



Government of Western Australia
Department of Mines, Industry Regulation and Safety



Building a home in challenging times



May 2022

The WA building industry is currently impacted by an Australia-wide shortage of building materials and skilled workers, which is affecting project timeframes and costs. This is not unique to WA and is happening across the world.

If you are building or renovating a home in WA right now, you will know these are challenging times.

Shortages of essential materials and skilled workers along with rising transportation costs and disruptions are all contributing to project delays and unprecedented costs for builders and tradespeople.

These challenges are the result of market forces, amplified by the COVID-19 pandemic and disruptions to global trade. These factors, and the corresponding impact on our local building industry and trades, are expected to continue for some time.

Your builder or tradesperson will be doing their best to manage the challenges and ensure your project is completed.

During this time, it is important to keep in regular contact with your builder or tradesperson to understand how the shortages may affect your building work and what measures can be put in place. Reaching an agreement that all parties can accept will often be the best outcome for a project.

WA has a number of laws to help protect consumers. These laws still apply during this period and it is important to understand your rights.

This guide will help you understand the current challenges and the laws and protections that apply.

Why are these delays happening?

The current delays to building projects are the result of market forces.

Since mid-2020, there has been substantial world-wide growth in the demand for quality building supplies and skilled trade labour.

This demand has been exacerbated by supply issues caused by COVID-19, global sanctions on trade and natural disasters, such as the recent floods in Queensland and New South Wales.

This has led to substantial price increases in building inputs, such as timber, steel and skilled labour.

Many of these price increases could not have been anticipated, and it means building projects are taking longer and costing more for WA builders and tradespeople to complete.

While Western Australians are doing well in living with COVID-19, public health protocols and staff absences from illness will continue to cause disruption to WA building businesses.

-  36,155 total dwelling approvals in WA between June 2020 and March 2022
(Source: ABS March 2022)
-  Est. 70% of dwellings approved between June 2020 – December 2021 still to be complete
(Source: DMIRS survey of largest local governments)
-  Cost of materials used in housing construction across Australia increased by 4.2% during March 2022 quarter
(Source: ABS March 2022)
-  Cost of materials used in housing construction in WA up 15.4% since March 2021
(Source: MBAWA 2022)
-  98% of builders surveyed experiencing significant supply chain issues
(Source: HIA WA member survey)

What should I do about delays?

If you are building or renovating a house or thinking about building or renovating, be mindful of the current challenges.

While it is still a great time to build and renovate in WA, make sure you discuss your project timeframe and budget with your builder or tradesperson first before signing a contract. Enquire about possible delays and check to ensure they have incorporated reasonable allowances when calculating commencement and completion dates. While they will be responsible for properly scheduling the works, it is important both parties are aware of the circumstances that may arise.

If you have already signed a contract for a building or renovating project, work closely with your builder or tradesperson and ask them to be up front about any delays. They may be able to suggest alternative materials or other changes to the project that could help reduce delays.

Discuss also the preferred methods of communication with your builder or tradesperson. Emails or text messages may be preferable to phone calls. Many businesses are very busy and experiencing staff shortages, so they may not be able to immediately respond to every inquiry.

Patient, respectful and timely communication with your builder or tradesperson will help create a positive building experience and realistic expectations.

If your project is delayed, it is best to be prepared. If you are building a new home and waiting to move in, consider whether you need to find alternative accommodation or extend your existing living arrangements. It is better to have explored all options should the need arise.

Manage your risk – know your rights

WA has laws in place to protect home owners.

These laws continue to apply during this time, so it's important to be aware of the protections.

Home indemnity insurance

Residential building work contracts in WA are governed by the *Home Building Contracts Act 1991* (HBC Act). These are generally contracts for residential building work between a registered builder and a homeowner. This includes contracts for building a new home, renovating, repairing or altering an existing home or placing a new home on a lot of land.

If you have entered into, or plan to enter into a contract for residential building work for works valued over \$20,000 the builder must take out home indemnity insurance in your name as the owner before accepting payment or commencing work.

Home indemnity insurance is a requirement of the HBC Act and is an important safeguard for a consumer in the event of the death, disappearance or insolvency of the builder. It can cover:

- loss of deposit up to \$20,000;
- incomplete building work up to \$100,000; and
- rectification of defective work, up to \$100,000.

You should not make any payment under your contract until your builder has given you a copy of your home indemnity insurance certificate.

An online home indemnity insurance certificate register can also be accessed through insurance handler QBE. Check the register to ensure a proper certificate is in place for your property. The register can be searched by using the policy number or street address.

QBE certificate register

qbe.com.au/home-insurance/builders-insurance

Further information on HII

commerce.wa.gov.au/publications/home-indemnity-insurance

A preparations of plans agreement, or PPA, does not form part of your contract and so is not covered by your home indemnity insurance policy.

This means that if the builder becomes insolvent or disappears while only preparing the plans under the PPA, you won't be covered for any losses incurred.

Further information on PPAs

commerce.wa.gov.au/consumer-protection/building

Deposits

Under the HBC Act, the maximum deposit that your builder or tradesperson can ask you for is 6.5 per cent of the contract price before work commences. Upfront payments for variations to your contract are not permitted under the Act.

This limit applies to all home building works contracts, which are those valued between \$7,500 and \$500,000. This includes contracts between those values for building a new home, renovating, repairing or altering an existing home or placing a new home on a lot of land, or associated works (e.g. building pools, carports and other structures).

