

HIA Progress Payment Schedule in New South Wales

Building your dream home is probably the biggest investment you'll make. Make sure you understand your HIA contract well, especially the clauses on Progress Payment Schedule, so that you can manage your costs effectively.

What Is a HIA Progress Payment Schedule?

The HIA Progress Payment Schedule is located in Schedule 2 of the [HIA NSW Residential Building Contract for New Dwellings](#).

Schedule 2. Progress Payments

Stage	Percent	Amount
1. Deposit	10.00%	\$31,127.00
2. Base	10.00%	\$31,127.00
3. Frame	20.00%	\$62,254.00
4. Enclosed	25.00%	\$77,817.50
5. Fixing	20.00%	\$62,254.00
6. Final	15.00%	\$46,690.50
Total	100.00%	\$311,270.00

Note:

- The total amount must be the same as the **contract price**.
- The deposit is brought to account in the first progress payment.
- Progress stages must be stated in clear and plain language.

Sample HIA NSW Residential Building Contract for New Dwellings. For illustration purposes only.

Unlike other states, the NSW Government does not prescribe any percentage requirements for progress payment schedules. However the governing law is section 8A of the [Home Building Act 1989 \(NSW\)](#). Subsection 2(a) reads:

'A progress payment for residential building work under a contract to which this section applies is authorised only if it is one of the following kinds of authorised progress payments--

(a) a progress payment of a specified amount or specified percentage of the contract price that is payable following completion of a specified stage of the work, with the work that comprises that stage described in clear and plain language...'

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How Do Progress Payments Schedule Work When Building a House?

The person identified as the Owner in the HIA Contract is responsible for making and issuing progress payment schedules under the Building and Construction Industry Security of Payment Act 1999 (NSW). This law and process applies to all construction in NSW including residential building.

The Owner should receive a progress payment claim in accordance with clause 17 of the Contract. Clause 17.4 of the HIA Contract reads:

"A progress claim is to state

- A. the amount claimed for the stage completed;
- B. the amount claimed and not paid for contract price adjustments;
- C. the amount claimed and not paid for variations; and
- D. the sum of the above amounts."

Clause 17. Progress Payments

- 17.1 The **owner** must pay the deposit stated in Item 2(b) of Schedule 1 on the later of the day that:
- (a) this **contract** is signed by the **owner**; and
 - (b) warranty insurance described in Schedule 6 is in force and the **owner** is provided with a certificate of insurance for such insurance.
- The deposit is brought to account with the first progress payment.
- 17.2 The **owner** must pay the **contract price** progressively as claimed by the **builder**.
- 17.3 The **builder** must give the **owner** a written claim for a progress payment for the completion of each **stage**.
- 17.4 A progress claim is to state:
- (a) the amount claimed and not paid for the **stage** substantially completed;
 - (b) the amount claimed and not paid for **contract price adjustments**;
 - (c) the amount claimed and not paid for **variations**; and
 - (d) the sum of the above amounts.

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Despite the HIA contract providing a 5 day payment term under clause 17.5, under the Security of Payment law, the Owner may issue a progress payment schedule under the HIA Contract within 10 working days.

As required by section 14 of the [Security of Payment Act](#) in NSW, the Owner's Payment Schedule must specify the following.

"(2) A payment schedule—

(a) must identify the payment claim to which it relates, and
(b) must indicate the amount of the payment (if any) that the respondent proposes to make (the "scheduled amount").

(3) If the scheduled amount is less than the claimed amount, the schedule must indicate why the scheduled amount is less and (if it is less because the respondent is withholding payment for any reason) the respondent's reasons for withholding payment."

How Do I Ask for a Building Progress Payment Schedule?

Builders who have excellent communication skills and apply best practices with their project management will invite owners to meet with the project manager responsible for the construction as soon as the Builder issues a progress payment claim. Together, the project manager and owner should inspect the works against the payment claim.

During the inspection, the Builder should explain the works complete and any works that are substantially complete. The Builder should request the Owner to provide a HIA payment schedule during the inspection or immediately following the inspection.

