



Government of **Western Australia**
Department of **Mines, Industry Regulation and Safety**
Building and Energy



Progress payments and deposits in the Western Australian cabinet making industry

Consultation paper

July 2019

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1. Background and purpose of paper

In 2018, the Cabinet Makers Association of Western Australia (CMAWA) met with the then Minister for Commerce, the Hon Bill Johnston MLA, in relation to difficulties experienced by cabinet makers in legally claiming progress payments from their clients under the provisions of the *Home Building Contracts Act 1991* (HBC Act). The Minister asked the Department of Mines, Industry Regulation and Safety (DMIRS) to investigate options to address these concerns.

As the law currently stands, cabinet makers are able to charge their clients a 6.5 per cent deposit where the contract price is above \$7,500 and below \$500,000. Once work commences, however, cabinet makers are not legally able to charge their clients progress payments until the finished cabinet or product is placed on their client's premises. This is because the HBC Act requires that “...*property in the materials...passes absolutely to owner on the payment being made.*” As the finished product can cost tens of thousands of dollars and take several months to make, cabinet makers must bear this cost themselves before receiving payment, which can create cash flow difficulties for some businesses.

DMIRS is examining options to address the concerns raised by the CMAWA. To inform its consideration of this issue, a survey of CMAWA members was carried out in December 2018. This also provided an opportunity for DMIRS to improve its understanding of the industry and the issues it currently faces. Further details of the survey findings is presented at Appendix 1.

Survey responses indicate that the progress payment provision is a contentious issue for cabinet makers and that there is a high level of non-compliance with the deposit taking and progress payment provisions of the HBC Act. While no cabinet maker has been prosecuted in recent years, it is evident there is a need for change to the law to provide a better outcome for cabinet makers while continuing to protect the interests of consumers. It is important that any change to the law to address this issue is subsequently enforced to ensure all cabinet makers are playing by the same rules.

The purpose of this consultation paper is to obtain building industry and public comment on two options for change that have been identified. It is also an opportunity for stakeholders to put forward any alternative views and options. Following receipt and analysis of comment, DMIRS will provide a final report with recommendations for change to the Minister for Commerce, the Hon John Quigley MLA.

Submissions and comments are invited by **6 September 2019** and should be sent to:

Cabinet Makers Progress Payments and Deposits
Policy, Standards and Engineering Directorate
Department of Mines, Industry Regulation and Safety
Locked Bag 100
EAST PERTH WA 6892

Or emailed to: progpay@dmirs.wa.gov.au

2. Overview of Western Australia's cabinet making industry

Cabinet makers play an important role in new domestic housing construction and in the renovation of existing housing stock. They design, fabricate, assemble and install wooden cabinetry and associated hardware for kitchens, bathrooms, living rooms and home offices, often under a contract with a builder. Cabinet makers typically work with carpenters, plumbers, electricians and tilers on new home or renovation projects.

Precision cabinet making and installation is a skilled trade, requiring a technical qualification and on-the-job training through an apprenticeship. Cabinet makers may build modular units or customised cabinetry, focus on factory-based prefabrication or specialise in onsite measure-ups and complex installation work. Electronic cutting equipment, computerised lathes and computing software are being increasingly used in this trade.

Flat-pack assembly and the 'do-it-yourself' movement has changed the trading environment for many cabinet making businesses, particularly for lower cost installations. Tariff reductions arising from free trade agreements has increased imports of cheaper flat-pack cabinetry options and this appears to have put downward pressure on consumer pricing expectations. An increasing practice in the industry is for cabinet makers to purchase imported flat pack cabinets and assemble and install them on their clients' premises.

There are approximately 800 cabinet making businesses operating in Western Australia (WA). Precise information is not available because cabinet makers are not registered. One hundred and sixty businesses, representing about 20 per cent of the industry, are CMAWA members, of which 59 responded to the DMIRS' cabinet making industry survey (see Appendix 1 for details of the survey's results).

3. The current law

In WA, contracts to carry out home building work valued between \$7,500 and \$500,000 are governed by the HBC Act. This includes the work of builders and a range of trades, including cabinet makers. Section 10(1)(a) of HBC Act prohibits builders, including cabinet makers, from demanding or receiving from their clients any payment before the commencement of the work unless the payment is:

- a deposit of not more than 6.5 per cent of the total amount payable under a home building contract; or
- of a 'prescribed kind'.