A limited exception applies for off-site cabinetry work, where the value of that work represents more than 50 per cent of the amount under the contract. In these cases, a deposit of no more than 20 per cent can be charged.

Even if the value of the home building works under your contract is greater than \$500,000, consider obtaining advice before paying a deposit that is greater than 6.5 per cent or exceeds your home indemnity insurance policy coverage for loss of a deposit (\$20,000).

Progress payments

The HBC Act limits the amount a builder or tradesperson can ask for progress payments under a home building work contract.

In short, these requests must be a 'genuine' payment for work already performed or materials or services supplied. You should only be paying progress payments for what you have received, not what might be supplied in the future, particularly to ensure protections under home indemnity insurance.

Further information

commerce.wa.gov.au/publications/building-contracts-and-progress-payments

Increases in price

For fixed-price home building works contracts valued between \$7,500 and \$500,000, the HBC Act limits the circumstances where a builder can pass on increased labour and material costs.

Information guide

commerce.wa.gov.au/publications/guide-price-increases-home-building-work-contracts

Extensions of time

The HBC Act does not set time limits for when building work must be completed. This is a matter for you to agree to in the contract with the builder or tradesperson.

Your builder or tradesperson may need to seek an extension of time to complete your project due to issues beyond their control. This may be because they cannot access the materials specified in your contract, or an agreement on alternative products cannot be reached.

If your service provider does ask for an extension of time, make sure you review your contract.

Ask them to outline the reasons for the extension of time, and confirm the relevant clause in the contract.

Extensions of time can sometimes require you to pay increased costs (such as those related to plant and labour), so it is important to understand the requirements under the contract. If you are unsure, seek independent professional advice.

Termination of the contract

If you are thinking about terminating your contract with the builder or tradesperson, it is important to understand your rights and remedies. If you terminate your contract without a right to do so, your builder or tradesperson could commence court action for damages and expenses, including loss of profit.

The HBC Act provides limited circumstances where a homeowner can lawfully terminate a home building work contract. If you are unsure of your rights, seek independent professional advice.

Further information

commerce.wa.gov.au/publications/guide-price-increases-home-building-work-contracts

Lodging a complaint

You can lodge a home building work contract complaint with Building and Energy if you believe a price rise is unjustified or excessive or there has been a breach of the contract.

A complaint will be considered if the builder exceeds the time specified for completion in the contract or breaches the contract, but this will be assessed based on the notices and justification provided by the builder. If you have been informed of an anticipated delay (in writing, in person or by phone), it may not be accepted as a complaint.

Generally, a three-year time limit applies from when the dispute arose to lodge a home building work contract complaint.

Further information

commerce.wa.gov.au/building-and-energy/building-service-and-home-building-work-contract-complaints

What happens if my builder becomes insolvent before finishing my project?

In the unlikely event your builder moves into insolvency or administration, your home indemnity insurance policy will cover losses up to \$100,000 for incomplete or defective works and \$20,000 for loss of deposits.

Insurance handler QBE can assist you in engaging another builder to complete the work or you can select your own replacement builder. Make a claim as soon as possible by calling QBE on 1300 790 723.

If deposits and progress payments have been made that do not meet the criteria set out in the HBC Act (for example, progress payments must be only be made when works have been carried out or goods have been delivered) they may not be covered by home indemnity insurance.

Further information

qbe.com/au/claims/builders-warranty

Repossession of goods and materials

Sometimes when a builder stops paying their bills, unfixed goods delivered to site may go missing or works that have been carried out could be damaged.

No one is entitled to damage your building site or remove materials fixed to your site.

Subcontractors who have not been paid by the builder cannot go on to the building site and take back materials that have been paid for and form part of the building works. It is important that theft or damage to your property is reported to the Police by calling 131 444.

Building Bonus and HomeBuilder grants

If your builder becomes insolvent, this will not impact on the State (Building Bonus) or Commonwealth (HomeBuilder) building incentives grants that you have received because the grants have some portability.

However, delays may affect the application of the grants, as both incentive programs require work to start by specified dates.

For the WA State Government Building Bonus, if you entered a building contract between 4 June 2020 and 31 December 2020 and your builder has entered administration, receivership or liquidation, or is the subject of enforcement action by a regulatory body (for example ASIC), a replacement contract will be considered eligible in the following circumstances:

- the replacement contract must be for the same scope as the original contract;
- construction must commence within 30 months of the date you entered into the replacement contract; and
- you must lay your foundations, apply for the grant and upload all required evidence by 30 April 2024.

Contact the WA Department of Finance on 9262 1170 if you have any questions about how delays may impact your eligibility, or visit their website.

Further information

[wa.gov.au/service/community-services/grants-and-subsidies](https://www.wa.gov.au/service/community-services/grants-and-subsidies)

Home Buyers Survival Guide

If you need more information about buying a home and the rights and protections available to consumers in WA make sure you read the Home Buyers Survival Guide.

Home buyers guide

commerce.wa.gov.au/publications/home-buyers-survival-guide

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Great Southern (08) 9842 8366

Kimberley (08) 9191 8400

Mid-West (08) 9920 9800

North-West (08) 9185 0900

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National Relay Service: 13 36 77

Translating and Interpreting Service (TIS): 13 14 50

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