



The Construction Contracts Co.
THE AUSTRALIAN SUBCONTRACT INDEX

INDEX REPORT · DATED EDITION

The State of Australian Subcontracts

September 2026

What 80 real subcontracts say about deadlines, deductions, damages and payment, measured clause by clause. Every statistic carries its sample size.

100%

make a missed notice deadline fatal to the claim
57 of 57

5 days

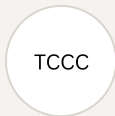
median window to notify a delay claim
n=60

97%

allow set-off without notice
65 of 67

85%

of liquidated damages clauses are uncapped
29 of 34



EXECUTIVE SUMMARY

Deadlines that kill claims, deductions without notice, damages without limit

This report analyses 80 distinct Australian subcontracts run through The Construction Contracts Co.'s free Subcontract Risk Scanner between May and September 2026, across seven states and territories. It measures what the contracts say, clause by clause, and counts a clause only where the drafting could be identified.

The picture is consistent. In every contract where the notice drafting could be read (57 of 57), missing a notice deadline does not just weaken a claim, it extinguishes it. The median window to notify a delay is 5 days (n=60), a third of the 15 days in the Queensland regulator's own published template. 65 of 67 contracts (97%) let the builder deduct from a subcontractor's payment without notice, and 29 of 34 (85%) with liquidated damages set no cap on them.

The clauses rarely appear alone. Of the 55 contracts where all three could be identified, 49 (89%) combine an absolute time bar, set-off without notice and termination for convenience. The one term that consistently sits at the market norm is retention: 53 of 58 contracts hold exactly 5%.

The sample is the contracts subcontractors chose to bring to the scanner, not a random sample of the market, and it is weighted to Queensland (45 of 80). The direction of every headline finding holds when the analysis is restricted to the 40 contracts uploaded directly by 33 separate users.

The findings at a glance

100%

1. Miss a 5-day deadline and the claim is gone

57 of 57 contracts where the notice drafting was identifiable

97%

2. 97% let the builder deduct from your payment without telling you first

65 of 67 contracts where the set-off clause was identifiable

85%

3. 85% of liquidated damages clauses have no cap

29 of 34 contracts with LDs where the cap position was identifiable

25 days

4. Median 25 days to be paid, and 38% of contracts ask for longer

median payment terms, n=68

86%

5. Walk-away rights, release deeds and uncapped indemnities are the norm

63 of 73 contracts include termination for convenience

89%

6. The clauses travel together: 89% carry all three

49 of 55 contracts where all three were identifiable

5%

7. Retention is the one term that sits at the market norm

median retention, n=58



FINDING 1 · TIME BARS

Miss a 5-day deadline and the claim is gone

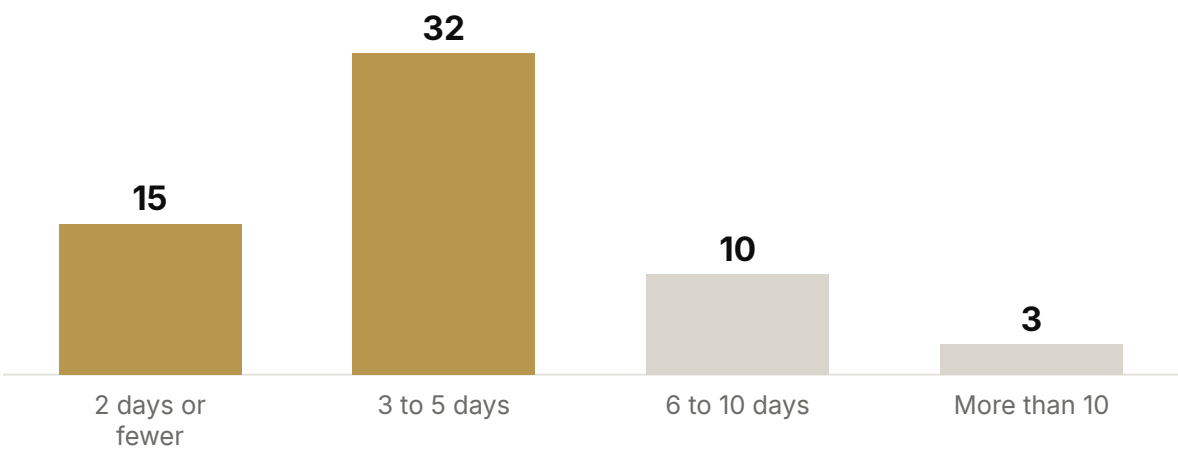
100% 57 of 57 contracts where the notice drafting was identifiable

Every contract in the corpus where the notice drafting could be identified makes a missed deadline fatal: late notice of a delay or variation does not reduce the claim, it extinguishes it. Not one of the 57 treats notice as procedural only.

