

TRUSTEE GUIDE: PROJECT TRUSTS



Building Industry Fairness (Security of Payment) Act 2017

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FURTHER RESOURCES AVAILABLE TO YOU

There are other guides available on the QBCC website to support the trust account requirements including:

- [Trustee guide - Retention trusts](#)
- [Trustee guide - Transitioning from project bank accounts \(PBAs\) to the new trust account framework](#)
- [Trustee guide - Trust accounting \(in development\)](#)
- [Beneficiary guide - Trust accounts](#)

This guide does not provide information about PBAs. Detailed guidelines and other resources to assist trustees of PBAs are available at the Business Queensland website: [Resources for project bank accounts | Business Queensland](#)

Note: Certain State government projects tendered before 1 March 2021 may require a PBA to be established. Contractors who open a PBA prior to commencement of the new trust account framework will be able to transition to the new trust framework.

HOW TO USE THIS GUIDE

This guide provides information on:

- When a project trust is required
- When a project trust is not required
- How and when to open a project trust account
- How to use a project trust account
- Changes affecting project trust accounts
- How to close a project trust account
- Information about related entities and project trust accounts

It also outlines the project trust process:

1. Determining whether or not a project trust is required for a contract.
2. If a project trust is required for the contract, the contracted party will be the trustee of the project trust, with statutory obligations to open, administer and eventually close the trust account.
3. Consider whether the trustee has entered a subcontract with a related entity - there are some extra things to keep in mind in this scenario.

A glossary of terms is provided in Part F of this guide.

INTRODUCTION

Trust accounts were introduced in 2018 to protect payments in Queensland's building and construction industry¹. The trust account requirements are set out in the *Building Industry Fairness (Security of Payment) Act 2017* (the BIF Act).

Changes have been made to the BIF Act to support a new trust account framework. From 1 March 2021 project trust accounts will be required for certain (eligible) contracts and a separate retention trust account will be required for holding cash retentions.

Where a trust account is required, there are specific processes and trust obligations that must be met by various parties including the contracting party and contracted party, subcontractors (who are beneficiaries), auditors, financial institutions etc. The majority of responsibilities lie with the trustee, who is the party responsible for managing the trust account(s).

WHO SHOULD USE THIS GUIDE?

This project trust guide is written to assist trustees of project trusts understand the requirements and their rights and to meet their obligations.

The guide may also be useful for principals to understand what the contracted party (as trustee) must do in relation to establishing a trust and operating a trust account and what to expect.

This guide provides general guidance and information about project trusts. It does not cover all situations and should not be solely relied upon to achieve compliance with the *Building Industry Fairness (Security of Payment) Act 2017*. If there is any uncertainty around rights and obligations, including whether a contract requires a project trust, professional advice should be sought.

¹ Project bank accounts (PBAs) have been required under the BIF Act for certain Queensland Government projects valued between \$1 million and \$10 million (including GST) since 1 March 2018. The new framework from 1 March 2021 replaces Project Bank Accounts with Project Trust Accounts and Retention Trust Accounts.

BACKGROUND

What is a project trust?

Project trusts are statutory trusts formed under Queensland legislation. A trust describes the relationship which arises when a person (the trustee) holds property (in this case contract payment amounts) on behalf of and for the benefit of the party/parties who will become entitled to them (the beneficiaries).

Project trusts are a legal concept – as opposed to a project trust account, which is the account at a financial institution where the property or funds of the trust are held.

What is a project trust account?

A project trust account is an account through which project funds are received and paid:

- the project owner (principal) pays progress payments into the project trust account for work completed in accordance with the contract;
- the head contractor pays all subcontractors engaged only from this account; and
- the head contractor pays itself only from this account

The trust account **must be** separate to the head contractor's personal or business account and keeps the funds for the project separate from funds of other projects and the head contractor's other cash flow.

The owner or principal is not required to pay the full contract value into the account upfront - progress payments still apply. Suppliers engaged by the head contractor and the head contractor's employees are not beneficiaries of the trust and must not be paid from the trust account. The head contractor's other business / operating costs must not be paid from the trust account.

Who is the trustee?

The trustee is the contracted party for the contract that requires the project trust (i.e. the 'project trust contract') and is responsible for the trust. They are generally the head contractor.

What is the role of the QBCC for trust accounts?

The QBCC is responsible for regulating the new trust framework, including project trust accounts. As part of this role, it has a number of powers, responsibilities and oversight functions including:

- receiving notices about trust accounts and maintaining a register of all trust accounts
- approving financial institutions where trust accounts may be held
- conducting approved audit programs to establish trust account compliance
- investigating complaints about possible non-compliance with trust laws
- conducting enforcement activities, including the prosecution of alleged offences
- directing trustees and financial institutions in certain cases, where warranted
- providing education and awareness to the industry and public.



PARTIES IN CONTRACTUAL CHAIN

**PAYS INTO
PROJECT
TRUST
ACCOUNT**



CONTRACTING PARTY also known as the: owner/developer/principal (first-tier contract)

The contracting party requesting the work. They may own the land or building on which the work is carried out or they fund the work being undertaken.

**PAID FROM
PROJECT
TRUST
ACCOUNT**



CONTRACTED PARTY also known as the: head contractor/contractor/builder (first-tier contract)

The contracted party that has been requested to perform the work and is directly engaged by the contracting party. They are both the trustee and beneficiary of a project trust.

Note: the contracted party may also be required to pay into the trust account when there are insufficient funds to pay subcontractors.



SUBCONTRACTOR

Subcontractors are parties that are engaged by the contracted parties to contribute/carry out work. Subcontractors are beneficiaries of a project trust.

Subcontractors can be consultants, engineers, electricians, architects or suppliers of a specifically made good.

**PAID
FROM
SUBCONTRACTOR**



SUB-SUBCONTRACTOR

Sub-subcontractors are parties that are engaged by the subcontractor to contribute/carry out work. Sub-subcontractors are not beneficiaries of a project trust and are paid by the subcontractor directly.

Sub-subcontractors can be consultants, engineers, electricians, architects or suppliers of a specifically made good.

**PAID
DIRECTLY**



OTHER PARTIES
(that are not beneficiaries of a project trust)

Suppliers and some consultants* may be engaged by any party in the contractual chain and are paid directly by that party (not through the project trust).

**consultants that are not a beneficiary of a project trust (performing protected work and engaged by the contracted party).*



PART A – HOW TO DETERMINE WHETHER A PROJECT TRUST IS REQUIRED

IS A PROJECT TRUST REQUIRED?

Only contracts that meet certain criteria, will require a project trust.

There will be a phased introduction of the trust framework, with certain contracts for projects becoming subject to project trust requirements at different times.

A project trust is required for a contract if all four criteria apply in relation to the contract:

1. the contracting party is as specified for the relevant phase, AND
2. the contract price is as specified for the relevant phase, AND
3. more than 50% of the contract price is for *project trust* work, AND
4. there is at least one *subcontractor* engaged for all or part of the contracted work.

There are some exemptions that may apply and which will mean the project trust is NOT required (even if all four of the above criteria apply to the contract). This is covered later in the guide.

The QBCC has developed a [project trust account tool](#) to help you quickly and easily determine if a contract is eligible and requires a project trust account. A factsheet is also available.

