

TRUSTEE GUIDE: RETENTION TRUSTS

BUILDING INDUSTRY FAIRNESS
(SECURITY OF PAYMENT) ACT 2017



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INTRODUCTION

Trust accounts were first introduced to Queensland's building and construction industry in 2018, in the form of project bank accounts (PBAs), as a means to protect subcontractor payments. *The Building Industry Fairness (Security of Payment) Act 2017* (the BIF Act) established this trust account framework and its associated requirements.

Changes to the BIF Act from 1 March 2021 introduced a new trust account framework which requires project trust accounts for certain (eligible) contracts and retention trust accounts for holding eligible cash retention amounts.

The requirements expand out to more sectors and more contracts in a phased approach and will be fully implemented as of 1 October 2025.

Where a trust account is required, there are specific processes and trust obligations that must be met by the person (the trustee) required to have the trust.

WHO SHOULD USE THIS GUIDE?

This retention trust guide is written to assist current and future trustees of retention trusts in understanding the trust requirements and meeting their obligations.

This guide provides general guidance and information about retention 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 retention trust, professional advice should be sought.

FURTHER RESOURCES AVAILABLE TO YOU

- [Trustee guide—project trusts](#)
- [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. (e.g. if the contract is amended or the first subcontractor is engaged). In such cases, if a PBA has not yet been opened, the contractor is able to transition to the new trust account framework simply by opening a project trust account (and a retention trust account if applicable). However, if a PBA has already been opened for a contract, and it was not transitioned to the new framework by 31 August 2021, it must remain a PBA and continues to be bound by the PBA requirements as in force at the time the contract was entered.

HOW TO USE THIS GUIDE

This guide provides information on:

- determining whether a retention trust is required
- how and when to open a retention trust account
- how to use a retention trust account
- how to end a retention trust
- other trustee obligations, powers and limitations
- oversight functions of the Queensland Building and Construction Commission (QBCC).

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

Appendix 1 provides a checklist covering the steps required from opening to closing a retention trust account.

Appendix 2 provides a checklist detailing the notices a trustee is required to give.

Background

What is a retention?

A retention amount is an amount that is withheld from a payment to a contracted party. Its purpose is to give financial protection to the contracting party in relation to the need to correct defects or otherwise secure the performance of work under the contract. Retention amounts are typically released following practical completion and/or after the end of a defects liability period in accordance with the contract.

What is a retention trust?

Retention trusts are statutory trusts formed under legislation. A trust describes the relationship which arises when a person (the trustee) holds property (in this case retention amounts) on behalf of and for the benefit of another person/s (the beneficiaries).

In addition to the protections of the trust account, retention amounts withheld are also subject to a charge (a statutory interest) in favour of the contracted party (i.e. the person from whom the amount has been withheld) to secure its release if and when the party becomes entitled to it. However, the charge is released for any amount the contracting party becomes entitled to be paid (e.g. to correct defective work).

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

What is a retention trust account?

A retention trust account is an account where eligible *cash* retention amounts withheld from contractors are held until due to be paid.

The trust account is separate to the contracting party's personal or business account and keeps the retention funds separate from project funds and the contracting party's other cash flow.

Who is the trustee?

The trustee is the person responsible for the trust – namely, the contracting party who is withholding retentions from the contracted party's/parties' payments.

Who are the beneficiaries?

Due to the nature of retention amounts and the contractual arrangements determining their release and/or payment, both the contracting party and the contracted party have a beneficial interest in the amounts held in the retention trust.

For a retention trust required for eligible retention amounts::

- Contracted parties become beneficiaries when retention amounts are withheld from their payment under a retention trust contract.
- The trustee is also a beneficiary and may become entitled to amounts in the trust account in accordance with the contract.

What is the role of the QBCC for trust accounts?

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

- Receiving notices about trust accounts and maintaining a public 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
- 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.



PART A—HOW TO DETERMINE WHETHER A RETENTION TRUST IS REQUIRED

Is a retention trust required?

Retention trust requirements apply if a contracting party withholds cash retention amounts under a contract (i.e., the withholding contract) that meets the following criteria:

- if it is a head contract, the contract also requires a project trust
- if it is not a head contract, the related head contract requires a project trust
- the contracting party is specified by contract tier for the relevant phase of the roll-out (see ‘Who is the contracting party’ on this page for details of the roll-out).