The windows are short. The median time to notify an extension of time is 5 days (n=60) and the median time to notify a variation is also 5 days (n=51). 15 of 60 contracts (25%) allow 2 days or fewer to notify a delay.

Baseline. The Queensland Building and Construction Commission's own published commercial template allows 15 days to notify an extension of time claim. 58 of 60 contracts (97%) allow less.

Days allowed to notify a delay (extension of time) claim (n=60)



Median 5 days. QBCC template: 15 days. Days as drafted, business or calendar.



FINDING 2 · SET-OFF

97% let the builder deduct from your payment without telling you first

97%

65 of 67 contracts where the set-off clause was identifiable

Set-off lets the head contractor deduct amounts it says it is owed (back-charges, defects, delay costs) from a subcontractor's progress payment. In 65 of 67 contracts it can do so without prior written notice.

Among the contracts subcontractors uploaded themselves, the pattern is the same: 30 of 31 allow set-off without notice.

Baseline. The QBCC's published commercial template requires notice before set-off. Only 2 of the 67 contracts do the same.

Can the builder deduct without notice? (n=67)



■ 97% Set-off without notice (65 of 67)

■ 3% Notice required (2 of 67)



FINDING 3 · LIQUIDATED DAMAGES

85% of liquidated damages clauses have no cap

85%

29 of 34 contracts with LDs where the cap position was identifiable

Liquidated damages are a fixed daily amount charged for late completion. Where a contract carried LDs and the cap position could be confirmed, 29 of 34 (85%) set no aggregate limit, so exposure grows for as long as the delay runs.

The median LD rate is \$1,500 per day (n=42). The middle half of contracts sit between \$500 and \$5,000 per day, and 11 of 42 set a rate of \$5,000 per day or more.

Baseline. A cap of 5% to 10% of the subcontract sum is the commonly negotiated market position.

Is there a cap on liquidated damages? (n=34)



■ 85% No cap (29 of 34)

■ 15% Capped (5 of 34)



FINDING 4 · PAYMENT TERMS

Median 25 days to be paid, and 38% of contracts ask for longer

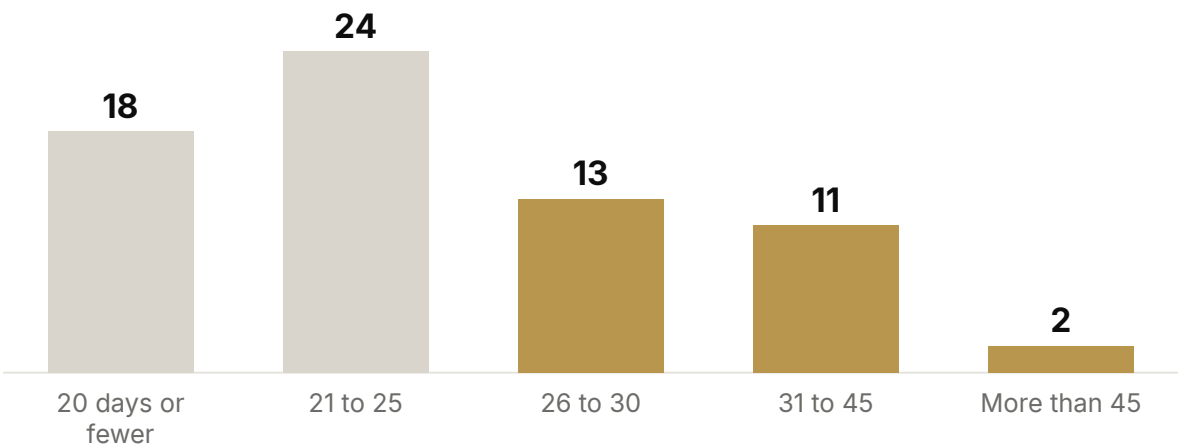
25 days median payment terms, n=68

The median payment period is 25 days from claim to payment (n=68). 26 of 68 contracts (38%) set a period longer than 25 days, and 21 of 68 (31%) start the clock at the end of the month rather than on the claim, which can add up to a further month before the stated period begins.