Note that a different set of criteria applies for certain subcontracts that require a project trust (see 'related entities' later in this guide).

WHO IS THE CONTRACTING PARTY?

The contracting party is the party to the contract who is requesting the work to be carried out. The contracting party of the head contract (also known as the owner, principal or developer), specifically the sector they belong to (e.g. government, health, private, etc.) is one of the key factors that determines whether a project trust implementation phase applies to the contract.

A project trust is required if the contracting party is:

- For projects *tendered*¹ on or after 1 March 2021 –
 - » a Queensland state government department
 - » a state authority who has elected to require a trust account for the contract
- For projects *tendered*² on or after 1 July 2021
 - » a Queensland state government department
 - » a Hospital and Health Service (HHS)
 - » state authority that has elected to require a trust account the project

1. Applies to contracts entered on or after 1 March 2021, if the contract was not entered as part of a tender process.

2. Applies to contracts entered on or after 1 July 2021, if the contract was not entered as part of a tender process.

- For *contracts entered* on or after 1 January 2022 – any of the below:
 - » an individual or private entity,
 - » a local government,
 - » a state authority,
 - » a Queensland state government department or a HHS

WHAT IS THE CONTRACT PRICE?

The contract price is the amount agreed to be paid to the contracted party for completing the work. If the amount cannot be accurately calculated, a reasonable estimate of the amount is taken to be the contract price.

In working out the contract price for trust account application, use the amount excluding GST.

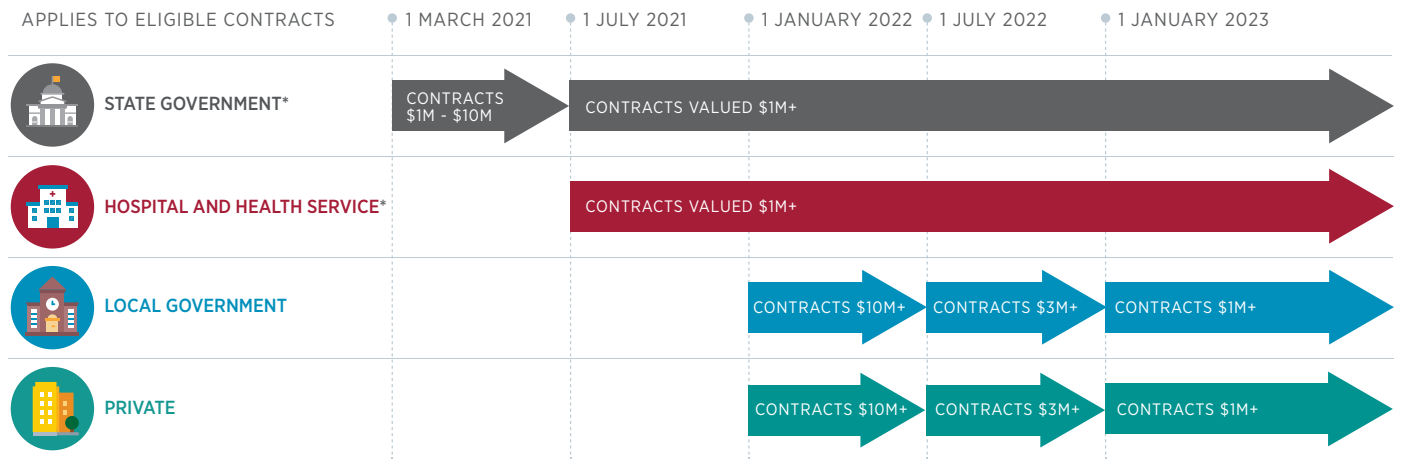
A project trust is required if the contract price is:

- For projects *tendered*³ on or after 1 March 2021 –
 - » \$1 million or more, but not more than \$10 million if the contracting party is a Queensland state government department;
 - » \$1 million or more if the contracting party is a state authority who has elected to require a trust account for the contract
- For projects *tendered*⁴ on or after 1 July 2021 – \$1 million or more
- For *contracts entered* on or after 1 January 2022:
 - » If the contracting party is a state government or a HHS or a state authority who has elected to require a trust account for the contract – \$1 million or more
 - » For all other contracts, \$10 million or more
- For *contracts entered* on or after 1 July 2022:
 - » If the contracting party is a state government department or a HHS or a state authority who has elected to require a trust account for the contract – \$1 million or more
 - » For all other contracts, \$3 million or more
- For all *contracts entered* on or after 1 January 2023 – \$1 million or more.

3. Applies to contracts entered on or after 1 March 2021, if the contract was not entered as part of a tender process.

4. Applies to contracts entered on or after 1 July 2021, if the contract was not entered as part of a tender process

PROJECT TRUST ACCOUNT TIMELINE



*some additional statutory authority contracts \$1M+ may be eligible from 1 Mar 2021 onwards where they have opted in early

WHAT IS PROJECT TRUST WORK?

'Project trust work' describes the scope of work that is used to determine if a project trust account is required. In working out whether a project trust applies, more than 50% of the contract price must be for project trust work.

Various kinds of work are prescribed under legislation to be 'project trust work'.

A summary of the categories of project trust work is provided below.

Work associated with, or in connection with a building
Erection or construction of a building
Renovations, alterations, extensions, improvements or repairs of a building
Lighting and electrical work
Water supply, sewerage or drainage
Heating, ventilation and air-conditioning work
Installing prefabricated components
Laying wet pour rubber
Site work in association with, or in connection with a building
Site work related to construction work (e.g. the construction of retaining walls)
Soil testing and site classification
Earthmoving and excavation
Scaffolding erection, management and removal
Specialist work (associated with a building)
Preparing plans or specifications for project trust work
Work performed by an architect
Work performed by a registered professional engineer
Work performed by a surveyor
Mechanical services work
Fire protection work
Inspection, investigation or advising on termite infestation or management systems
Contract administration if carried out by a person who wholly or partly designed the building
Inspections and advice (associated with a building)
Carrying out a building inspection
Building certification work
Energy efficiency assessments
Fire safety advice
Other work/
Swimming pool construction, installation, alterations and repairs (whether associated with a building or not)

Note: A building is taken to be a fixed structure that is wholly or partly enclosed by walls or is roofed.

The complete legislative definition of project trust work can be found [here](#)

Work that is not project trust work

Some work is prescribed by regulation not to be project trust work, for example, the types of work below are specified not to be project trust work.

Construction, maintenance or repair work
Busways
Roads (ex. driveways)
Railways
Tunnels for roads, busways or railways

Mineral and energy resources
Authorised activities for a resource authority

WHO ARE SUBCONTRACTORS?

Subcontractors are parties engaged by the contracted party (normally the head contractor) to perform all or part of the contracted work.

In working out whether a project trust applies, at least one subcontractor must be engaged – but only to the extent they are performing ‘protected work’. All first-tier subcontractors performing ‘protected work’ for the head contractor are *beneficiaries* of the project trust.

Protected work includes project trust work and additional work such as:

- Construction work such as roadworks, pipelines, water mains and drainage
- Installation of heating, lighting, power supply, water supply and drainage
- Site works such as earthmoving, foundations, scaffolding, site restoration and landscaping
- Painting and decorating

You can check the complete legislative definition of project work [here](#).

Work that is not protected work

The following work is not protected work.