Cash retention amounts withheld on contracts that meet the above criteria must be held in a retention trust account. These are referred to as eligible cash retention amounts.

Once a retention trust is required, the contracting party must open a retention trust account if they don’t already have one and all cash retentions they withhold (including any they have already withheld and have not yet released) under the contract must be deposited into it.

A contracting party only needs to have **one** retention trust account and this one account may hold cash retention amounts across multiple contracts for which retention trusts are required. However, should a trustee wish, they may have multiple retention trust accounts.

Who is the contracting party?

The contracting party is the party to the contract who is requesting the work to be carried out and, in accordance with the contract, is withholding the cash retention amount from the progress payment.

A retention trust account is required if the contracting party is:

- **from 1 January 2022** a private sector principal (e.g. owner or developer) who is withholding cash retentions from the head contractor on a contract that requires a project trust (i.e. a project trust contract; and
- from 1 March 2021 a head contractor for a project trust contract who is withholding cash retentions from first-tier subcontractors; and
- from 1 October 2025, a subcontractor downstream from a project trust contract who is withholding cash retentions from any of their subcontractors.

Note: a contracting party who is a Queensland government department, a state authority (including a Hospital and Health Service), the Commonwealth or a local government is exempt from the requirement to establish a retention trust.

For the purpose of determining eligibility for a retention trust, any reference to a head contractor includes a subcontractor if the subcontractor and head contractor are related entities.

The table below identifies circumstances in which a retention trust is required and who in the contract chain will be the trustee.

CONTRACTING PARTY – BECOMES TRUSTEE	CRITERIA	RETENTION TRUST REQUIRED
Head contractor	<ul style="list-style-type: none"> • a project trust is required for the head contract • withholding cash retention amounts from subcontractors. 	Yes
Private sector principal (e.g. owner/ developer)	<ul style="list-style-type: none"> • contracting party for a head contract that requires a project trust • withholding cash retention amounts from the head contractor on or after 1 January 2022. 	Yes
Related entity subcontractor	<ul style="list-style-type: none"> • a project trust is required for the head contract • subcontractor is a related entity to the head contractor and is required to establish a project trust • withholding cash retention amounts from sub-subcontractors. 	Yes
Subcontractor (any tier)	<ul style="list-style-type: none"> • a project trust is required for the head contract • withholding cash retention amounts from sub-subcontractors on or after 1 October 2025. 	Yes

Note: A contracting party that is the State, the Commonwealth, a State authority or a local government is excluded from the requirement to establish a retention trust

This table only applies to contracts entered into from 1 March 2021.



PART B—ESTABLISHING A RETENTION TRUST

The retention trust is established by the contracting party withholding the retention amount from payment (regardless of whether it is deposited/held in the retention trust account).

The contracting party withholding an eligible cash retention amount becomes the trustee of the retention trust once the trust is taken to be 'established'. This is important as trustee obligations commence from the point of 'establishment', regardless of whether the account has been opened.

The trustee has special responsibilities for the administration of the retention 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 retention trust account

If a retention trust is required for an eligible retention amount, the trustee must ensure a retention trust account is opened at an approved financial institution. Approved financial institutions have been approved by the QBCC to provide trust accounts required under the BIF Act. The QBCC keeps a [register](#) of approved financial institutions.

Only one retention trust account is required to be opened to hold retentions across relevant project trust contracts and/or for related subcontracts. However, the contracting party may choose to open additional retention trust accounts should they wish. A contracting party must not use a retention trust account to hold amounts withheld under contracts that do not require a retention trust.

When must a retention trust account be opened?

A retention trust account must be opened before the contracting party withholds any 'eligible' retention amounts from payment.

If a retention trust is required and a retention amount was withheld from payment before the requirement was triggered (e.g. a trust wasn't required until a contract variation), the following must occur:

- a retention trust account must be opened (if the contracting party doesn't already have one) and
- the retention amount must be deposited into the retention trust account within 5 business days of the retention trust being required.

A trustee does not need a retention trust account for each contract. They may have one retention trust account for all retention amounts across multiple contracts, so long as each contract requires a retention trust.

Where must a retention trust account be opened?

A retention trust account MUST be opened at an [approved financial institution](#). An approved financial institution is a financial institution approved by the QBCC for providing trust accounts required under the BIF Act.

When opening the retention trust account, the account name must include the trustee's name and the word 'trust'.

Is training required?

