

Information guide to the client on the 2019 Client Architect Agreement (CAA2019)

This guidance note provides general information to clients to help them understand their key rights and obligations under the Australian Institute of Architects' 2019 Client Architect Agreement (**CAA2019**). This note is not legal advice and does not form part of or affect your CAA2019. You should read your CAA2019 contract carefully and if you need advice on your rights and obligations under the document, you should get independent legal advice.

The CAA2019 has been developed to assist parties to formally record their agreement for delivering architectural services, as well as providing clear steps the parties need to take when things change during the delivery of those services. In each state and territory, the *Architects Act* and the relevant Architects Registration Board governs the professional registration and conduct of architects—this includes an obligation to enter into a written agreement with the client, which sets out specified minimum provisions. Your architect must be registered in the state or territory where your site is located. A person who is not registered with the applicable registration board cannot call themselves or claim to be an architect. You can check online whether your architect is registered with the registration board in the relevant state or territory.

Defined terms throughout the CAA2019 are in **Bold**. For definitions, see page 6 of the contract. All terms that are capitalised have the corresponding meaning that is described in Section M: Definitions of the conditions.

The value of engaging an architect under the CAA2019

An architect is a trained, experienced and qualified professional and their professional conduct is governed by legislation, a code of conduct and a regulatory body (a registration board) in each state and territory. In addition, an architect who is a member of the Australian Institute of Architects is also bound by a Code of Professional Conduct and has access to additional professional resources and guidance they can draw on to support their professional services to you under the CAA2019.

In most states and territories, architects must also take out and hold professional indemnity insurance that covers their professional services. This gives every client confidence in their architect and the professional services to be delivered under the CAA2019.

Disclaimer: *This Information for clients is intended as general guidance only to help you understand the CAA2019. It is not legal advice and you should not rely on this guide as an alternative to reading and understanding the CAA2019 document. The Institute endeavours to publish content that is accurate at the time it is published but does not accept responsibility for content that may or has become inaccurate over time.*

What are the services that my architect will provide under the CAA2019?

The architectural services your architect will deliver for you will be set out in Schedule A: Scope of Services. This schedule is a comprehensive document which should be carefully developed in collaboration with your architect before signing the CAA2019. Only the services marked as included in Schedule A will form part of the services under the CAA2019. If you require additional services during the project, you should ask the architect to consider the change to the services and any accompanying change to the fee and then follow the process under clause D.8 of the CAA2019. There are a few items that are not included in the architect's services and these are listed in clause A.2.

How much will the services cost?

Through the course of your project, you must pay the architect:

- the fee for your architect's services set out in Item 1 of Schedule B and calculated in accordance with clause D;
- all adjustments to the fee, including changes to the fee, if the scope of the services changes under clause D.8; and
- disbursements listed in Item 3 of Schedule B.

The fee can be calculated in different ways: as a percentage of the project cost, as a lump sum or on hourly rates. The appropriate method of calculating the fee will depend on factors like the type of project, the type and extent of services to be delivered by the architect and potentially the unknowns or uncertainties at the start of the project. Your architect will guide you on this and the way the fee is to be calculated and the known amounts will be set out in the CAA2019 and Schedule B.

Your budget and the cost of the project

As the client, you might already have a design in mind and an overall budget for getting your project completed. Let's call this your total project budget. Under the CAA2019, it is your responsibility to consider and set the total project budget. The total project budget is the cost of building the design *plus* all other costs that can be as broad as professional fees for other consulting services, planning costs, legal fees, financing costs, project contingency costs and the cost of furnishing and moving in. Under the CAA2019, this budget is defined as the **Total Project Cost**. This is different to the **Cost of Works** which is the amount that ultimately reflects the cost of building the architect's design (but not all the other costs mentioned). The architect's fee can be based on the **Cost of Works**—for example where the fee is calculated as a percentage. This is because the architect's design (including input to the design from specialist consultants) is the professional service the architect is delivering, for the fee.

You can revise the cost of building the design (**Cost of Works**) on the advice of the architect. The architect will provide you with an initial forecast (see **Cost of Works forecast** on the front page of the CAA2019) of what the project build is likely to cost based on the design you've selected. As the project progresses, the architect will update you on that forecast, particularly if you make design changes along the way.

How is the Cost of Works determined where a percentage fee is payable?