Work that is not protected work
Drilling for, or extraction of, oil or natural gas
Extraction of minerals (including surface work, tunnelling, boring and constructing underground works for the purpose of extraction of minerals)

EXEMPTIONS - WHEN A PROJECT TRUST IS NOT REQUIRED

There are some exemptions that may apply, meaning the project trust is NOT required (even if all four of the above criteria apply to the contract).

Contracts that are exempt

Contracts that are exempt from establishing a project trust are:

- Subcontracts, unless it is a subcontract with a related entity.
- Contracts between the State and a state authority.
- Small scale *residential construction work* – that is, for one or two living units.
 - » a single detached dwelling or a residential unit each equate to one living unit.
 - » a duplex is taken to be two living units.
- *Maintenance work*, if that is the only kind of work to be carried out under the contract.
- Design or advisory work, if:
 - » it is the only kind of work under the contract, and
 - » it is to be carried out (directly or indirectly) by an architect, registered professional engineer, building designer or landscape architect.
- Contract administration work, if:
 - » it is the only kind of work under the contract,
 - » it is to be carried out (directly or indirectly) by an architect, registered professional engineer, licensed building designer or landscape architect, and
 - » it is for the construction of a building wholly or partly designed by that person.
- Contracts with less than 90 days until practical completion
 - » The counting of days begins from the day the contract becomes eligible for a project trust, for example,
 - the day the contract is entered triggering the project trust requirement, or
 - the day a variation amendment is agreed triggering the project trust requirement
 - » It ends on the day practical completion for the contracted work is expected to occur
 - » Be aware that a change to the expected practical completion day (for example, due to a contract amendment) may result in this exemption no longer applying. Consequently, if you are relying on this exemption, you must review its application each time an amendment is made to the contract that is likely to affect the day practical completion is expected to occur.

OTHER CIRCUMSTANCES THAT CAN INFLUENCE WHETHER A CONTRACT IS AN ELIGIBLE CONTRACT

There are other circumstances which may impact on whether or not a project trust is required.

Contract variations

If a contract is not initially an eligible contract, it could become eligible as a result of an amendment to the contract, for example:

- A change in contract price, where an amendment increases the original contract price by 30% or more (is cumulative across any/all previous amendments) and the revised contract price exceeds the applicable threshold
- A change to the scope of works and value of project trust work as a proportion of the overall contract price
- The practical completion date has been extended and is at least 90 days from the date of the amendment
- A subcontractor carrying out protected work is engaged.

If this occurs, the contract is considered to be an eligible contract from the date the amendment takes effect, not from the original date of the contract.

Multiple contracts for the same or adjacent sites

Note: the information below does not apply to contracts entered into as a result of separate tender processes.

Multiple contracts involving the same parties (principal and head contractor) at the same or adjacent work sites are considered to be one contract for the purpose of determining whether a project trust is required. This grouping of separate contracts is referred to as the *larger contract*.

Consequently, when determining if a project trust account is required, the larger contract must be used as the basis for determining eligibility, not each separate contract. For example, the total contract price for the larger contract and the total number of residential living units provided for under the larger contract would apply. However, if the separate contracts are entered into as a result of separate tender processes, then the contracts are assessed individually in line with the tender processes.

SUBCONTRACTS WITH RELATED ENTITIES

Subcontractors are generally exempt from establishing project trusts.

However, subcontracts may require a project trust when the following criteria are met:

1. the subcontract is a first tier subcontract for a head contract,
2. a project trust is required for the head contract,
3. the subcontractor is a beneficiary of the project trust for the head contract, and
4. the subcontractor is a *related entity* for the contracted party for the head contract.

Note: A subcontract that meets the above criteria will be referred to in this guide as a 'related entity subcontract'.

Related entities fall into a broad range of categories. The contracted party and a subcontractor will be related entities if:

- they are members of the same *family*
- they are related bodies corporate
- one party is an individual and the other is a corporation – where the individual (or a member of their family) is a majority shareholder, director or secretary of the corporation or a related body corporate of the corporation

- one of the parties is a trustee of a trust – where the other party (or a related entity) is a beneficiary of the trust
- for trustees of two or more trusts –
 - » one party is a beneficiary of both trusts, or
 - » one party is a beneficiary of one trust, and a related entity is a beneficiary of the other trust.

Additionally, two persons can be related entities based on their common interests in a land holding trust.

A family member is taken to be the following:

- the party's spouse
- for the party or their spouse, their:
 - » parent
 - » grandparent
 - » brother, sister, aunt, uncle, nephew or niece
 - » child
 - » grandchild
- the spouse of a family member (for example, a brother's spouse)

If a related entity subcontract is eligible for a project trust, the subcontractor will be its trustee and must comply with all legislated project trust requirements. The related entity subcontractor will remain a beneficiary of the project trust for the head contract.

ACTION REQUIRED FOR RELATED ENTITY SUBCONTRACTS

There are notification obligations that apply to alert the QBCC of a related entity relationship between the contracted party and the subcontractor.

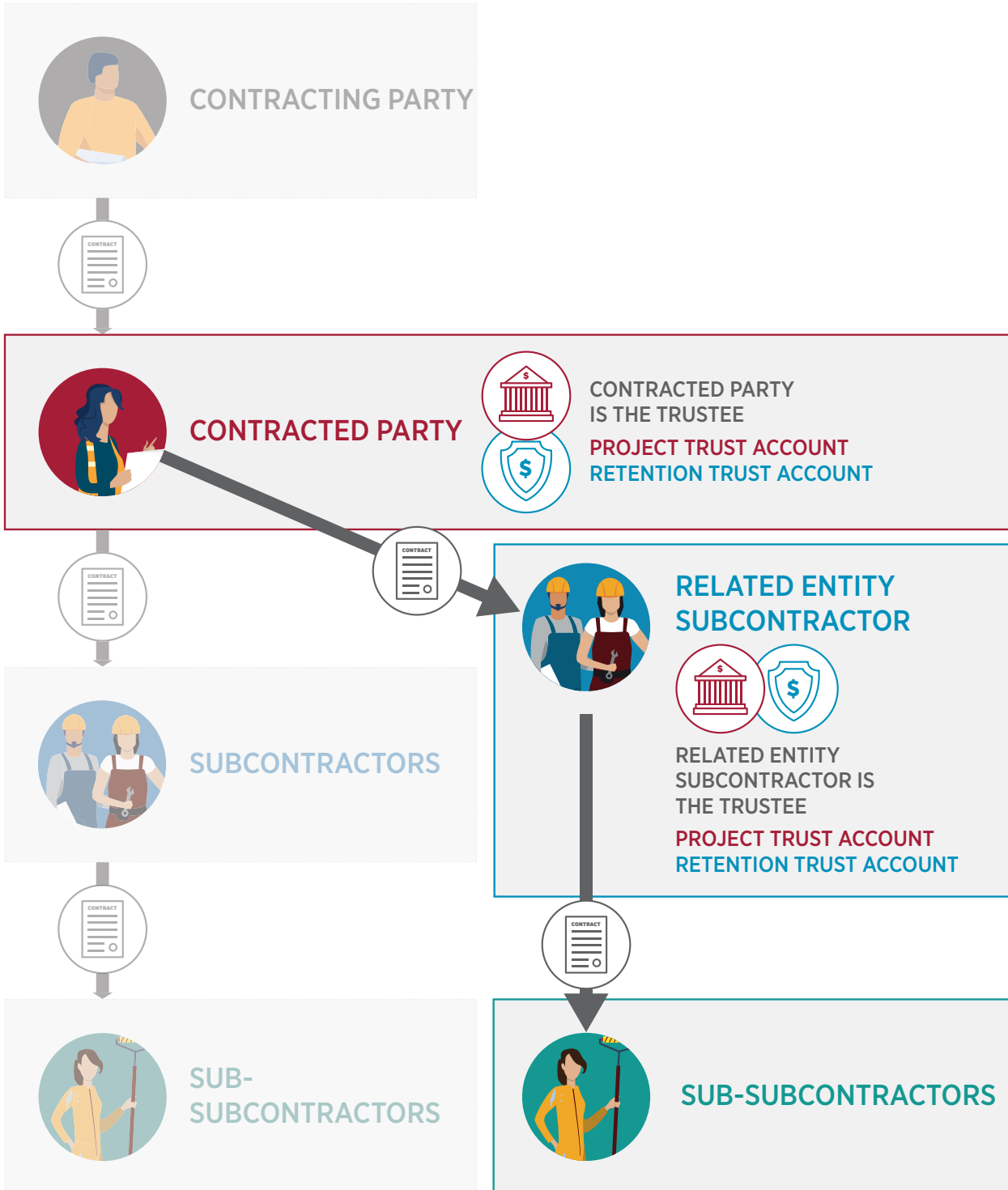
The contracted party for the head contract must inform the QBCC about entering into a subcontract with a related entity within 5 business days after entering into the subcontract. A notice must be given to the QBCC using one of the following approved ways:

- Online (myQBCC) submission – Related Entity Notification, OR
- Manual submission – FORM TA3 – Notice of Related Entities, available from the QBCC's website and QBCC service centres

The contracting party (principal) also has an obligation to inform the QBCC if they know, or ought reasonably to know, that a subcontractor beneficiary is a related entity to the contracted party (head contractor). The contracting party must notify the QBCC within 5 business days of becoming aware, or ought reasonably to have become aware, of the matter using one of the following approved ways:

- Online (myQBCC) submission– Related Entity Notification, OR
- Manual submission – FORM TA3 – Notice of Related Entities, available from the QBCC's website and QBCC service centres

RELATED ENTITY DIAGRAM





PART B – ESTABLISHING A PROJECT TRUST

The project trust is established when the first of the following events occurs:

- the contracting party pays the contracted party an amount under the contract
- the contracted party pays a subcontractor beneficiary for subcontracted work under the contract
- a deposit is required by law into the project trust account.

The contracted party to an eligible contract becomes the trustee of the project trust once the trust is taken to be 'established'. This is important as a trustee's obligations commence from the point of 'establishment', regardless of whether the account has yet been opened.

The trustee has special responsibilities for the administration of the project trust. These responsibilities are stipulated by law.

Note: Unlike other types of trusts, trust deeds and other documentation are not required to establish the trust or to establish the beneficial interest in trust amounts. This is because the trust over amounts held is established by the BIF Act (created by statute) making them statutory trusts.

HOW TO OPEN A PROJECT TRUST ACCOUNT

If a project trust is required for a contract, the trustee must ensure a project trust account is opened. For each eligible contract, only one project trust account must be held.

A project trust account must meet certain requirements in order to be compliant.

When must a project trust account be opened?

The contracted party/trustee has 20 business days after they enter into the first subcontract to open a project trust account. The eligible contract may state a date by which the project trust account must be opened, however this date must be at least 20 business days from the contract date.

If a project trust is required because of a contract variation or amendment, and the first subcontract was in place prior to that amendment, the contracting party/trustee has 20 business days to open the account after the contract amendment was agreed.

What are other requirements when opening a project trust account?

A project trust account must be opened at an *approved financial institution* and the account cannot be a virtual or subordinate account.

An approved financial institution is a financial institution approved by the QBCC for keeping trust accounts. A list of all [approved financial institutions](#) is published on QBCC's website.

When opening the project trust account, the trustee must ensure the account name includes the trustee's name and the word 'trust'.



ACTION REQUIRED BEFORE ENTERING INTO SUBCONTRACTS

The contracted party/trustee is responsible for ensuring each subcontractor is given written notice about the use of a project trust account for making payments to the subcontractor. The timeframe for giving this notice depends on whether the project trust is already established when the subcontract is entered into:

- if the project trust is established when the subcontract is entered into with a particular subcontractor – before the contracted party and the subcontractor enter into a subcontract
- if the project trust has not yet been established when the subcontract is entered into with a particular subcontractor – within 10 business days after the trust is established
- if a project trust is not required until after an amendment of the contract, and the contracted party entered into a subcontract for the contract before the amendment of the contract – within 10 business days after opening the project trust account.

The notice must include the following:

- a statement advising a project trust will be used for making payments
- the project trust account's:
 - » name
 - » account number
- the financial institution's:
 - » name
 - » BSB (identifying number)
- Information to identify the contract to which the project trust relates.

The notice can be given to subcontractors in a way determined by the trustee, however it must be in writing, for example:

- as information included in the subcontract
- by email to the subcontractor
- using a template form.

An example 'template' notice will be available shortly from QBCC's website.



ACTION REQUIRED AFTER OPENING A PROJECT TRUST ACCOUNT

After opening the project trust account, the trustee must give notice to the contracting party and to QBCC within 5 business days .

The notice to the contracting party about the opening of the project trust account must include:

- the trustee's name
- the project trust account's:
 - » name
 - » account number
- the financial institution's:
 - » name
 - » BSB (identifying number)

The notice to the QBCC about the opening of the project trust account must be given to the QBCC using one of the following approved ways:

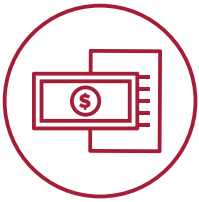
- Online ([myQBCC](#)) submission – Trust Account Notification, or
- Manual submission – [FORM TA1 – Notice of Trust Account Opening](#), available from QBCC's website and QBCC service centres.

Information about the project trust will be published on QBCC's website, based on the information provided by the trustee. This register is publicly accessible at QBCC's website.

Should a person fail to open a project trust account when required, the contracting party is obliged to report the matter to the QBCC. Notification must be given to QBCC using one of the following approved ways:

- Online ([myQBCC](#)) submission – Trust Account Complaint, or
- Manual submission – [FORM TA6 - Trust Account Complaint](#), available from QBCC's website and QBCC service centres.





PART C – ADMINISTERING A PROJECT TRUST ACCOUNT

PROJECT TRUST ACCOUNT TRANSACTIONS

There are certain requirements for how payments into, and out of, the project trust account may be made.

The trustee must ensure that only methods of transfer that create an electronic record can be used for project trust account transactions.

Interest earned and deposited into the account, and fees charged and withdrawn from the account by the financial institution are allowable by the trust account laws, provided compliant recording of these amounts is made. Trustees are not entitled to recover payment for administration or bank fees from a beneficiary or from funds held in trust.

Payments into a project trust account

Only amounts related to the contract for which the project trust is required may be paid into and held in the project trust account. Amounts owed under other contracts and/or for different projects must not be paid into the project trust account.

