



Trust information session

OVERVIEW AND ELIGIBILITY



Session overview

Overview:

- what are trust accounts?
- phased rollout of trust accounts
- who are trustees and beneficiaries?
- other key terms and concepts.

When is a trust account required:

- project trust eligibility criteria and exemptions
- retention trust eligibility criteria and exemptions
- other considerations.

How to set up a trust account:

- time limits for opening trust accounts
- choosing a financial institution
- rules for naming and structuring accounts
- notifying QBCC and other parties.

Trust account administration

Using myQBCC

Question and Answer session

OVERVIEW

What are trust accounts?



Project trust account:

- holds progress payments received by the head contractor
- protects and prioritises first-tier subcontractor payments.



Retention trust account:

- protects retentions withheld from payments
- only if a project trust is also required for the project
- will apply along the contracting chain (subject to phases).



Trustee or beneficiary?

Each trust involves a trustee, beneficiaries and funds.

- The **trustee** is the person responsible for the trust
 - ➔ project trust account – this is the head contractor
 - ➔ retention trust account – this is the person withholding the retention amount.
- The **beneficiaries** are parties that are entitled to be paid amounts from the trust
 - ➔ project trust account – this is the head contractor and subcontractors
 - ➔ retention trust account – this is the person from whom the retention amount has been withheld.



Trustee obligations

A trustee must:

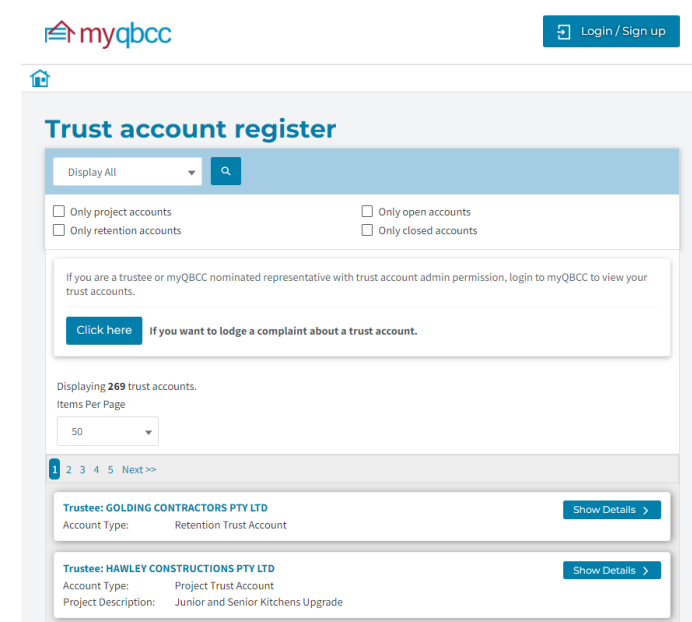
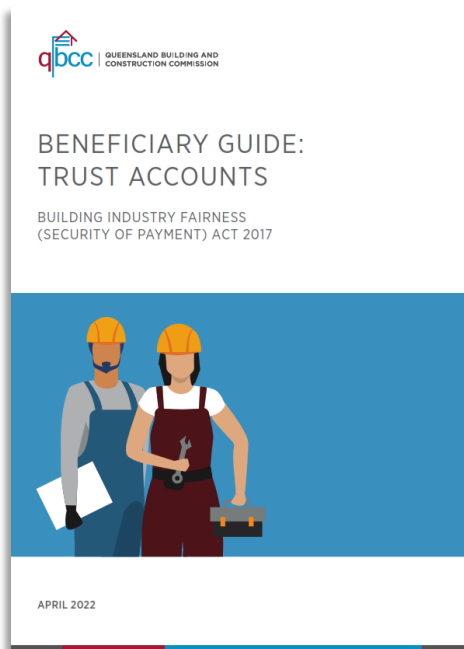
- determine whether a trust account is required
- open/establish a trust within the required timeframes
- notify parties of the trust account
- administer the trust account correctly
- trustee may seek assistance with their administration functions or delegate their trustee powers.



Beneficiary rights

A beneficiary:

- will be notified by the trustee of a trust account
- will receive payment advices for deposits and withdrawals made to and from the trust account
- must be paid only from the trust account
- can search or check for a trust account by searching the QBCC's trust account register
- can request copies of certain information relating to the trust from the trustee.