From 1 January 2022, retention trust training must be completed within prescribed timeframes by the trustee for a retention trust or a person/s nominated by the trustee to administer the retention trust account (e.g. a director, financial officer or contract administrator).

Multiple persons may complete the training per trustee. A person only needs to successfully complete the training once (not once per trust account). The timeframes for training completion are either:

- by the end of February 2022, if an eligible retention amount is withheld OR a person nominated to administer the trust account on or before 31 January 2022
- otherwise, within 20 business days after withholding the first eligible retention amount (for first person completing training for the trust) OR within 20 business days after nominating an administrator (if the trustee or a previous nominee has already completed training).

Action required after opening a retention trust account

After opening the retention trust account, the trustee must give a notice providing certain details about the opening of the account 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 TA1 – Notice of opening trust account](#), available from [QBCC's website](#) and QBCC service centres.

Information about the retention trust will be published on QBCC's website, based on the information the trustee provides. This [register](#) is publicly accessible at qbcc.qld.gov.au.

Action required before withholding a retention amount

The trustee is responsible for ensuring each contracted party is given written notice about the use of a retention trust for withholding retention amounts under the contract.

The notice must be given to the contracted party before the retention amount is withheld from payment.

If, however, the retention trust account was not opened at the time the retention amount was withheld (due to the retention trust account not previously being required) – the notice must be given to the contracted party within 5 business days after the retention trust account is opened.

The notice must include the following information:

- the retention trust account's:
 - » name
 - » account number
- the financial institution's:
 - » name
 - » BSB (identifying number)
- information identifying the contract to which the retention trust relates.

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

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

An example 'template' notice will be available soon from [QBCC's website](#).



PART C—ADMINISTERING A RETENTION TRUST ACCOUNT

Retention trust account transactions

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

The trustee must ensure that deposits and withdrawals are made using only methods that create electronic records of the transfer.

Payments into a retention trust account

All 'eligible' cash retention amounts **MUST** be held in a retention trust account.

Retention amounts withheld under unrelated withholding contracts and/or for projects that do not require a retention trust must **NOT** be paid into the retention trust account.

Any retention amount a trustee withholds from payment under a retention trust contract must be deposited immediately into the retention trust account (or within 5 business days after opening the account if the retention amount was withheld before the retention trust was required).

Payments from another trust account into the retention trust

If the trustee is a head contractor who also must have a project trust for payments to subcontractor beneficiaries, the retention amount will originate from the project trust account and be transferred into the retention trust account. This must occur at the same time or immediately following the progress payment to the subcontractor.

If the trustee is not a head contractor, the retention amount being withheld will originate from the business or trading account of the contracting party.

There are, however, certain scenarios where a subcontractor will be trustee for a project trust and a retention trust (e.g. a related entity subcontractor). In these situations, any retention amounts withheld from their sub-subcontractors will need to be transferred directly from their project trust account to their retention trust account.

Withdrawals from a retention trust account

An amount must only be withdrawn¹ from a retention trust account in certain circumstances. They are:

- paying a contracted party as a beneficiary a retention amount that has been withheld from them and they are entitled (as per the terms of the contract) to be paid
- the trustee paying themselves to correct defects or omissions in the contracted work or otherwise to secure, wholly or partly, the performance of a contract (as per the terms of the contract) and only after the end of the defects liability period.

- the trustee paying another person to correct defects or omissions in the contracted work as per the terms of the contract (at any time before or after the end of the defects liability period).

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 interest when transferring the account to a new financial institution or 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.

Payment of retention amounts to beneficiaries

All beneficiaries must be paid their retentions only from the retention trust account.

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

Payments must be deposited into the financial institution account nominated by the beneficiary. If the beneficiary themselves needs to have a project trust account for their contract and the account is still open, then the account nominated must be that project trust account.

Notice to beneficiaries about deposits and withdrawals

The contracted party beneficiary must be notified of particular deposits and withdrawals affecting the retention trust account as it relates to retention amounts in which the party has a beneficial interest².

When a beneficiary 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 deposit or withdrawal.

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

- payment amount
- payment claim reference number
- payment account name
- BSB
- account number
- date of payment.

1. Withdrawals include circumstances where:

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

2. A contracted party has a beneficial interest in the retention amount that was withheld from them and to which they are or may become entitled to be paid as per the terms of the contract.

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
- 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](#) (available on [QBCC's website](#)).