Currently, there are no alternative deposit limits prescribed in the regulations made under the HBC Act. Failure to comply with the provision is an offence that carries a maximum penalty of \$10,000.

The 6.5 per cent deposit limit protects consumers by minimising potential financial losses in the event their cabinet maker dies, disappears or becomes insolvent before commencing or finishing the cabinet.

Section 10(1)(b) of the HBC Act prohibits builders and cabinet makers from charging their clients any payment after the commencement of the home building work unless it is for “...a genuine progress payment for work already performed or materials or services already supplied...”. However, section 10(2) also requires that the materials or product must pass into the possession of the client before the payment can be claimed. Failure to comply with this section is an offence that carries a maximum penalty of \$10,000.

Section 10(1)(b) also provides for regulations to be made under the HBC Act to allow ‘prescribed kinds’ of payments to be charged after the commencement of the home building work. However, none have been prescribed to date.

4. The problem to be addressed

The key problem faced by cabinet making businesses is that they are unable to legally charge progress payments for the off-site fabrication of cabinetry prior to its on-site installation. The existing law requires them to finance for themselves a large portion of the cost of fabrication of the cabinet until its installation on the client’s property, which can take several months. The inability of cabinet making businesses to charge progress payments is a significant problem for them because many are small businesses with low levels of capital and where cash flow has to be managed carefully. Before the final payment is made by the client, the financial risks of doing business are therefore strongly weighted in favour of the client and some rebalancing of that risk appears reasonable.

The ‘genuine progress payment’ provisions in the HBC Act do not adapt well in situations where most of the home building work is undertaken off-site. This problem is not unique to WA, with similar issues existing in all domestic building contracts legislation in Australian states and territories (refer Appendix 2).

5. Options for change

This paper proposes the following two options to assist cabinet makers, as well as a ‘no change’ option:

OPTION 1: Amend the HBC Regulations to increase the deposit that cabinet makers can charge their clients to 20 per cent where the value of off-site work is more than 50 per cent of the total contract price (with no cap on the maximum amount of the deposit).

OR

OPTION 2: Amend the HBC Regulations to increase the deposit that cabinet makers can charge their clients to 20 per cent where the value of off-site work is more than 50 per cent of the total contract price (to a maximum of \$20,000).

OR

OPTION 3: No change.

The three options are discussed further below.

5.1 OPTION 1: Increase the deposit that cabinet makers can charge their clients to 20 per cent (with no cap on the amount).

Option 1 proposes to substantially increase the deposit that cabinet makers can legally charge their clients from 6.5 per cent to 20 per cent where the value of off-site work is more than 50 per cent of the total contract price. No cap would apply on the amount of the deposit that can be demanded so long as it does not exceed 20 per cent of the contract price. This is in recognition that the survey results (refer Appendix 1) indicate that at least 40 per cent of cabinet makers already charge a deposit of 20 per cent or more. However, cabinet makers would not be able to seek any further payment from their clients until the product has been installed on their client's premises.

Cabinet makers who assemble and install pre-fabricated cabinets (e.g. imported flat pack cabinets) on their clients' premises would continue to be restricted to charging a 6.5 per cent maximum deposit. This recognises that the installation of pre-fabricated cabinets by cabinet makers does not require them to carry costs relating to material and labour for any significant period of time, unlike when they fabricate cabinets themselves.

The key advantage of Option 1 is that it would legally allow cabinet makers to charge 20 per cent of the value of the contract upfront, thereby alleviating them of a significant proportion of the cash flow burden. Given that the purchase of the materials for a cabinet occurs near the beginning of the cabinet making process and is one of the most significant costs in the cabinet making process, this would go some way to addressing industry cash flow concerns.

In Queensland and Tasmania, a deposit of 20 per cent is allowable for a regulated domestic building work contract if the value of off-site work is more than 50 per cent of the total contract price (refer Appendix 2). Under Queensland's legislation relating to domestic building work, *off-site work* means '*contracted services performed at a place that is not a place at which the domestic building work is to be finally installed or constructed under the contract*'. The Queensland Building and Construction Commission (the QBCC) has the ability to prosecute for any breaches of this provision, which typically come to its attention via consumer complaint. On investigation, the QBCC will request the service provider to establish that the works in question have not just been an installation of materials taken off the shelf but have been prefabricated or customised by the performance of services.

