## Rise and Fall Contracts

Rise and Fall contracts are much broader in terms of the scope of costs increases. There are a variety of ways in which they are drafted, but the two most common are:

1. One which allows for the price to be adjusted by the actual increased costs of the labour and materials whilst the contract is being performed and
2. One where the price is adjusted by a set formula in certain events or over a certain timeframe.

Rise and Fall contracts are becoming increasingly favoured by builders in the uncertain economic times in which we now live. Elements such as COVID, labour shortages, shipping delays and material cost increases all mean that the ultimate cost to the builder in undertaking construction work is far less predicible than ever before.

Materials which were quoted for one price may end up costing significantly more only several months later, and thereby significantly eat into the builder's profit margins. Quoting "in advance" for such possibilities is unfair, because they may never occur, and also because the builder's pricing will then not be in line with the industry.

Rise and Fall contracts are intended to prevent that, but have the unfortunate side effect for homeowners that they are effectively signing a contract in which the actual, final price is unknown.

Rise and Fall contracts are also not without legal risk and regulation for the builder. The Building Work Contractors Act 1995 sets out how they are to be used (for example, the contract must specify an end date within set timeframes) and further to that, Rise and Fall contracts unless carefully drafted may be struck out by the Court for uncertainty.

## The best time to understand and negotiate a building contract is before you sign it!

Here at Andersons, our solicitors practice in construction law and understand it. We are able to review your contracts and explain, in plain terms, how they will work "out in the field". If you have already signed a contract and the construction costs are seemingly endlessly escalating, we can review that and give you our opinion on whether that is appropriate and justifiable under the document you have signed.

Lastly, if you are builder, we can assist you to review your contracts to ensure that the Court is likely to enforce them and that your customers will have a clear understanding and commitment to the costs they will incur, from the outset.

Contact this article's author [Felix Hoelscher](#) or our [commercial team](#) at Andersons today.