The spread differs by state. Queensland, where the Building Industry Fairness (Security of Payment) Act 2017 caps subcontract payment terms at 25 business days, clusters tightly: 23 of 40 Queensland contracts state exactly 25 days and the median is 25 (n=40). The Victorian median is 35 days (n=12) and the New South Wales median is 30 days (n=10).

Baseline. Statutory caps on subcontract payment terms: 25 business days in Queensland and Western Australia, 20 business days in New South Wales. Contract periods are recorded as drafted (business or calendar days) and are not directly comparable with the statutory business-day clock.

Payment terms as drafted, claim to payment (n=68)



Median 25 days. Highlighted: longer than 25 days (26 of 68).



FINDING 5 · RISK TRANSFER

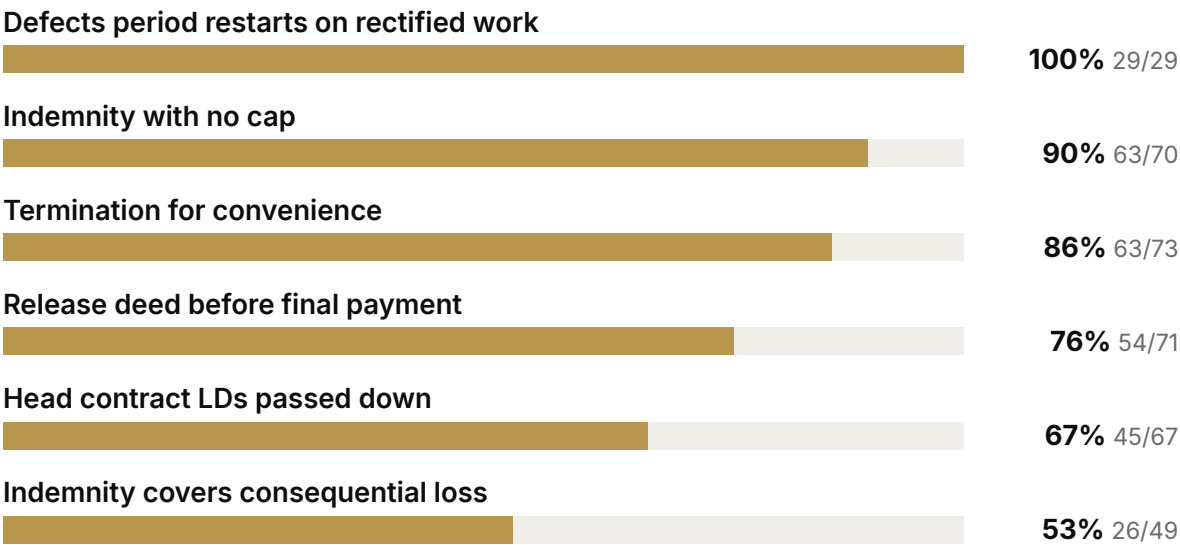
Walk-away rights, release deeds and uncapped indemnities are the norm

86% 63 of 73 contracts include termination for convenience

Beyond deadlines and deductions, the contracts shift a wide band of risk down the chain. 63 of 73 (86%) let the head contractor end the subcontract without cause. 54 of 71 (76%) make signing a release deed a condition of final payment. 63 of 70 (90%) contain an indemnity with no cap.

45 of 67 (67%) pass the head contract's liquidated damages down to the subcontractor on top of the subcontract's own LDs, a delay exposure set by a contract the subcontractor has usually never seen. In all 29 contracts where the defects clause could be read on this point, rectified work restarts the defects liability period.

Share of contracts carrying each clause, where identifiable



The defects restart field was added to the extraction more recently, so its sample is smaller.



FINDING 6 · THE PACKAGE

The clauses travel together: 89% carry all three

89% 49 of 55 contracts where all three were identifiable

These are not isolated clauses in otherwise balanced documents. Of the 55 contracts where all three could be identified, 49 (89%) combine an absolute time bar, set-off without notice and termination for convenience.