Although no hard data is currently available, anecdotal evidence suggests that the introduction of this 20 per cent deposit concession has been well received in Queensland among contractors in the relevant sectors of the domestic building industry.

The key disadvantage of Option 1 is that it increases the risk to consumers of suffering financial loss in the event the cabinet maker becomes insolvent before the build is complete. Consumers may be caught paying for cabinetry work they are unable to inspect or control or take possession of in an insolvency event. However, as this risk appears to be already borne by the clients of at least 40 per cent of cabinet maker businesses, the quantum of additional risk would be less.

5.2 OPTION 2: Increase the deposit that cabinet makers can charge their clients to 20 per cent (to a maximum of \$20,000) only.

Option 2 also proposes to substantially increase the deposit that cabinet makers can legally charge their clients from 6.5 per cent to 20 per cent where the value of off-site work is more than 50 per cent of the total contract price, but caps the maximum amount they can demand at \$20,000. This cap limits the consumer risk in high value contracts.

The key advantage of Option 2 is that it would also legally allow cabinet makers to charge 20 per cent of the value of the contract upfront, thereby alleviating them of a significant proportion of the cash flow burden. Given that purchase of the materials for a cabinet occurs near the beginning of the cabinet making process and is one of the most significant costs in the cabinet making process, this would go some way to addressing industry concerns.

Option 2 has the additional advantage of capping the deposit that can be charged in high value contracts to \$20,000. In such cases, a cap attempts to balance the consumer's risk with the cabinet maker's risk. The suggested \$20,000 cap is arbitrary and has no basis in evidence.

The key disadvantage of Option 2 is the same as Option 1. Option 2's additional disadvantage is that capping the allowable deposit to \$20,000 will mean that in high value contracts (such as values over \$100,000) the deposit's contribution in financing the purchase of materials will be less than would be the case in Option 1 where the deposit is not capped at \$20,000.

To implement either Option 1 or 2, a new regulation under the HBC Act would be created to allow cabinet makers to charge a 20 per cent deposit where the value of off-site work is more than 50 per cent of the total contract price, similar to that which applies in Queensland and Tasmania. As indicated above, cabinet makers who assemble and install pre-fabricated cabinets (e.g. imported flat pack cabinets) on their clients' premises would continue to be restricted to charging a 6.5 per cent maximum deposit.

5.3 OPTION 3: No change

Option 3 is to make no change and for DMIRS to enforce the law as it stands.

5.4 Personal Property Securities Act 2009 (Cwlth)

DMIRS examined the possible use of the *Personal Property Securities Act 2009* (Cwlth) (PPSA) as a means for cabinet makers to legally charge progress payments while protecting the financial interests of their clients in the event of the cabinet maker's insolvency.

The PPSA is Commonwealth legislation that establishes an online Personal Properties Securities Register (PPSR), which allows consumers and businesses to register for a small fee a 'security interest' in 'personal property' not in their possession. If applied to the cabinet making industry, the security interest of a client of a cabinet maker could be registered after payment of a deposit to the cabinet maker. If certain legal conditions applied, this registration would establish what is called a 'purchase money security interest' (PMSI). This may establish a 'super-priority' for the client's security interest in the event of the cabinet maker's insolvency, which may help to minimise the client's financial losses.

To facilitate a PMSI, new regulations would be required to imply a 'security agreement' between cabinet makers and their clients in every cabinet making contract. This 'security agreement' would be enforceable against third parties. In the event a cabinet maker becomes insolvent, the clients of that cabinet maker may be able to claim the personal property and its proceeds from the liquidator, thereby minimising any financial losses. If the conditions of establishing such a PMSI under the PPSA were satisfied, then the client's risk of paying for materials and labour not in their possession may be reduced.

If use of PMSI's could be facilitated across the cabinet making industry, then this may enable the legalisation of pre-installation progress payments for cabinet making works. It could also help reduce the risk to consumers if a higher maximum deposit for domestic cabinet making works is implemented.