When a retention amount is deposited into a retention trust account after being withheld from the contracted party, they must be given written notice about the deposit within 5 business days.

The notice about the deposit to the retention trust account must include the following information -

- the amount that was or is to be deposited in the account
- identification of the payment claim for the deposit, if any
- the name of the account
- the name of the financial institution where the account is kept
- the identifying number of the financial institution (BSB) where the account is kept
- the account number at the financial institution for the deposit account
- the date the amount is deposited in the account
- the total retention amounts held in the account, when the notice is given, for the contracted party under the contract to which the deposit relates

When a retention amount is withdrawn from the retention trust account, the contracted party from whom the amount was originally withheld and who has a beneficial interest in the retention amount, must be given written notice about the withdrawal within 5 business days. This notice applies whether the withdrawal is to pay the retention amount to:

- the contracted party (as beneficiary) or
- the contracting party (the trustee) or
- another person to correct defects or omissions

When the withdrawal is to pay the contracted party, the notice about the withdrawal of the retention amount from the retention trust account must include the following information -

- the retention amount that was or is to be withdrawn from the account
- identification of the payment claim to which the withdrawal relates, if any

- the name of the account the amount has or will be paid to
- the identifying number of the financial institution (BSB) where the payment account is kept
- the account number, at the financial institution, for the payment account
- the date the amount is to be withdrawn
- the total retention amounts held in the retention trust account, after the withdrawal, for the contracted party under the contract to which the withdrawal relates

When the withdrawal is to pay someone who is not the contracted party, the notice about the withdrawal of the retention amount from the retention trust account must include the following information:

- the retention amount that was or is to be withdrawn from the account
- the reason for the payment (example— payment made to another contractor to correct defects in the contracted work)
- the date the amount is to be withdrawn
- the total retention amounts held in the account, after the withdrawal, for the contracted party under the contract to which the withdrawal relates

Dealing with situations where there are insufficient funds (shortfalls) to pay beneficiaries

A *shortfall* is said to occur if there is an insufficient amount available in the retention trust account to pay an amount due to be paid to a beneficiary of the trust.

It is the trustee's responsibility to cover any shortfalls in funds held in the retention trust account by topping up the account with their own funds. The trustee must immediately deposit an amount equal to the shortfall into the retention trust account to ensure payment can be made to the beneficiary before the due date (and to avoid the retention trust account becoming overdrawn or the payment defaulting).

Maintaining trust records

Trustees are responsible for keeping certain trust records and copies of related documents, in accordance with statutory requirements.

Trust account ledger

For each retention trust, the trustee is required to keep an individual retention trust account ledger. This ledger must be capable of providing separate information for each beneficiary and must enable convenient and proper audit of the transactions affecting the trust account.

As an overview:

- All deposit and withdrawal transactions affecting the retention 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 retention 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 retention 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 retention 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 retention 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 retention trust account
- *bank reconciliations* for the retention 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 retention 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 retention trust account, given by the trustee to subcontractor beneficiaries
- copies of *account review reports* for the retention trust
- records of the completion of retention trust training
- if any abbreviations or codes are used in a retention trust record – a document that explains the abbreviation or code in plain English.

For all records, including the trust account ledger, the trustee must ensure:

- 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 used to store trust records –
 - » 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.
 - » must not be capable of deleting all or any part of:
 - a record of deposit or withdrawal for the retention trust account
 - the trust account ledger for the retention trust account.

Bank reconciliation

The trustee is responsible for completing a monthly bank reconciliation for the retention 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 retention trust account with the record of deposits and withdrawals for the retention trust account; and
- The record of deposits and withdrawals for the retention trust account with the trust account ledger trial balance statement.

Review of retention trust account

The trustee is required to engage a registered company auditor, under a reasonable assurance engagement, to carry out a review of the retention trust account, in accordance with statutory requirements.

What is a trust account review?

A trust account review is a review of a trust account to assess and report on the trustee's compliance with the requirements for the administration of the trust account.

The auditor completing the trust account review must prepare an account review report, stating their conclusion about whether the trustee complied with the requirements for the administration of the trust account during the review period.

If, when completing the trust account review, an auditor finds that the trustee has seriously and willfully or repeatedly failed to comply with the requirements for the administration of trust account, this must be reported to the QBCC with 5 business days of their finding. All non-compliance events and irregularities identified for the review period by the auditor, whether serious or not, are to be included in the account review report.