Any interest credited to the project trust account is considered to be lawfully deposited into the account.

Payments made by the contracting party (the owner / principal)

All amounts due and payable by the principal / owner to the trustee for the contracted work must be paid only into the project trust account, not the trustee's personal or business account or any other payment destination.

An amount is not required to be deposited into the project trust account if (i) the amount is withheld because of a 'payment withholding request' from a subcontractor, (ii) the amount is paid directly to a person in connection with a 'subcontractors charge', (iii) the amount is paid into court, (iv) the amount is due to be paid before the trust was established, or (v) situations where the contracting party has a reasonable excuse.

Payments made by the trustee into the trust account

The trustee may only deposit amounts into the project trust account that are to:

- pay a subcontractor beneficiary an amount the contracted party is liable to pay the beneficiary in connection with its subcontract (i.e. topping up the account)
- to transfer an amount paid by the contracting party incorrectly (e.g. paid to an incorrect account)
- repay an amount withdrawn from the account in error.

Withdrawals from a project trust account

An amount must only be withdrawn¹ from the project trust account if it is for the purpose of paying a beneficiary an amount they are entitled to be paid. This includes:

- Paying a subcontractor an amount the contracting party is liable to pay to the subcontractor in connection with its subcontract
- Depositing an amount into the retention trust account for a subcontractor beneficiary
- The trustee paying themselves but only to the extent the contracted party is not also liable to pay a subcontractor beneficiary for the same work;
- Returning an amount paid in error by the contracting party;
- Making payment relating to the contract in accordance with an adjudication decision or a decision of a court.

The trustee may also withdraw an amount equal to the interest earned on the account but not more than once every twelve months; and may withdraw the interest when transferring the account to a new financial institution and when dissolving the trust.

Should the trustee make an unauthorised withdrawal, it must repay such amounts as soon as practicable after becoming aware the withdrawal is unauthorised.

Payments to subcontractor beneficiaries

All subcontractor beneficiaries must be paid only from the project trust account.

This obligation applies whether or not sufficient funds are held in the project trust account at the time the amount is due to be paid. Should there be insufficient funds on the day that payment is due to a subcontractor, the trustee will be required to top up the project trust account with its own funds (see below).

Payments must be deposited into the financial institution account nominated by the subcontractor beneficiary. Only an account controlled by the subcontractor beneficiary can be nominated (i.e. the account cannot be in the name of another person or entity other than the subcontractor beneficiary). If the subcontractor beneficiary themselves needs to have a project trust account for their subcontract, then the account nominated must be that project trust account.

Notice of subcontractor payments

When a subcontractor is paid an amount from the project trust account (including if an amount is paid into the retention trust account on behalf of the subcontractor) they must be given written notice confirming details of the payment. It must be given to the subcontractor beneficiary within 5 business days after making the withdrawal.

The notice about a withdrawal to make a payment to a subcontractor beneficiary must include the following information:

- the amount that was or is to be paid to the beneficiary
- identification of the payment claim for the payment, if any
- the name of the account (the payment account) the payment was or is to be paid to
- the BSB (identifying number) of the financial institution where the payment account is kept
- the payment account's account number
- the date the payment was or is to be paid.

The notice about a withdrawal to deposit an amount in a retention trust account for the benefit of a subcontractor beneficiary must include the following information:

- the amount to be deposited in the account
- identification of the payment claim for the deposit, if any
- the name of the account (the deposit account) into which the deposit is to be made
- the BSB (identifying number) of the financial institution where the deposit account is kept

¹ Withdrawals include circumstances where:

- the trustee authorises another person to make the withdrawal, or
- the trustee knowingly contributes to the withdrawal being made.

- the deposit account's account number
- the date the amount was or is to be deposited into the deposit account
- the total retention amounts held in the account, when the notice is given, for the beneficiary under the contract to which the withdrawal relates.

The notices can be given to a subcontractor in a way determined by the trustee, for example:

- as remittance advice
- by email to the subcontractor
- using a template form

Payments to the trustee

The trustee is a beneficiary and is also paid from the project trust account.

However, the trustee must only pay itself if sufficient funds will remain available in the account to pay what they are liable to pay² to subcontractor beneficiaries at the time of the withdrawal.

The trustee is not entitled to be paid its costs for fees or administering the project trust from the funds held in trust or from project trust beneficiaries.

The trustee is, however, entitled to receive all interest earned on amounts held in the project trust account. The trustee can withdraw interest amounts only:

- once every 12 months,
- when dissolving the project trust, and
- if the withdrawal will not prevent the full payment of any other amount that must be paid from the account.

Dealing with situations where there are insufficient funds to pay subcontractors

Payments received from the principal / owner may not occur on the same payment cycles and timeframes as payments to subcontractors. Therefore a situation may arise where there are insufficient funds in a project trust account to pay, in full, all amounts due to be paid to subcontractors.

Shortfalls (insufficient funds)

A *shortfall* occurs if there is an insufficient amount available in the project trust account to pay an amount due to be paid to a beneficiary.

The trustee must cover any shortfall in the project trust account by topping up the account with an amount equal to the shortfall. This must be done to ensure payments due to be paid to the subcontractor can be made (and to avoid the project trust account becoming overdrawn³ or the payment defaulting).

Proportional payments to multiple subcontractors

If the trustee is unable to top up the trust account with an amount equal to the shortfall they will not only have committed an offence, but will also need to make payments using a particular formula for the duration of the shortfall. Proportional (or 'pro rata') payments must be made to the subcontractor beneficiaries using the following formula:

Amount to be paid to Beneficiary X = $A \times B$
 where
 $A = \text{Amount due to Beneficiary X} \div \text{total amount due to all subcontractor beneficiaries}$
 $B = \text{Amount available in trust account (\$)}$

2. Liable to pay in this context includes monies owing, but not yet due for payment.
 3. Note that financial institutions are required to report overdrawn accounts to QBCC.

For example, if one subcontractor beneficiary is due to be paid \$50,000 and another is due to be paid \$30,000, but only \$40,000 is available, the beneficiaries are to be paid \$25,000 and \$15,000 respectively.

The trustee will also need to inform QBCC that a pro-rata payment has been made as soon as practicable after doing so using the approved way. QBCC must be advised by completing and submitting a [FORM TA4 - Notice of Insufficient Payment Amount](#).

It is important to understand that the requirements about proportional / pro-rata payments do not relieve the contracted party from its liability to pay all subcontractor beneficiaries in full, and the subcontractor may be able to take action, such as adjudication or lodging a complaint with the QBCC, to recover unpaid amounts.

MAINTAINING TRUST RECORDS

The trustee is responsible for keeping certain trust records and copies of related documents, in accordance with statutory requirements.

Trust account ledger

For each project trust, the trustee is required to keep an individual project trust account ledger. This ledger must be capable of providing separate information for each beneficiary.

A separate trust accounting guideline is available which provides detailed information about maintaining the trust account ledger. However the following information provides an overview of the legal requirements in relation to the keeping of a trust account ledger:

- All deposit and withdrawal transactions affecting the project trust account must:
 - » be recorded in the trust account ledger
 - » be listed in chronological order of the date the transaction occurred
 - » be recorded in the trust account ledger within 5 business days of occurring.
- For each transaction, the following information must be recorded:
 - » transaction date
 - » a unique identifier for the transaction (for example, transaction number)
 - » transaction amount
 - » associated beneficiary details and amount to which the beneficiary is entitled for the transaction
 - » reason for the transaction
 - » the balance of the amount held in trust for each beneficiary after each transaction.