Application of the PPSA processes to the cabinet making industry would require a significant shift in consumer behaviour and discipline by requiring consumers to protect their own interests. A significant investment by DMIRS in consumer education would be required, which may not be successful in eliminating consumer risk. For this reason, the use of the PPSA is not supported as an option in this paper.

6. Request for comments and next steps

Comments are sought on the options presented in this paper, including ways in which these options can be improved. Alternative options are also welcome. Respondents are strongly encouraged to provide evidence to support the views expressed in their submissions.

Upon receipt and analysis of comments, a final proposal for change will be presented to the Minister for Commerce for approval to implement. Implementation of Option 1 or 2 will require amendments to the HBC Regulations, which takes four to six months from Ministerial approval.

APPENDIX 1 – SUMMARY OF CABINET MAKING INDUSTRY SURVEY RESULTS DECEMBER 2018

A. Sample size and response rate

The survey was sent to 160 cabinet makers and their suppliers, with responses being received from 59 cabinet making businesses and 3 suppliers, representing about 8 per cent of the industry. The size of businesses surveyed ranged in turnover \$100,000 per annum and just employing the principal to a business with a turnover of \$22 million with 70 employees.

The total annual turnover among cabinet makers surveyed was in excess of \$111 million. The respondent businesses employed 513 persons, including 51 apprentices. The average age of the business principal was 49 and the businesses had an average longevity of 20 years. Sixty per cent of the total output was residential building work for which the deposit and progress payment provisions of HBC Act would apply. See Table 1 for some key indicators supplied by the businesses that responded and the sample size for each indicator.

Table 1

Cabinet Maker Businesses' Survey – December 2018 - Key Indicators						
Business Indicator Measurement	Annual Turnover of Business (\$'000)	Number of Employees	% Output that is Residential Building Contract Work	Current Age of Principal* (years)	Total Number of Years of Operation	Number of Apprentices
Average of the total number of businesses that responded	2,098.9	8.8 employees	59.9%	48.9 years	20 years	0.88 persons
Average of the 36 businesses with turnover of \$1M or less	432.6	3.3 employees	66%	46.78 years	16.5 years	0.52 persons
Highest number in any business	22,000.0	70 employees	100%	69 years	45 years	6 persons
Lowest number in any business	100.0	0 employees	5%	30 years	1 year	0
From the total of all responding:	\$111,240.5 turnover	513 employees	59.9% of business output consumer focused	48.9 years - average age of principle	1169.5 years of operative experience	51 apprentices are being trained
Number of supplied responses	53	58	58	56	58	58
Nil or unclear responses	6	1	1	2	1	1
Total in sample:	59	59	59	59	59	59

B. Survey results

General trading conditions

The survey results indicate that post mining boom trading conditions for cabinet makers in WA is highly competitive due to flat-pack imports, technological changes and the influence of consumer expectations about price and product preferences. Forty-four per cent of businesses said trading conditions were steady but 27 per cent indicated that trading was depressed. As views about trading conditions became more negative, businesses surveyed were more likely to identify problems with cash flow and their profit margins. Overall, about 65 per cent of businesses expressed some positivity about the current trading environment but of these 43 per cent thought that their profit margins were inadequate. A smaller number of businesses that thought they were trading well said they had cash flow issues. See Table 2 below for some correlated results.

Table 2

Cabinet Makers' Trading Conditions Correlated with Cash Flow & Profit Margin Issues						
Survey Respondents' Description of Trading Conditions	No. of Businesses Describing the Particular Trading Conditions	%	No. of Businesses with Cash Flow Issues	%	No. of Businesses Indicating Profit Margins are Inadequate	%
Excellent	3	5.1%	1	1.7%	1	1.7%
Good	10	17.0%	5	8.5%	6	10.2%
Steady	26	44.1%	16	27.0%	19	32.2%
Variable	1	1.7%	1	1.7%	1	1.7%
Depressed	16	27.0%	12	20.3%	14	23.7%
Very low margins	2	3.4%	2	3.4%	2	3.4%
No comment	1	1.7%	-	-	-	-
Total:	59	100%	37	62.6%	43	72.9%

Compliance with the HBC Act

Responses to questions about deposits and progress payments suggest that about 65 per cent of all businesses were non-compliant in relation to the statutory deposit limit and a similar amount were not following the requirements in relation to progress payments. Tables 3 and 4 indicate wide variations in contractual terms.