Who can be engaged to review a retention trust account?

They must be carried out by a registered company auditor³ who also meets the following criteria:

The registered company auditor must be independent of the trustee, meaning —

- the auditor is not an employee of the trustee
- the auditor is not an executive officer, investor or shareholder of the company (if the trustee is a company)
- the auditor is not a partner to the trustee (if the trustee is a partnership)
- the auditor is not a related entity for the trustee

A registered company auditor can not carry out a trust account review if they have been excluded by the QBCC from conducting trust account reviews. QBCC exclusions apply for 3 years. Details of excluded auditors are published on the [QBCC website](#).

When must the account review be carried out?

A trust account review must be carried out at the following times:

- annually - the review must start within 20 business days after the end of each annual period, AND
- when the account is closed - the review must start within 20 business days after the account is closed.

The period of the review that the auditor must cover is:

- for an annual review:
 - » for the first review of the account – 12 months starting on the day the account was opened
 - » for a later review of the account – 12 months starting on the day after the last review period ended

- when the account is closed – starting on the day the account was opened (if no previous review period), or the day after the last review period ended; and ending on the day the account was closed.

A trust account review must also be carried out if directed by the QBCC⁴.

The registered company auditor must complete their review within 40 business days after starting the review; and provide an account review report to the QBCC through [myQBCC](#) within 20 business days after completing the review.

The auditor must also give the trustee a copy of the account review report.

Exemption from trust account review requirement

A trustee may be eligible for an exemption from engaging an auditor to carry out a retention trust account review if there were no retention amounts held in the trust account at any time during the review period.

The trustee must notify the QBCC within 10 business days after the end of the review period to advise of the trustee's intention to not engage an auditor to carry out the review and confirm the account has not been used to hold retention amounts during the review period.

This notice must be given using either:

- online ([myQBCC](#)) submission - account review exemption, or
- manual submission - [Form TA5 - Notice of no trust account review](#)



3. To find a 'registered company auditor' visit the ASIC website at <https://asic.gov.au/online-services/search-asics-registers/professional-registers/>

4. The QBCC has powers to be able to direct a trustee carry out a review of either a project trust or retention trust, however this is limited to circumstances where the trust contract is terminated, the trustee is insolvent, or there are suspected contraventions of the BIF Act.

How is the trust and charge over retention amounts dissolved?

Retention amounts are deemed to be protected by the retention trust and are also subject to a statutory charge from the point they are withheld from payment.

Similarly, the trust is dissolved (i.e. ended) by releasing all retention amounts from the trust to the party or parties entitled to amounts under the contract. No specific additional action is required to formalise the dissolution. Claiming to dissolve a retention trust before these requirements are met (for example, by closing the retention trust account while it is still required) is an offence.

While there is no requirement to notify the QBCC of the dissolution, there are notification requirements when closing a retention trust account (see 'when a retention trust account may be closed').

When may a retention trust account be closed?

Unlike a project trust account which is required for each project, a single retention trust account may be used for multiple projects, including future projects. Therefore, a retention trust need not be closed by the trustee when retentions are released.

However, if a trustee determines the retention trust account is no longer required there are prerequisites and a process the trustee needs to follow in order to properly close the account.

The trustee can lawfully close the retention trust account only if all retention amounts held in the account have been paid to the parties entitled to the amounts under the relevant contract/s – meaning there are no longer any beneficiaries for the trust.

Note that it is lawful to close the retention trust account for the purpose of lawfully transferring the account to another financial institution. This is not taken to be dissolving the retention trust.

An account review report is required after closure of a retention trust account. Refer to Part C of this guide for details.

Notice of the retention trust account closure

It is the trustee's responsibility to give a notice providing details about the closure of the retention trust account to the QBCC within 5 business days of the account being closed. 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 RETENTION TRUSTS

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

Action required after changing the name of a retention trust account

A trustee may at times need to change the 'name' of the trust account, noting any name change must ensure it continues to comply with requirements that the name of the account include the name of the trustee and the word 'trust'.

The trustee is responsible for giving a notice providing details about changing the account name for the retention trust account to the QBCC within 5 business days of taking the action. 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.

The information given by trustees will be published online in the [Trust Account Register](#).

Action required after changing financial institutions

A trustee may need to change financial institutions in some circumstances.