Record of deposits and withdrawals

- The record of deposits and withdrawals for the project trust account must be a consolidated record, which lists the transactions in chronological order of the date the transactions occurred.
- The record of deposits and withdrawals for the project trust account must include the following information for each deposit or withdrawal:
 - » date of the deposit or withdrawal
 - » a unique identifier for the deposit or withdrawal (for example, transaction number)
 - » either the payment claim details or other reason for the deposit or withdrawal
 - » deposit or withdrawal amount
 - » for a deposit – the entity that made the deposit
 - » for a withdrawal – the beneficiary or other person for whom the withdrawal was made, including the following information for the account to which the amount of the withdrawal was deposited into:
 - account name
 - BSB (that is, the identifying number of the financial institution)
 - account number
 - » the balance of the project trust account after the deposit or withdrawal is made.

Keeping other trust records

There are other records the trustee is also required to keep in relation to the project trust:

- Each contract for which the trust is required
- Payment claims (including any supporting statements)
- Payment schedules given by or to the trustee, including information used to support the payment schedule
- Documents relating to contractual variations or amendments
- Financial institution statements for the project trust account
- *Bank reconciliations* for the project trust account, including information used to prepare the bank reconciliations
- *Trust account ledger trial balance statements*, including all information used to prepare the statements
- Records of deposits and withdrawals
- Records of changes to any of the following records for the project trust account, and the reasons for the changes, including correction of errors and inclusion of additional information –

- » a trust account ledger
- » a *trust account ledger trial balance statement*
- » a record of deposits and withdrawals
- » a bank reconciliation.

- Notices about withdrawals from, or deposits to, the project trust account, given by the trustee to subcontractor beneficiaries
- Copies of *account review reports* for the project trust
- If any abbreviations or codes are used in a project trust record – a document that explains the abbreviation or code in plain English.

Requirements for all trust records, including the trust account ledger

- All transactions are in Australian dollars.
- Any words used to explain a transaction are in the English language.
- The records are accurate records of the transactions affecting the trust account.
- Trust records are retained for at least 7 years
- Any computer system you use to store trust records must comply with the following requirements:
 - » It must be capable of producing a report about:
 - transaction details for a particular trust account for particular periods
 - the details of the transactions for a particular beneficiary.
 - » It must not be capable of deleting all or any part of:
 - a record of deposit or withdrawal for the project trust account
 - the trust account ledger for the project trust account.

BANK RECONCILIATION

The trustee is responsible for completing a monthly bank reconciliation for the project trust account. This bank reconciliation must be completed within 15 business days after the end of each month.

The purpose of the bank reconciliation is to reconcile:

- The financial institution statement for the project trust account with the record of deposits and withdrawals for the project trust account
- The record of deposits and withdrawals for the project trust account with the trust account ledger trial balance statement.



PART D – ENDING A PROJECT TRUST

Ending a project trust is not as simple as just closing the project trust account. There are prerequisites that must be met before the account itself can be closed.

When a project trust can be dissolved

The trustee can lawfully dissolve the trust only if:

- there are no longer any subcontractor beneficiaries for the trust, or
- only *maintenance work* remains to be completed under the contract.

A subcontractor is no longer considered to be a beneficiary once it is paid all amounts the contracted party is liable to pay it in connection with its subcontract.

Claiming to dissolve a project trust before these requirements are met (for example, by closing the project trust account while it is still required) is an offence.

The project trust account can be closed without the above requirements being met but only for the purpose of transferring the account to another financial institution in accordance with the requirements explained above. This is not taken to be dissolving the project trust.

How to dissolve a project trust

The project trust is dissolved by:

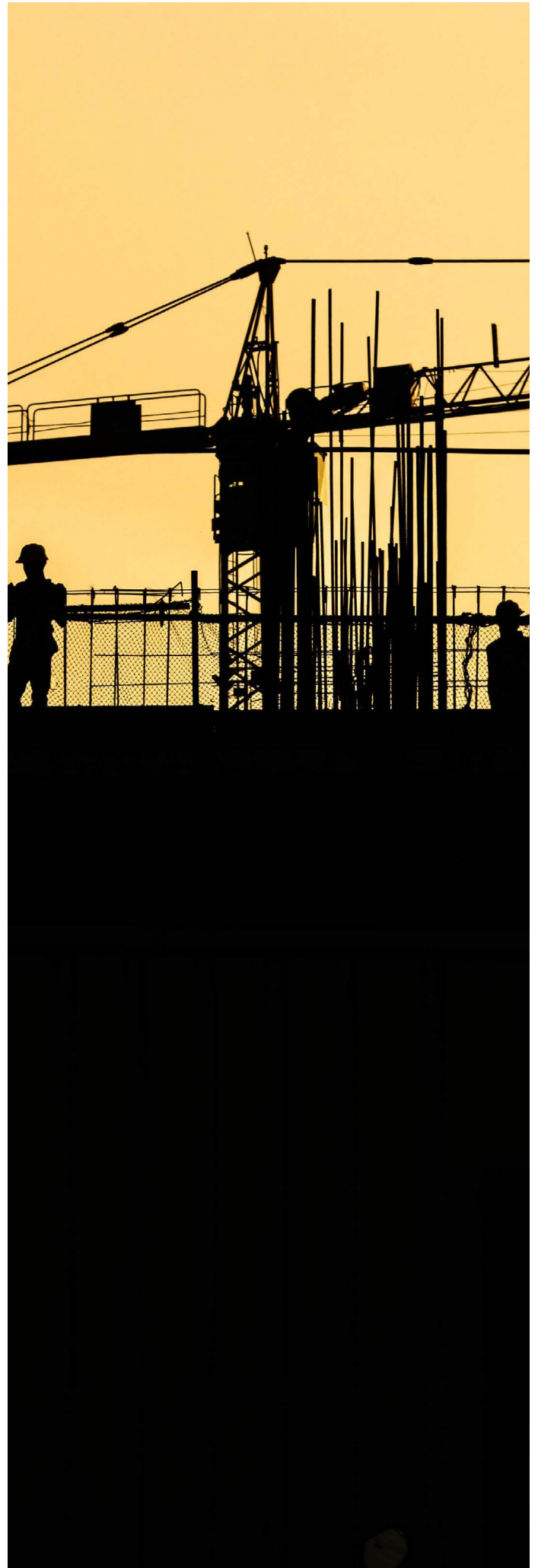
- closing the project trust account, and
- giving a written notice to QBCC.

When dissolving the project trust, the trustee may pay itself:

- any interest earned on amounts held in the project trust account (unless the withdrawal would prevent the full payment of another amount that must be paid from the account)
- any remaining amount in the account that is not owing to a subcontractor beneficiary

It is the responsibility of the trustee to ensure a notice providing details about the closure of the project trust account is given to the contracting party and to QBCC within 5 business days of closing the account. The notice must be given to QBCC using one of the following approved ways:

- Online ([myQBCC](#)) submission – Trust Account Notification, or
- Manual submission – [FORM TA2 – Notice of closing or changing trust account](#), available from QBCC’s website and QBCC service centres.