Table 3

Cabinet Makers' Compliance with HBC Act's Deposit Limit		
Operative Deposit Charged in Cabinet Making Residential Building Work Contracts	No. of Businesses	% of Businesses
Mostly compliant with 6.5% deposit and no other payment before installation	7	11.9%
Compliant 6.5% or less deposit, with non-compliant pre-installation payments	14	23.7%
Non-compliant 10% deposit (with non-compliant pre-installation payments)	4	6.8%
Non-compliant 20% deposit (with non-compliant pre-installation payments)	1	1.7%
Non-compliant 30% - 50% deposit (with or without pre-installation payments)	17	28.8%
All material costs charged upfront as a proxy (non-compliant) deposit	6	10.2%
Non-compliant deposit amount not specified or dependent on size of the job	4	6.8%
No deposit; full payment charged after installation (compliant)	2	3.4%
No comment	4	6.7%
Sample Total:	59	100%

Table 4

Cabinet Makers' Compliance with HBC Act's 'Genuine' Progress Payments Provisions		
Stated Type of Operative Payment Regime	No. of businesses	%
Compliant payment regime (with compliant deposit)	8	13.5%
No deposit; full payment charged after installation (compliant with HBC Act)	2	3.4%
Non-compliant deposit but balance on completion (a 'genuine' payment)	6	10.2%
Non-compliant progress payment regime (with or without compliant deposit)	38	64.4%
No comment	5	8.5%
Sample Total	59	100%

Disputation with clients

Cabinet makers perceived level of disputation with their clients was low and the general perception of their relationship with their clients ranged from excellent (11.8 per cent) to good (62.7 per cent). A small minority indicated a negative situation. See Table 5.

Table 5

Cabinet Makers' General Perception of Relationships with their Clients		
Overall General Status of Relationships	No. of businesses	%
Excellent / Great	7	11.8%
Very Good	5	8.5%
Good	37	62.7%
Business Like	1	1.7%
Price Conscious Focused	5	8.5%
No Comment	3	3.4%
Not applicable	1	1.7%
Sample Total:	59	100%

When disputation did occur with clients, it was invariably about payments; expectations about completion time or delays in completion; or issues related to price, cost of variations and additional items. Table 6 below lists the key causes for disputation.

Table 6

Key Causes for Disputation between Cabinet Makers and their Clients	
No.	Cabinet Maker Indicated Disputation Cause (Ranked According to Number of Times Mentioned)
1	Delays in payment or non-payment
2	Expectations about completion timing or delays in completion
3	Price, cost of variations and additional costs
4	Workmanship
5	Material or hardware failures; product supplied not to specification
6	Misunderstanding or miscommunication of client expectations or about product supply
7	Changing preferences of client during the build
8	Installation issues

Impact of builder insolvency

The impact of builder insolvency on cabinet making businesses was mixed, with 42 per cent indicating there was some impact while over 52 per cent said there had been no impact. The situation was almost reversed for the impact of imported flat-pack cabinetry. Over 47 per cent said the imports had a high impact and another 28.8 per cent said it had some impact – a total of 76.2 per cent suggesting that imports were influencing the local trading environment. See Tables 7 and 8 for details.

Table 7

Impact of Builder Insolvencies on Cabinet Making Businesses						
<i>Question Asked of Cabinet Making Businesses:</i> Has there been any impact on the business due to builder insolvencies?	High impact	Some impact	No impact	Maybe	No response	= Total
No. of Businesses with response	12	13	31	1	2	59
% of Businesses with response	20.3%	22.0%	52.6%	1.7%	3.4%	100%

Table 8

Influence of Imported Flat Pack on Cabinet Making Businesses						
<i>Question Asked of Cabinet Making Businesses:</i> What do you believe has been the impact to your business of imports of flat packed cabinetry?	High impact	Some impact	Slight impact	No impact	No response	= Total
No. of Businesses	28	17	5	5	4	59
% of Businesses	47.4%	28.8%	8.5%	8.5%	6.8%	100%

Impact of imported flat-pack products

Cabinet makers were more ambivalent about the impact of HBC Act’s progress payment provisions in the context of the rise of imported flat-pack. Over 35 per cent said that the relationship was one where HBC Act supported an unfair playing field or created an anti-competitive impost given that the sale of imported flat-pack product was not subject to the similar deposit or payment restrictions. However, over 33 per cent of businesses suggested the HBC Act had no bearing on the competitiveness of local industry in relation to imports. See Table 9.