The trustee must complete all required steps before changing the financial institution at which a retention trust account is held:

- ensure the new financial institution is an approved financial institution
- ensure all amounts in the retention trust account are to be transferred with the account to the new financial institution (with the exception of interest credited to the retention trust account, which the trustee may withdraw)

When changing financial institutions, the trustee must inform all beneficiaries and the QBCC about the change. 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.

The information given by trustees will be published online in the [Trust Account Register](#).

Action required after nominating account administrator

If the trustee will not be the person administering the retention trust account, they must nominate a person to administer the account on their behalf. Each time a person is nominated, the trustee must inform the QBCC about the nomination (via [myQBCC](#)) and must ensure the nominated person completes retention trust training.

Responding to an information request from a beneficiary

Current and former beneficiaries have the option to request certain types of information from the trustee:

- a statement of balance for the retention trust account
- a copy of the transactions for the retention trust account
- a copy of the trust records

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 must 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

A trustee is not allowed to invest the funds held in trust in any form of investment. Contravening this requirement is an offence. Note that earning interest on amounts held in the trust account that is paid by the financial institution is not considered to be an investment and is permitted.

Agents for the trustee

A trustee can employ or engage an agent to do any act relating to the retention trust on their behalf.

They bear the cost of employing or engaging an agent. These costs cannot be recovered from the funds held in the trust or from its beneficiaries.

The trustee remains liable for all acts and defaults of their agent. The law will treat the agent's acts and defaults as if they are the trustee's own acts and defaults.

Delegates for the trustee

A trustee may delegate any of their powers to a person resident in the State of Queensland (although they cannot delegate the power to delegate).

Trustees are responsible for keeping evidence of the delegation for 7 years.

Trustees bear the costs relating to the delegation. These costs cannot be recovered from the funds held in the trust or from its beneficiaries.

Beware that others are able to rely on a delegate's exercise of the trustee's powers, even if the delegate seems to:

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

The delegate's exercising of the trustee's powers is considered valid – as if exercised under a proper delegation – unless the other person had actual notice that the delegate was not authorised to do so.

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 retention trust is appropriate.

A 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.

Trust funds protected

Amounts paid, or required to be paid, into a retention 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

These definitions are provided as a summary only, refer to the BIF Act for complete definitions.

Account review report	A report prepared by an auditor following a trust account review, stating their conclusion about whether the trustee complied with the requirements relating to administration of the trust account.
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	A term used when a project or retention trust comes into 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 <i>Hospital and Health Boards Act 2011</i> , section 17. This is a consideration for eligibility for a project trust account.
Trust account ledger	A record of transactions for the trust account that identifies each beneficiary’s beneficial interests in amounts.
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.
Reasonable assurance engagement	Refer to the ‘Standard on assurance engagements ASAE 3100 - compliance engagements’ (Auditing and Assurance Standards Board).

PART F—GLOSSARY OF TERMS CONTINUED

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 <i>Corporations Act 2001</i> (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 through which a retention trust is operated and held at an approved financial institution. 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.
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 the compliance of a trust account carried out by a registered company auditor using the methodology for a reasonable assurance engagement. The auditor completing the review 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.

APPENDICIES

APPENDIX 1: PROJECT TRUST ACCOUNT CHECKLIST

APPENDIX 2: TRUSTEE NOTICES CHECKLIST



PROJECT TRUST ACCOUNT CHECKLIST

CONTRACTING PARTY

EFFECTIVE MAY 2022



This checklist summarises the key steps and requirements for a trustee when they are operating a retention trust account. Note—there is a separate [project trust account checklist](#).

All notices and example templates can be found on the [QBCC website](#).

1 Check contract eligibility to determine if a trust account is required

- Use the [trust account tool](#) to determine whether a trust is required.

Retention trust account eligibility criteria:

1. You're withholding retention in the form of 'cash'.
2. The withholding contract is related to a project trust account project.
3. You're the contracting party as per the relevant phase.

If all of the eligibility criteria is met, you must keep the retention amount in a retention trust account.

2 Open retention trust account

- Open the account for the retention trust at an [approved financial institution](#) before withholding the retention amount from payment.
- Ensure account name includes the words 'trust' and the trustee's name.
Reminder: Only one retention trust account is required per contracting party.