PART E – FURTHER INFORMATION ABOUT PROJECT TRUSTS

Some issues that may arise during the life of a project trust account require the trustee to take certain action in response.

Action required after changing the name of a project trust account

The trustee can change the name of the project trust account, provided the new name meets the naming requirements, i.e. it includes the word 'trust' and includes the name of the trustee. The trustee must give a notice providing details about changing the account name for the project trust account to the contracting party and to the QBCC within 5 business days. The notice must be given to QBCC using one of the following approved ways:

- Online ([myQBCC](#)) submission – Trust Account Notification, or
- Manual submission – [FORM TA2 – Notice of closing or changing a trust account](#), available from QBCC's website and QBCC service centres.

Action required after changing financial institutions

The trustee can transfer the project trust account to another approved financial institution. When transferring the account, the trustee must:

- only open the new project trust account at an approved financial institution
- transfer all amounts in the existing project trust account to the new account (with the exception of interest credited to the project trust account, which can be withdrawn and kept by the trustee)
- provide details about the transfer of the project trust account to the contracting party, the subcontractor beneficiaries and to the QBCC. The notice must be given to the QBCC using one of the following approved ways:
 - » Online ([myQBCC](#)) submission – Trust Account Notification, or
 - » Manual submission – [FORM TA2 – Notice of closing or changing trust account](#), available from QBCC's website and QBCC service centres.

The ability to transfer a project trust account from one financial institution to another does not change the requirement to have only one project trust account for each contract. To ensure compliance, the transfer process should be completed as soon as possible.

Responding to an information request from a subcontractor beneficiary

Current and former subcontractor beneficiaries can request the following information from the trustee:

- a statement of balance for the project trust account
- a copy of the transactions for the project trust account
- a copy of the trust records
- a copy of *supporting statements* given to the contracting party with the *payment claims* made by the trustee as the contracted party.

The request must be in writing. The information can only be obtained to the extent it relates to the beneficiary making the request.

The trustee is obligated to provide the requested information within 10 business days after being given the request, unless:

- the trustee has a reasonable excuse (which cannot include the ground that complying with the request might tend to incriminate the trustee or expose the trustee to a penalty)
- the information is already available to the person
- the information has not changed since it was previously given to the person.

The information provided to the beneficiary must be in writing, with any words used in the information to explain a transaction to be in the English language.

OTHER TRUSTEE POWERS, RESPONSIBILITIES AND LIMITATIONS

Investments

The trustee cannot invest the funds held in the project trust account in any form of investment. Note that earning interest on amounts held in the project trust account that is paid by the financial institution is not considered to be an investment, and is permitted.

Agents for the trustee

The trustee can employ or engage an agent to do any act relating to the project trust on their behalf. The trustee is responsible for all costs associated with employing or engaging an agent and these costs cannot be recovered from the funds held in the project trust or from its beneficiaries.

Despite the engagement of an agent to act on behalf of the trustee, the trustee remains liable for all acts and defaults of the agent. The law treats the agent's acts and defaults as if they are the trustee's acts and defaults.

Delegates for the trustee

The trustee can delegate any of the trustee's powers to a person resident in the State of Queensland (although power to delegate cannot be delegated). Any costs associated with the delegation of power cannot be recovered from the funds held in the project trust account or from its beneficiaries. Any documentation about the delegation must be kept for 7 years.

When powers are delegated, others will be able to rely on the delegate's exercise of powers as if it was the trustee exercising those powers, even if the delegate exercises:

- a different power from what they are delegated
- the power while the delegation is not in force
- the power after the delegation has been revoked.

The delegate's exercise of the trustee's powers are only invalid when the other person (who is relying on the delegated power) has actual notice that the delegate was not authorised to have that power.

Further details on delegating statutory powers is provided in section 27A of the *Acts Interpretation Act 1954*. Legal advice is recommended before appointing a delegate.

Supreme Court directions

There may be circumstances that arise where the judicial resolution of an issue in relation to the project trust is appropriate.

The trustee can apply to the Supreme Court for directions about:

- an amount held in trust
- the administration of the trust
- the exercise of their powers as trustee

A copy of the application must be given to all beneficiaries for the trust (unless otherwise directed by the Supreme Court).

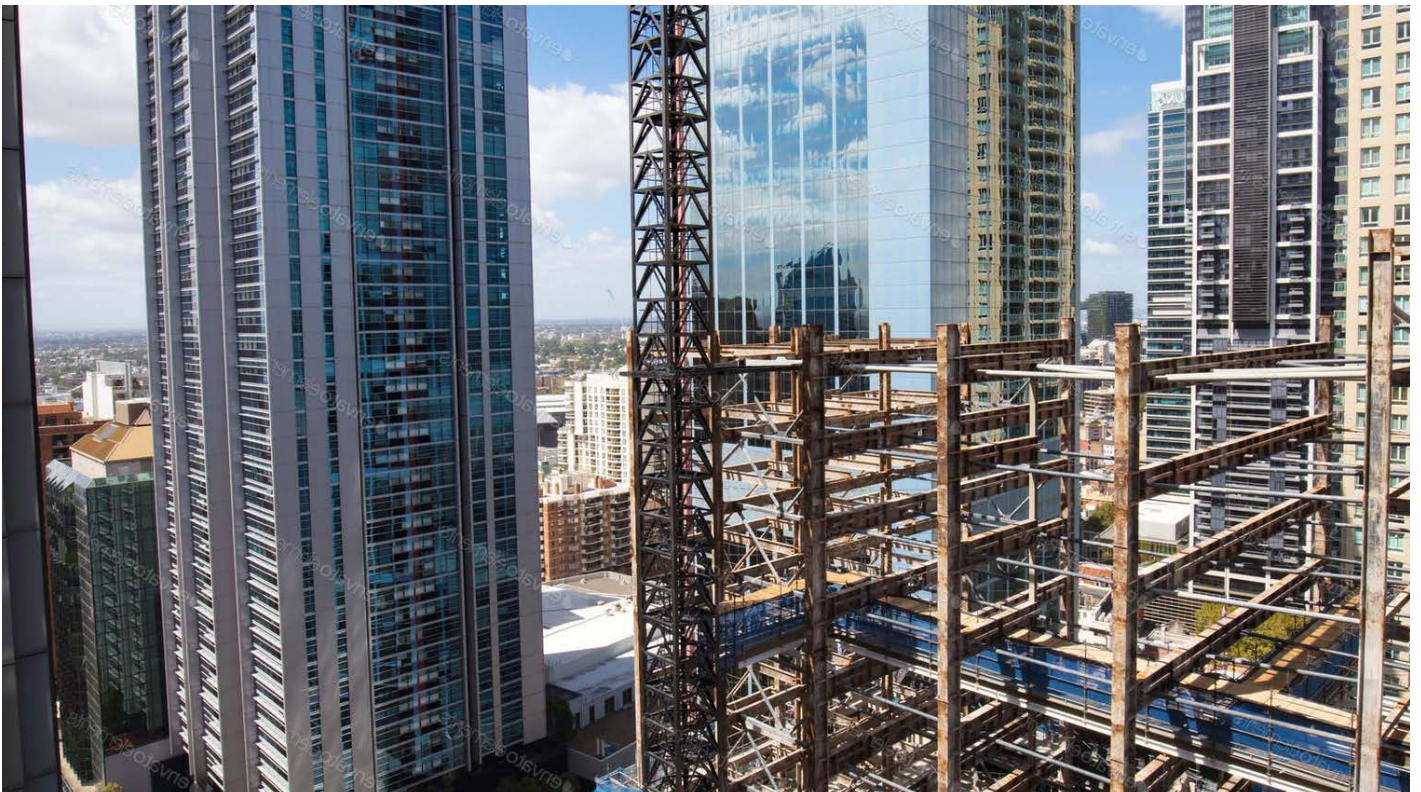
Legal advice is recommended before making any application to the Supreme Court.