Table 9

Relationship Between the Growth of Imported Flat Pack Cabinetry and the HBCA’s Progress Payment Regime Required of Local Cabinet Makers						
<i>Question Asked of Cabinet Making Businesses:</i> In your view, has the current progress payment regime made the local industry less competitive against imported products?	Negative, unfair competitive impact	Probable impact on other businesses	No impact	Not Sure / Don’t know	No response	= Total
No. of Businesses	21	2	20	8	8	59
% of Businesses	35.6%	3.4%	33.8%	13.6%	13.6%	100%

Perceptions of the disruptive effects of imported flat-pack were nevertheless largely negative, particularly in relation to its impact on the lower end of the market. Many respondents also expressed views that flat-pack imports had lowered standards, quality, skills and opportunity within the industry. See Table 10.

Table 10

Cabinet Makers' Perceptions of the Impact of Cheap Imports of Flat Pack Cabinetry	
No.	Cabinet Maker Indicated Disruptive Effects
1	Increased unit price competition at the middle to lower end of the market (i.e. lower profit margins)
2	Has shrunk the industry while lowering its quality and workmanship standards
3	Consumer expectations in regard to the cost of good cabinetry have tightened as a result
4	There has been a loss of work for skilled tradespeople and a growth in less skilled installers
5	Lifecycle of cabinetry has shortened due to cheap, low quality imported materials
6	Local manufacturers are required to meet Australian Standards while importers do not
7	It is forcing local businesses to change their business model and more rapidly adopt new technology
8	Provides some differentiation for local quality cabinet makers using environmentally safer materials

Reform options

Cabinet makers were strongly supportive of a review of the HBC Act and also supported the registration of the cabinet making trade. There was much less support for the application of HBC Act's home indemnity insurance provisions to trade work, with the majority indicating opposition to the idea. See Table 11.

Table 11

Cabinet Makers' Support for Possible Government Responses to Protect Consumers						
Type of Possible Action Suggested:	Yes	No	Maybe	Not sure/ Don't know	No comment	= Total
Reintroduce mandatory Home Indemnity Insurance for trade work	22	31	2	3	1	59
Require registration of cabinetmaking trade	43	9	0	5	2	59
Review the <i>Home Building Contracts Act 1991</i>	48	2	2	3	4	59

APPENDIX 2 – Jurisdictional comparisons

Table 1: Deposit Limit provisions in other Australian jurisdictions

Domestic Building Legislation Deposit Limits – Australia			
State/ Terr.	Legislation	Relevant Clauses	Maximum % of Contract as Deposit
WA	<i>Home Building Contracts Act 1991</i>	S.10(1)(a)(i) and (ii)- Deposits and progress payments, limits on terms as to	<ul style="list-style-type: none"> • Not more than 6.5% of the total amount payable under a home building contract. • Allows for a deposit amount that is prescribed by regulation.
SA	Building Work Contractors Regulations 2011 <i>Building Work Contractors Act 1995</i>	Reg. 17(d)(i) and (ii) as per S.30(1)(b) of the Act	<ul style="list-style-type: none"> • Not more than \$1,000 if the price of a domestic work building contract is less than \$20,000; • Not more than 5% of the price stipulated in a building work contract that is \$20,000 or more.
VIC	<i>Domestic Building Contracts Act 1995</i>	S.11(1)(a) and (b)	<ul style="list-style-type: none"> • Not more than 10% of any contract price that is less than \$20,000. • Not more than 5% of any contract price that is \$20,000 or more.
NSW	<i>Home Building Act 1989</i>	S.8(1)	<ul style="list-style-type: none"> • Maximum of 10% of the contract price for residential building work.
QLD	<i>Queensland Building and Construction Commission Act 1991</i>	Schedule 1B - Division 2 - S.33 (1)(a),(b) and (c)	<ul style="list-style-type: none"> • 10% of the contract price for contracted services valued less than \$20,000; • 5% of the contract price for works valued \$20,000 or more; • 20% where more than 50% of the contracted services is to be carried out off-site.
TAS	<i>Residential Building Work Contracts and Dispute Resolution Act 2016</i>	S.41 (1) and (2) - Deposits	<ul style="list-style-type: none"> • 20% for a residential work contract under which the value of off-site work is more than 50% of the contract price; • 10% of contract price that is less than \$20,000 and is not one above; • 5% of the contract price that is equal to or more than \$20,000.
NT	Building Regulations (NT)	Reg. 41HE(1) - Deposits and progress payments	<ul style="list-style-type: none"> • Not more than 5% of total contracted price of the prescribed building work specified in the contract.