3 Notify parties of the trust account

- Send notices to the QBCC** within 5 business days of opening the account—submit an [online notice of trust account opening](#) OR manually using the **TA1 - Notice of opening project trust account and/or retention trust account**
- Send notices to the contracted party** before the retention amount is withheld from payment—use the PDF provided after online notification to the QBCC, the template [Notice to subcontractor—project trust account opened or changed \(s23-s18c\)](#), or [create your own](#).

4 Administration of the account

- If the trustee will not be responsible for administering the retention trust account, the trustee must nominate a person to be the account administrator.
- Ensure a notice is given to the QBCC informing of the nominated account administrator—submit an [online notice of account administrator](#) or manually using the form **TA7 - Notice of retention trust account administrator**.
Reminder: [set up permissions in myQBCC](#) so that they can lodge forms on your behalf.
- Ensure the trustee or nominated account administrator completes mandatory retention trust training within the prescribed time frames.
- You can withdraw an amount equal to the interest earned on the account only once every 12 months and/or upon closure of the trust account.
- You may transfer the trust account to another [approved financial institution](#). You must ensure you notify the QBCC and all contracted party beneficiaries of the updated trust account information after doing so.

5 Withholding retention amounts from payment

- Respond to a payment claim with a payment schedule advising the retention amount to be withheld.
- Ensure all cash retention amounts are deposited into the retention trust account at the time they are withheld.
- Give notice of the deposit of the retention amount into the retention trust account (e.g. remittance advice) to the contracted party within 5 business days. You can use the template [notice Payment advice to beneficiary—deposit into retention trust account](#) or you can create your own that includes the required information.
- Record the retention deposit in the record of deposits and withdrawals and the trust account ledger.

6 Releasing retention amounts to contracted parties (beneficiaries)

- Ensure all eligible retention amounts are released and paid to the contracted party only from the retention trust account.
- Give a notice of payment (e.g. remittance advice) to the contracted party within 5 business days of making the payment. You can use the template notice **Payment advice to beneficiary—paid from retention trust account** or you can create your own that includes the required information.
- Record the payment withdrawal in the record of deposits and withdrawals and the trust account ledger.

7 Releasing retention amounts to someone else from the account

- You may pay another person (other than the beneficiary) to correct defects or omissions in the work carried out by a beneficiary.
- Give a notice of payment made to another person to the contracted party within 5 business days of making the payment. You can use the template notice **Payment advice to beneficiary—payment to other party** from retention trust account or you can create your own that includes the required information.
- Record the payment withdrawal in the record of deposits and withdrawals and the trust account ledger.

8 Releasing retention amounts to yourself as trustee

- You may pay yourself as trustee to correct defects or omissions in the work carried out by a beneficiary —BUT ONLY after the end of the defects liability period.
- Give a notice of payment made to yourself as trustee to the contracted party within 5 business days of making the payment. You can use the template notice **Payment advice to beneficiary—payment to other party** from retention trust account or you can create your own that includes the required information.
- Record the payment withdrawal in the record of deposits and withdrawals and the trust account ledger.

9 Monthly reconciliations and recordkeeping

- Ensure you conduct a monthly reconciliation of the trust account, within 15 business days of the end of each month, to balance trust records and rectify any anomalies.
- To complete a reconciliation:** Reconcile the bank statement to the record of deposits and withdrawals to the trust ledger trial balance statement.
- Ensure copies of all project, payment and trust documentation is kept as part of the trust records, and for a minimum of 7 years.

10 Annual account review reports

- Ensure you engage an independent auditor to carry out a review of the trust account every 12 months.
- The auditor must START the review within 20 business days of the end of the review period and submit their account review report to the QBCC within 20 business days after the review is completed. Note-a copy of the account review report must also be given to you as the trustee by the auditor.
- Ensure you provide the QBCC a notice if you are not required to engage an auditor to carry out an account review because the trust account was not used to hold retention amounts during the review period—[submit an online notice of account review exemption](#) OR manually using the **TA5 - Notice of no trust account review**.

11 Close the account

- Ensure the account is only closed when there are no amounts left to be paid to beneficiaries.
Remember: a retention trust account can be used to hold retentions across multiple contracts and need not be closed at the end of a project.
- Send a notice to the QBCC confirming the account has been closed within 5 business days of closing the account —Submit an [online notice of trust account changing or closing](#) OR manually via the **TA2 - Notice of trust account changing or closing a trust account**
- Engage an independent auditor to carry out a review of the account within 20 business days of closing the trust account.

Disclaimer: This is a summary of the retention trust account requirements only. For more detailed information on your requirements as a trustee—refer to the [Trustee guide - retention trusts](#).