A percentage fee is payable for a particular service if the relevant box is marked and a percentage is stated in Item 1 of Schedule B. The total fee you must pay for that component of the services is the percentage stated in Item 1 multiplied by the **Cost of Works**. The **Cost of Works** is the final cost of all work designed, specified or scheduled by your architect, including all work by specialist consultants, which will be coordinated by your architect. At the beginning of the project, the architect will provide a forecast of the **Cost of Works**, which the architect's forecast based on the information and assumptions at the time of signing the CAA2019, of the probable cost of building the design. Importantly, this is not a guarantee of the final **Cost of Works**, nor the final, total cost of the project (see **Total Project Cost**, above), because many factors during the project can change this amount, including design changes you ask the architect to make.

Percentage fees are calculated and adjusted progressively against the **Cost of Works** and are subject to final adjustment at the end of the project. This means that the amount you will pay your architect can change up until the actual **Cost of Works** is known at the end of the project.

If during the project, the final **Cost of Works** is reduced due to a change in the scope of services or the project, you are not entitled to a credit or be reimbursed any fees for those services that the architect has already performed on your behalf.

How are disbursements calculated?

Disbursements are payable and calculated at the rates set out at Item 3 of Schedule B. You must pay or reimburse your architect for any disbursements listed in that schedule. Disbursements may be subject to an additional 15 per cent administration fee, unless Item 3 indicates that an administration fee is not applicable. You will have to pay this fee at the same time as paying or reimbursing the disbursement.

What are my obligations under the CAA2019?

You should carefully ensure that you have read and understand your obligations under the CAA2019. By signing the agreement, you authorise the architect to carry out the services. Be wary that even if you don't sign the agreement, it is possible that by giving the architect instructions to do things for the project on your behalf, you are effectively authorising the architect to carry out the services and the terms of the CAA2019 could apply.

Clause B sets out your primary obligations under the agreement. You are required to:

- appoint your architect to act as your agent for the project (where necessary);
- agree on a reasonable budget for the **Cost of Works** with your architect;
- provide all information required by your architect;
- cooperate fully with your architect, including giving the architect prompt approvals for the Services;
- if the architect is to provide contract administration services and a builder is appointed, only issue instructions to the builder through your architect;
- engage any specialist consultants specified in Item 4 of Schedule B after consulting your architect;
- allow your architect to photograph and record the project;
- allow your architect to publicise the project;
- attribute your architect's design where required;
- follow the architect's reasonable requirements or directions prior to and when you access the site; and
- notify your architect of the details of the project that you wish to be kept confidential.

At the footer of each page of the schedules in the CAA2019, you'll see a line for you to initial that page. The architect may point this out to you. You should look at the specific terms and details in the schedules to make sure they are correct, and you have understood them, then initial where indicated.

When will my architect submit claims for payment?

Your architect may submit one claim for payment (including GST) each month in the form of a tax invoice. This claim must clearly distinguish between fees and disbursements. You must pay the total amount in the claim within 10 business days. If you don't pay your architect's invoices by this time, you must pay interest on any outstanding amounts at the rate specified in Item 7 of Schedule B.

Who owns the rights in the design?

The design includes all the architect's services, design concepts, drawings and documents. Your architect owns the copyright in the design. The CAA2019 gives you a licence right to use the design only for your project and only on the site. This means you cannot give the right to use the design to another party (or let them use the design) and you cannot use the design on another site unless the architect has first given you permission to do so.

Moral rights are an intellectual property right of an author to protect the integrity and ownership of their work. These rights are protected by the *Copyright Act*. An architect has moral rights and, as the author of the design, is entitled to be correctly recognised (attributed) as the author of the design. Your architect must be attributed in any information containing a 2D or 3D representation of the project using the wording set out in Item 5 of Schedule B. The *Copyright Act* moral rights' provisions make it mandatory for everyone, including you as the client, to attribute the architect as the author of the design, even if the design doesn't get built or is not completed. The moral rights provisions also give the architect a right to photograph or record the built design.

Avoiding disputes

Many of the typical disputes or misunderstandings that arise during a project can be avoided if there is open communication between you, your architect and your builder. Good communication can start at the briefing, designing and budget-setting stages, all the way through to administering the project, engaging the builder, paying invoices and delivering the project.

There are various provisions under the CAA2019 that require the architect and you to discuss and agree on certain aspects of the project or the services. If a dispute or difference of view develops, section J sets out a formal process for mediation, before the parties resort to resolving the dispute through court proceedings. If the parties use the dispute and mediation procedures in the CAA2019, the architect must continue to deliver and remains entitled to be paid for the services. This procedure is different from the scenario where the services are delayed (clause A.5) or suspended (clause A.6) or where the parties cannot agree to a new fee and scope of the services (clause D.3). Even so, open and regular communication with your architect should help everyone stay informed, manage expectations and find practical solutions before problems arise.