Table 2: Progress payment provisions in other Australian jurisdictions

Domestic Building Legislation Progress Payment Provisions – Australia			
State/ Terr.	Legislation	Relevant Clauses	Progress Payment Requirement
WA	<i>Home Building Contracts Act 1991</i>	S.10(1)(b)(i) - Deposits and progress payments, limits on terms as to	A builder must not enter into a contract ... any payment ... after commencement ... unless the payment is a <i>genuine progress payment</i> for work already performed or materials or service already supplied.
SA	<i>Building Work Contractors Act 1995</i>	S.30(1) - Payments under or in relation to domestic building work contracts	A person must not demand or require that a payment be made under a domestic building work contract or preliminary work contract by the person for whom work is performed under the contract unless: (a) the payment constitutes a <i>genuine progress payment</i> in respect of work already performed; ... or (b) the payment is of a kind authorised under the regulations.
VIC	<i>Domestic Building Contracts Act 1995</i>	S.40	The Act sets out four standard stages of construction (base, frame, lock-up and fixing) and regulates percentage payments of the contract price that can be claimed upon completion of each stage. Unless an owner and a builder agree otherwise, a builder cannot claim more than the percentage specified in the Act in a contract where the builder is to build all four stages. The balance of the contract price is typically split between a deposit and additional stage called 'completion'.
NSW	<i>Home Building Act 1989</i> <i>Home Building Amendment Act 2014</i>	S.8A(2)(a),(b) and (c) - Maximum progress payments (other than small jobs)	Authorised progress payments are either: (a) a specified amount or percentage of the contract price that is payable following completion of a specified stage of work ..., (b) payment for labour and materials in respect of work already performed or costs already incurred ... with payment intervals fixed by contract or on an "as invoiced" basis, (c) a payment authorised by the regulations.
QLD	<i>Queensland Building and Construction Commission Act 1991</i>	Schedule 1B - Division 2 - S.34 (1)(a),(b) and (2) and (4)	The building contractor under a regulated contract must not claim an amount under the contract, other than a deposit, unless the amount – (a) is directly related to carrying out the subject work at the building site; and (b) is proportionate to the value of the subject work that relates to the claim, or less than that value. A regulation may prescribe when an amount is proportionate to the value of subject work under a regulated contract. In this section, building site, for a regulated contract, does not include a place where the subject work has been, is being, or is to be, carried out if the work is required to later be installed or constructed at another place under the contract.

Progress payments and deposits in the cabinet making industry

State/ Terr.	Legislation	Relevant Clauses	Progress Payment Requirement
TAS	<i>Residential Building Work Contracts and Dispute Resolution Act 2016</i>	S.42(1) and (2)(a) and (b) - Progress payments	S.42(1) defines a building site and S42(1) stipulates that a building contractor cannot demand or receive a payment, other than a deposit, unless it is directly related to progress of performance at a building site and is proportionate to the value of work undertaken.
NT	Building Regulations (NT)	Reg 41H(f) and (g) - Residential building contracts; Reg 41HA - Standard progress payments; and Reg41HB - Progress payment agreement	Reg 41H(f): unless paragraph (g) applies – specifying the percentage of the total contract price payable to the prescribed building contractor after completion of a stage of work in accordance with the standard progress payments; and (g) if the parties have agreed to a variation to standard progress payments ... - specifying that progress payments are to be made in accordance with a progress payment agreement made under the contract; Reg 41HA outlines what the building stages and the maximum percentage of the total contracted price that is allowed for each stage of construction; Reg 41HB specifies the requirements of a progress payment agreement.

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