TRUSTEE NOTICES CHECKLIST

RETENTION TRUST ACCOUNT



EFFECTIVE MAY 2022

PAGE 1 OF 2

OPENING THE ACCOUNT

Provide to QBCC	<input type="checkbox"/>	notice must include information as per the online or hard copy form
	<input type="checkbox"/>	within five business days of opening the account
	<input type="checkbox"/>	submitted online or using form from QBCC website.
	<input type="checkbox"/>	complete Form TA7 - Notice of retention trust administrator.
Provide to the contracted parties	<input type="checkbox"/>	statement advising that an account will be used for withholding retention amounts under the contract
	<input type="checkbox"/>	account details (account name, financial institution, BSB and account number) information identifying the contract
	<input type="checkbox"/>	before withholding a retention amount, otherwise within five business days of the account being opened
	<input type="checkbox"/>	no specific form required—QBCC template available.

CHANGING THE NAME OF THE ACCOUNT

Provide to QBCC	<input type="checkbox"/>	notice must include information as per the online or hard copy form
	<input type="checkbox"/>	within five business days of changing the name of the account
	<input type="checkbox"/>	submitted online or using form from QBCC website.

CHANGING FINANCIAL INSTITUTIONS OR TRANSFERRING THE ACCOUNT

Provide to QBCC	<input type="checkbox"/>	notice must include information as per the online or hard copy form
	<input type="checkbox"/>	within five business days of the change
	<input type="checkbox"/>	submitted online or using form from QBCC website.
Provide to the contracted parties	<input type="checkbox"/>	trustee name
	<input type="checkbox"/>	account details before the change (account name, financial institution, BSB and account number)
	<input type="checkbox"/>	account details after the change (account name, financial institution, BSB and account number)
	<input type="checkbox"/>	date of account transfer
	<input type="checkbox"/>	date from which the new account is intended to be used
	<input type="checkbox"/>	before the amounts are transferred to the new account
	<input type="checkbox"/>	no specific form required – QBCC template available.

MAKING A DEPOSIT INTO RETENTION TRUST ACCOUNT FOR A BENEFICIARY

Provide to the contracted parties	<input type="checkbox"/>	amount deposited
	<input type="checkbox"/>	payment claim details
	<input type="checkbox"/>	account details (account name, financial institution, BSB and account number)
	<input type="checkbox"/>	date of the deposit
	<input type="checkbox"/>	the total retention amount withheld for the beneficiary for the contract after the deposit
	<input type="checkbox"/>	within five business days of the deposit
	<input type="checkbox"/>	no specific form required (QBCC remittance advice example available).
	NOTE: an additional notice does not need to be sent if the trustee has already sent a notice of withdrawal from the project trust account depositing retentions into the retention trust account.	

MAKING A WITHDRAWAL (PAYMENT TO BENEFICIARY) FROM THE TRUST ACCOUNT

Provide to the contracted party	<input type="checkbox"/> amount paid
	<input type="checkbox"/> payment claim details
	<input type="checkbox"/> details of the account the payment was made to (account name, BSB and account number)
	<input type="checkbox"/> date of the payment
	<input type="checkbox"/> the total retention amount withheld for the beneficiary for the contract after the withdrawal
	<input type="checkbox"/> within five business days of the withdrawal
	<input type="checkbox"/> no specific form required (QBCC remittance advice example available).

MAKING A WITHDRAWAL (PAYMENT TO ANOTHER PARTY THAT IS NOT THE BENEFICIARY) FROM THE TRUST ACCOUNT

Provide to the contracted party	<input type="checkbox"/> amount paid
	<input type="checkbox"/> reason for the payment
	<input type="checkbox"/> date of the deposit
	<input type="checkbox"/> the total retention amount withheld for the beneficiary for the contract after the withdrawal
	<input type="checkbox"/> within five business days of the withdrawal
	<input type="checkbox"/> no specific form required (QBCC remittance advice example available).

CLOSING THE ACCOUNT

Provide to QBCC	<input type="checkbox"/> notice must include information as per the online or hard copy form
	<input type="checkbox"/> within five business days of closing the account
	<input type="checkbox"/> submitted online or using form from QBCC website.

Support and resources: qbcc.qld.gov.au/running-business/trust-accounts/opening-using-trusts/required-trust-notice

For more information

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