For a subcontractor that means the same document which lets a late claim die after a few days also lets the builder deduct without warning and end the job without cause.

Absolute time bar + set-off without notice + termination for convenience (n=55)



- **89%** All three (49 of 55)
- **11%** Two or fewer (6 of 55)



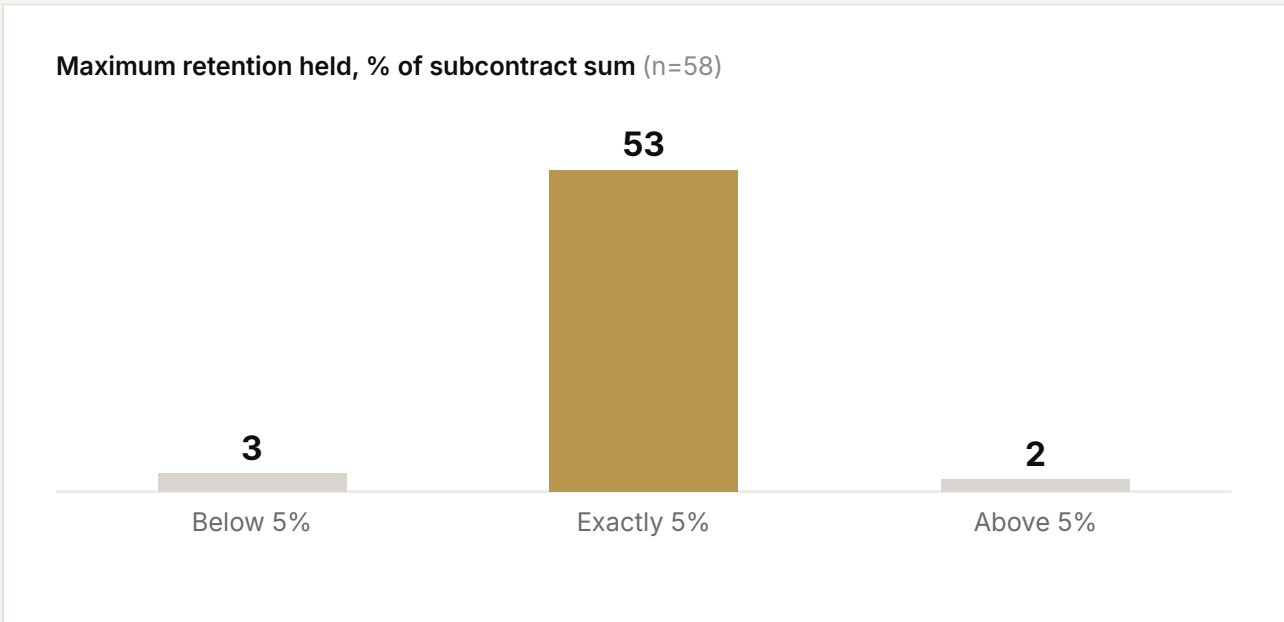
FINDING 7 · RETENTION

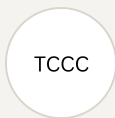
Retention is the one term that sits at the market norm

5% median retention, n=58

Retention, the security held back from progress payments, is the exception to the pattern. 53 of 58 contracts (91%) hold exactly 5% of the subcontract sum, the market-normal cap. 2 of 58 hold more than 5% and 3 hold less.

The risk in retention sits less in the percentage than in when it comes back, which the release and defects findings above bear on.





BY STATE

Queensland, Victoria and New South Wales

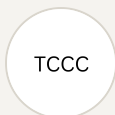
State figures appear only where that state has at least 10 contracts with the clause identifiable. South Australia (4), Western Australia (3), the ACT and the Northern Territory (1 each) are included in the national figures only. Queensland contributes 45 of 80 contracts, Victoria 14 and New South Wales 12.