An excellent Builder who is managing their relationship with the Owner will request the owner to provide payment schedules under the HIA contract for every progress claim. This will allow the owner to assess the progress of the work and provide the owner with the opportunity to express any concern the owners have for the progress of the works.

Owners who are not invited for an inspection and requested to provide a payment schedule should be more alert of their Builder. The Owners should consider engaging a building consultant to assist with the administration of the Contract and inspecting the works.

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HIA Progress Payment Schedule Percentages

There are hard and fast rules on HIA Progress Payments Schedules in NSW. This is because there is no law in NSW that specifies the percentages for payment schedules. However, the percentages are often driven by the lender, if the owner has a construction loan.

The standard fair and typical percentages applied in NSW is 6 progress payment stages.

The first is characterised as a stage payment; however, it is not actually a stage but rather a Deposit claim. Deposit Payments are not for works so they should not be specified in Schedule 2 of the HIA Contract for Progress Payment Schedule. Rather, the deposit should be applied to the first progress payment stage.

THE REMAINING 5 STAGES SHOULD BE:	
Demolition, excavation, and slab stage	20%
Frame stage	20%
Lock-up	30%
Fix-out	20%
Practical completion	10%

The above is an indication of reasonable stages that owners can expect most banks should lend against. This is the industry standard in NSW. Owners should consult with their broker or lender to ensure the stages of work will be honored. Much will depend from build to build and the circumstance of the owner's borrowing capacity.

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Deposit Claims and How They Are Applied to Building Works

Schedule 1, Item 2(b) of the HIA Contract provides the amount that the parties agree to be the deposit payment.

As provided in clause 17.1 of the Contract, "The deposit is brought to account with the first progress payment."

Many Builders who do not understand the HIA Contract will specify the deposit in Schedule 2. This causes a conflict between the contract and the parties conduct. This may be an issue because deposit payments are not subject to GST. Often the Builders who are not properly completing the contracts will claim GST. This is a problem because the HBCF Insurance may not insure the GST component of the deposit claim.

When Must a Progress Payment Schedule be Included as Part of the Contract Documentation?

The progress payment schedule must be completed as part of every HIA Contract. Owners should not sign the contract without a payment schedule that they can commit to.

When Should I Pay My Builder?

The default payment term in the HIA Contract for all [HIA Progress Payments](#) is 5 days. Section 17.5 reads:

"The owner must pay a progress claim within 5 working days of the builder giving the claim." Diligent owners who have engaged a construction lawyer to review and advise on their construction contract would have negotiated the payment term to be aligned with the Security of Payment Act. That is, the payment term is a date after the payment schedule is due.

Failing to have payment terms that are 10 working days or more exposes owners to the Builder commencing the Security of Payment process. More concerning is that the Builder may exercise its rights under the contract to issue a dispute or breach notice.

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How Often Should a Contractor be Paid Based on Progress Payments?

There is no specified date that contractors may make HIA progress claims to owners. The progress claims should be made whenever the stage of works is substantially complete.

Interestingly, the HIA contract does not specify that a claim may be made prior to works being completed. The [Master Builders Contract in NSW](#) specifies that claims may be made when the stage is 95% complete. This is commonly referred to as substantial completion.

The above information is based on the industry template without amendment. Most builders amend their HIA contract. The above commentary is general information. Owners should get legal advice before taking any steps under their contract.

Expert Tip for Owners

Owners should be aware of the following reasons that they should care about the progress payment schedule applied in their contract.

1. For owners with construction loans, interest is applied to your loaned amount.
2. Front loaded payment schedules expose owners to uninsured claims. Owners should review their HBCF Insurance to understand their insurable loss.
3. Sometimes, it is a tell-tale sign of a builder with financial difficulties or cash-flow problems when stages claimed do not reflect the value of works performed. Owners should contract only with solvent builders.

How We Can Help

Contracts Specialist is led by a specialist construction lawyer with more than 10 years experience in all facets of Construction Law, including Contract Review and Security of Payment. If you're having your house built and you want to make sure your risks with overpayment are minimised, and if you want to make sure that you won't run into payment issues later on, give us a call. We can review your contract and advise you accordingly. First consult is free.

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