

PROGRESS PAYMENTS AND THE CONSTRUCTION CONTRACTS ACT 2002

The fundamental requirements of the Act in relation to Progress Claims:

1. The builder makes a claim for a progress payment – now called a Payment Claim - which has to be in a specified form.
2. The client or Principal – now referred to as the Payer under the Act, is required, within a specified time, to issue a Payment Schedule which advises the amount that is to be paid.
3. Payment is then to be made within a specified period.

The role of the architect in relation to Progress Claims:

The CCA does not explicitly recognise the role of an administering architect (with or without a Quantity Surveyor assisting). Under NZIA SCC 2007 (which tends to follow NZS 3910) there is a procedure that recognises the role of the Architect (or Engineer under NZS 3910) in the administration of progress payments on behalf of the Principal.

In simple terms these procedures are:-

1. The Contractor issues a Payment Claim to the Architect with a copy to the Principal.
2. The Architect – in an independent professional capacity - assesses the Payment Claim and the sums due under the Contract, and then issues a provisional Payment Schedule to the Contractor and the Principal. Reasons must be given for any difference between the sum claimed and the architect's assessment of the sum due.
3. The Principal is entitled to notify the Architect of any amendments or deductions that the Principal requires, and must provide the reasons for the differences.
4. If the Principal does seek a change to the provisional Payment Schedule, the Architect - acting as agent of the Principal - will then issue a Payment Schedule incorporating such amendments that the Principal requires. The sum due to the Contractor is the amount in the Payment Schedule.
5. If no amendments are notified by the Principal, the provisional Payment Schedule is deemed under the contract to be a Payment Schedule in terms of the Act, and the sum due to the Contractor is the amount in that provisional Payment Schedule.

In addition to these steps, the Payment Schedule (or provisional Payment Schedule) should be in such a form as is required to constitute a payer generated GST invoice.

The times required for these various processes are both tight and strict. Times and processes vary slightly between NZS 3910 and NZIA SCC 2007. The CCA does allow contracting parties to agree different times for the processing and payment of Contractor Claims to the default times specified in the Act. But, if no Payment Schedule is provided

by the Payer either within the specified period or at all, the amount claimed by the Contractor in its Payment Claim becomes due and payable in full.

The NZIA SCC 2007 document (as does NZS 3910) includes provisions for the dealing with final accounts and securities for off-site materials and these specific provisions need to be carefully read to understand their procedures.

Educating the client in payment procedures:

For a “residential construction contract” (as defined by the Act), the contractor is required to provide a copy of “Form 1” of the CCA with the Payment Claim. This provides a good explanation of the processes and obligations in respect of claims and payments, but does not deal with the architect’s involvement. Despite being intended for residential contracts, it is also useful for all other contracts.

It would be helpful for the architect to provide the client with a copy of “Form 1” before the contract commences, and to explain the processes – as they involve the architect - to your client with reference to NZIA SCC 2007 Section 14.

A simple letter – along the lines of this proforma letter below – might then be issued to the client with your assessment of the sums due to the contractor.

Dear Client

XYZ/ABC Building Contract – Progress Payments

This letter and enclosure advises you on the first of a number of payments you will be required to make under your Building Contract. It sets out to advise you of the procedures contained in your contract and required by legislation.

Under the terms of your building contract your Contractor is entitled to monthly progress payments.

The Construction Contracts Act 2002 (the Act) provides specific procedures and time scales for the assessment and payment of progress payments under your building contract.

As a consequence we advise you that we have received a copy of the Contractor’s Payment Claim, also issued to you, for a progress payment under the terms of the contract and have assessed its value and validity and now provide you with our assessment of it.

*This is in the form of a provisional Payment Schedule. If you are in agreement with this assessment you are required to make payment for the amount certified within **xx days of the date of the Contractor’s Payment Claim.***

Should you not agree with our assessment you must advise us within yy working days so that an amended (if required) Payment Schedule can be issued by us on your behalf.

The provisional Payment Schedule and any subsequent payment schedule are in the form of a payee generated GST invoice.

You are required to pay the Contactor within zz working days of receipt of the Contractor’s Payment Claim.

Your failure to comply with the procedures and timing can have consequences which may be detrimental and we urge your co-operation and compliance.

Yours faithfully