Measure	National	QLD	VIC	NSW
Absolute time bars	100% 57/57	100% 33/33	100% 12/12	n<10
Set-off without notice	97% 65/67	95% 35/37	100% 13/13	100% 10/10
Uncapped liquidated damages	85% 29/34	84% 21/25	n<10	n<10
Termination for convenience	86% 63/73	80% 33/41	100% 14/14	100% 10/10
Release deed before final payment	76% 54/71	73% 30/41	92% 12/13	80% 8/10
Indemnity with no cap	90% 63/70	90% 37/41	100% 12/12	80% 8/10
Median payment terms (days)	25 n=68	25 n=40	35 n=12	30 n=10
Median EOT notice window (days)	5 n=60	5 n=35	3 n=11	n<10
Median retention (%)	5 n=58	5 n=33	5 n=12	n<10

Shares show contracts with the clause over contracts where it was identifiable. Periods in days as drafted, business or calendar.

Cuts withheld for small samples

- State results for South Australia (n=4), Western Australia (n=3), the ACT (n=1) and the Northern Territory (n=1)
- Liquidated damages rates and caps by state (Victoria n=5, New South Wales n=6 for rates; cap position n=3 and n=5)
- New South Wales absolute time bars (n=7), EOT notice window (n=9) and retention (n=9)
- Liquidated damages caps expressed as a percentage (n=8)
- Results by project type and by trade, where most categories are under 10



METHODOLOGY AND LIMITATIONS

How the numbers were made

Source. Subcontracts analysed by the free Subcontract Risk Scanner (review.theconstructioncontracts.co) between 11 May 2026 to 22 September 2026. When a contract is scanned, a separate extraction step records 18 normalised fields (payment period, notice windows, set-off, retention, liquidated damages and their cap, termination and indemnity terms and others). This report uses exactly the rules of the live Australian Subcontract Index.

The corpus. 80 distinct contracts: 40 uploaded directly by 33 separate users, 26 real subcontracts scanned by The Construction Contracts Co. in the course of its own review work, and 14 publicly published standard forms and templates (including the QBCC's commercial template). A document scanned more than once counts once. Test scans are excluded.

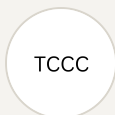
Counting rules. A clause is counted only where the contract states it explicitly: "not identifiable" is never treated as a no, so each measure has its own denominator. Any measure with fewer than 10 qualifying contracts is withheld, nationally and by state. Medians use the Index's definition, the middle value (the upper of the two middle values on an even count). Periods are recorded in days as drafted and are not converted between business and calendar days.

Privacy. Aggregates only. No contract, party, project or business is named or identifiable.

Limitations

- **Not a random sample.** These are the contracts subcontractors chose to bring to the scanner, plus published templates. People may be more likely to scan a contract they are worried about.
- **Weighted to Queensland.** 45 of 80 contracts are Queensland contracts.
- **Machine extraction.** Fields are extracted by an AI model instructed to return nothing rather than guess. Errors are possible, and some fields (such as the defects restart) exist only for more recent scans.
- **Small samples.** Several measures rest on a few dozen contracts. Treat percentages as indicative and always quote the n.
- **A fixed edition.** Figures are as at 27 September 2026 and will not be updated. The live Index moves as new contracts arrive.

This report describes how contracts are drafted. It is general information, not legal advice. Statutory references are summaries; check the current Act before relying on any period.



ROBUSTNESS AND USE

Robustness check: direct uploads only

The corpus mixes contracts users uploaded themselves with contracts scanned by The Construction Contracts Co. and published templates. Restricted to the 40 contracts uploaded directly by 33 separate users, the headline figures hold:

- Absolute time bars: 26 of 26 (100%)
- Termination for convenience: 31 of 36 (86%)
- Set-off without notice: 30 of 31 (97%)
- Median payment terms: 25 days (n=34)
- Uncapped liquidated damages: 17 of 20 (85%)
- Median EOT notice window: 5 days (n=30)

How to cite

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Press and research enquiries

Mat Kennedy, Founder, The Construction Contracts Co., is available for comment and can provide custom cuts of the data (state, clause or contract type, subject to the n=10 rule).

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About the author

Mat Kennedy has worked on both sides of Australian subcontracts, for head contractors and subcontractors, on more than \$200 million of projects. He is the author of *Screwed Down*, a guide to subcontracts for Australian trades, which reached #1 in Contract Law on Amazon Australia in September 2026.

Where does your contract sit?

Scan any subcontract free in about 90 seconds: a clause-by-clause risk report against your state's Security of Payment law, benchmarked against the Index.

review.theconstructioncontracts.co