Assignment of entitlement to amounts

The contracted party cannot assign any of its entitlements to an amount held in a project trust (that is, an assignment of this kind will be of no legal effect).

Trust funds protected

Amounts paid, or required to be paid, into a project trust account cannot be accessed for the benefit of a non-beneficiary creditor of the trustee, for example to recover a debt owed to them by the trustee (in any capacity).





PART F - GLOSSARY OF TERMS

Account review report

A report completed by an auditor and based on a review of a trust account, certifying the trustee has complied with their trust account requirements.

Approved financial institution

A financial institution approved by the QBCC for providing project trust account and retention trust account products for trustees.

Beneficiary

A person or entity with a beneficial interest in the property held in a trust. For a project trust, beneficiaries include the trustee and relevant subcontractors. For a retention trust, beneficiaries are contracted parties from which eligible cash retention amounts are withheld.

Business day

A day that is not a Saturday or a Sunday, a public holiday, special holiday or bank holiday at the place where work is carried out, or any day between 22-24 December, 27-31 December or 2-10 January.

Contract price

The amount (excluding GST) the contracted party is entitled to be paid (or a reasonable estimate) for the completion of work under the contract.

Contracted party

The party that has been engaged under a contract to carry out work. This is the head contractor for the head contract and the subcontractor for the subcontract.

Contracting party

The party that has engaged another party to carry out work under a contract. This is the owner, developer or principal for the head contract and the head contractor for the subcontract.

Eligible contract

A project trust contract OR a retention trust contract (depending on the context) that requires the establishment of a trust account.

Eligible cash retention amount

Retention amounts withheld by the contracting party in the form of cash. These amounts must be withheld within a retention trust account.

Establishment

Is a term used when a project or retention trust is in effect. There are specific steps that must be undertaken for establishment to occur.

Head contract

A contract for work that is not also a subcontract of another contract.

Head contractor

The contracted party for the head contract – can also be the contracting party for a subcontract if they subcontract all or part of the work to be carried out under the head contract.

Hospital and Health Service

A Hospital and Health Service established under the *Hospital and Health Boards Act 2011*, section 17. This is a consideration for eligibility for a project trust account.

Ledger

Book or computer software containing the accounts of the trust account administrator. A general ledger is a collection of all the asset, liability, owner's equity, revenue and expense accounts.

Maintenance work

Work that is required on an ongoing basis to help to prevent the deterioration or failure of a building. It does not include any refurbishments or replacements to enhance or extend the life of a building or testing, taking samples or restoring a sample site.

Project trust

A trust, primarily for the benefit of subcontractors, over (i) amounts paid for a project trust contract by the contracting party to the contracted party, (ii) amounts paid by the contracted party for the project trust contract to subcontractors, and (iii) required deposits into the project trust account.

Project trust account

An account which is held at an approved financial institution and through which a project trust is operated. All payment amounts under a project trust contract and its subcontract/s must be deposited into this account. Withdrawals from this account can only be used to pay beneficiaries amounts they are entitled to.

Project trust contract

A contract for which a project trust is required.

Project trust work

Particular types of work that are taken into consideration when assessing whether a contract requires a project trust.

Protected work

Particular types of work that, if included in a subcontract to the project trust contract, make the subcontractor a beneficiary of the project trust. The definition includes everything that is considered to be 'project trust work' but with additional types of work and some specific exclusions.

Reconciliation

A procedure that involves checking the accuracy of transactions recorded for a trust against the trust account bank statement. Monthly reconciliations are required for trust accounts.

Record of deposits and withdrawals

A consolidated record of deposits into a trust account and withdrawals from the trust account. This record forms part of the trustee's record keeping obligations.

Registered company auditor

An auditor registered under the *Corporations Act 2001* (search ASIC's Professional registers). Trustees are required to engage a registered company auditor to conduct a review of the trust account.

Related entity

A person is a related entity for another person if they have a particular family, corporate, trustee or common land holding trust relationship with the other person.

Related services

Particular types of services that, if included in a subcontract to the project trust contract, make the subcontractor a beneficiary of the project trust. The types of services include architectural, design, surveying or quantity surveying services, building, engineering, interior or exterior design, landscaping advisory services and soil testing services.

Retention trust

A trust over eligible cash retention amounts which protect deposits made on behalf of the party/parties that will be entitled to the retention amounts.

Retention trust account

An account, kept at an approved financial institution, through which a retention trust is operated. It is the account into which all withheld cash retention amounts under an eligible contract are deposited by the contracting party and held until they are required to be released to the party/parties entitled to the amounts.

Retention trust contract

A withholding contract for which a retention trust is required.

Review period

The prescribed period of time for trust account reviews. For a retention trust, the review period is annually (from when the account was opened) and when the account is closed. There is currently no review period prescribed for a project trust. The QBCC may also specify a review period when directing a trust account review.

Special investigator

An investigator appointed by the QBCC to investigate a trustee's compliance with their legislative requirements in relation to trust accounts.

State authority

An agency, authority, commission, corporation, instrumentality, office or other entity particular established under an Act or by authority of the state for a public or State purpose. A State authority can also be a corporation owned or controlled by the State or local government or a Hospital and Health Service.

Subcontract

A contract that contributes to the completion of work under the head contract.

Subcontractor

A person who is required to carry out the work under a subcontract.

Trust

A relationship that arises when a person or other entity (the trustee) holds property on behalf of and for the benefit of a party/parties with a beneficial interest in the property (that is, the beneficiaries).

Trust account ledger trial balance statement

A record that outlines the balances of amounts held in trust for each beneficiary at the end of each month. This record is used as part of the monthly reconciliation process.

Trust account register

A register available on the QBCC website that displays trust accounts across the State.

Trust account review

A review of a trust account carried out by a registered company auditor who is independent of the trustee and not excluded from reviewing trust accounts. The auditor prepares and submits an account review report once the review is completed.

Trust records

Records that must be kept for at least seven years by a trustee in relation to a trust. Trust records must include an individual trust account ledger, a record of deposits and withdrawals and other documents relating to the trust account and trust project.

Trustee

The person or entity responsible for the trust. The trustee for a project trust is the contracted party for the project trust contract. The trustee for a retention trust is the contracting party for the retention trust contract.

Work

A general term used in relation to work performed under a contract.

Includes labour, the supply of materials, the manufacture or fabrication of a specific component and the supply of any non-administrative labour for work under a contract.

Excludes the delivery of goods, plant or machinery hire (that is not connected to labour under a contract), labour performed under a service contract or labour relating to testing materials or taking measurements.

Need more information?

Visit qbcc.qld.gov.au or call us on 139 333.