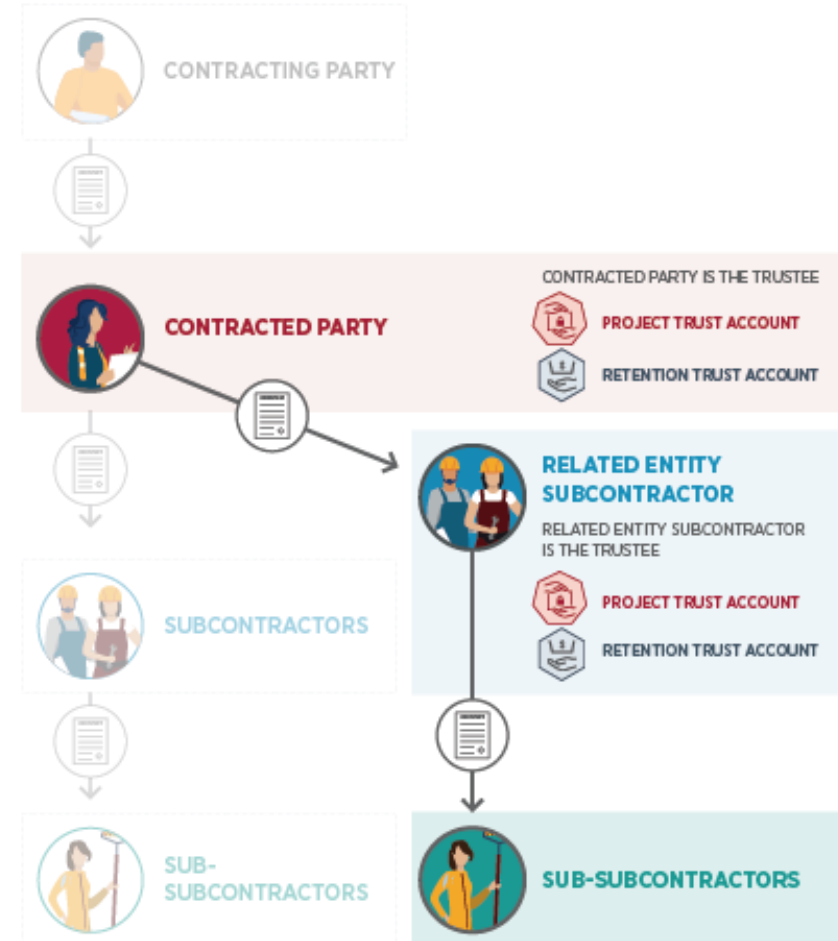




Key terms

- eligible contract vs eligible cash retention amounts
- contracting party vs contracted party
- project trust work vs protected work
- related entities (*right*)
 - a related entity subcontractor may also be required to set up a trust account (and be trustee of an account).

RELATED ENTITY DIAGRAM



WHEN IS A PROJECT TRUST ACCOUNT REQUIRED?

Eligible contracts



Project trust eligibility criteria



1. Who is the contracting party?



2. What is the contract price?



3. What type of work is to be carried out?



4. Are subcontractors engaged (or will be)?



1. Who is the contracting party?

For previous phases of the rollout, the contracting party is specified.

For example:

- 1 March 2021 – contracting party is only the Queensland Government
- 1 July 2021 – contracting party is only the Queensland Government or a Hospital and Health Service (HHS)
- state authorities (e.g. local government) can decide to opt-in.

From the phase beginning 1 January 2022 the contracting party criteria is **no longer relevant**.



2. What is the contract price?

Each phase of the rollout specifies a contract price for eligible contracts.

Current phases:

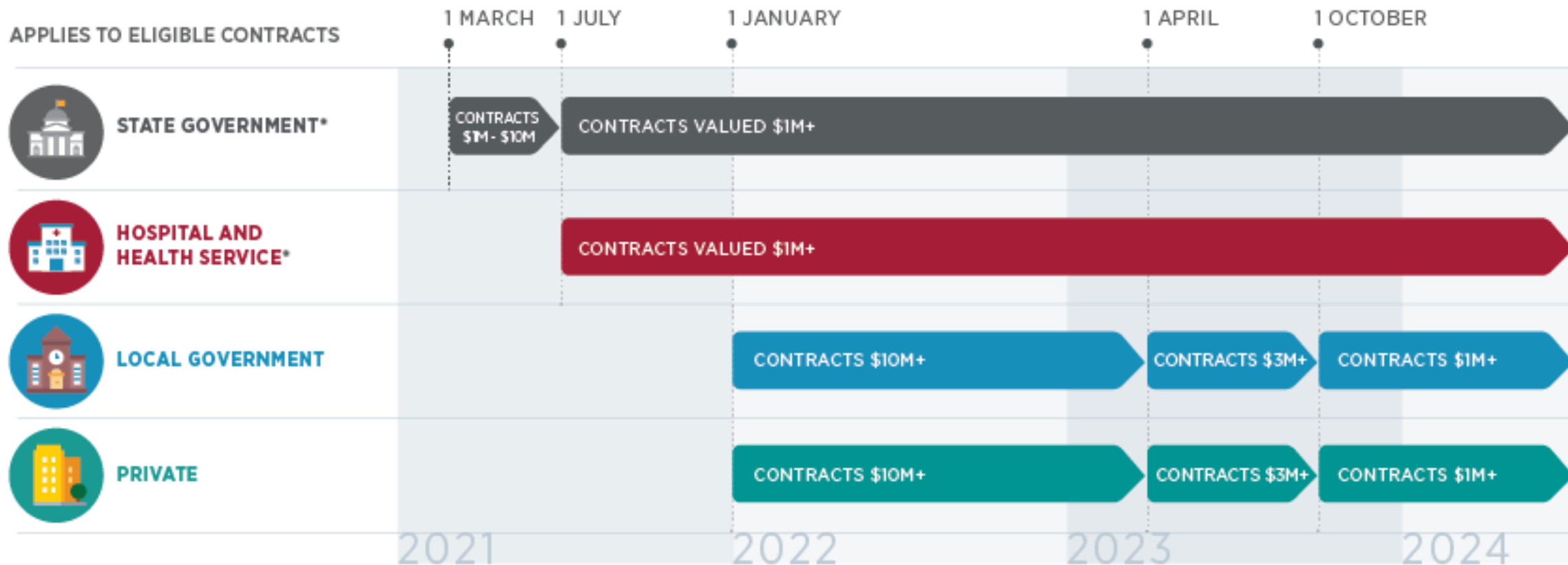
- previous project bank accounts applied to Queensland government contracts valued between \$1 and \$10 million
- 1 March 2021 – Queensland Government contracts valued **between \$1 and \$10 million**
- 1 July 2021 – Queensland Government and HHS contracts valued **\$1 million or more**
(this continues to apply across all later phases to Queensland Government and HHS contracts).
- 1 January 2022 – all other projects valued **\$10 million or more**

Future phases:

- 1 April 2023 – all other projects valued **\$3 million or more**
- 1 October 2023 – all other projects valued **\$1 million or more.**



Project trust rollout timeline



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



2. What is the contract price?

What about GST?

From 1 March 2021, the contract price used to determine trust account eligibility is exclusive of GST.

Single contract or multiple connected contracts?

Multiple contracts between the same parties on the same or adjacent sites are valued as one larger contract (except where the contracts arose from different tender processes).

For example: separate contracts to renovate 6 individual units in the same building (where the owner and the contractors are the same entities/persons for all 6 contracts).

Does it matter when the contract is signed?

- 1 March and 1 July 2021 commencement dates – contracts **tendered**
- from 1 January 2022 – contract **entered**.



3. The type of work carried out

A project trust account will only be required if more than 50% of the ***contract price*** is for ***project trust work***.

What is project trust work?

- erection, construction, renovation, alteration of a building
- associated work (e.g. plumbing, air conditioning, fire protection, etc.)
- site work, earthmoving and site testing
- contract administration
- specialist work (architectural, engineering, surveying, certification)
- inspections and advice.

What is NOT project trust work?



- work on a busway, road or railway or associated tunnels
- work related to a mining activity and/or on a mining site.



3. The type of work carried out

Example 1:

A contract is awarded for a building development and surrounding roadworks. The value of the roadworks is more than 50% of the total contract price.

Would this meet the criteria?

Example 2:

A contract is awarded for alterations to a council building and repairs to an open-air council carpark that is not associated with a building. Alterations to the council building represent 80% of the contract value.

Would this meet the criteria?



4. Subcontractors engaged?

A project trust account will only be required if at least one subcontractor is engaged under the head contract.

Who is a subcontractor?

A party engaged by the contracted party to contribute/carry out **protected work**.
There is **no minimum** subcontract price.

What is a 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.



4. Subcontractors engaged?

Who is not a subcontractor:

- employees of the trustee
- suppliers of goods/materials/components, if:
 - their **only** contribution is supplying the materials/components
 - they are **not** installing/erecting/maintaining/dismantling etc. the materials/components onsite
 - they are **not** prefabricating components of the building/works, whether onsite or offsite
- some consultants, if they are **not** engaged to perform **any** protected work.



Project trust exemptions

Some contracts do not require a project trust even if all criteria are met. These include:

- subcontracts generally
- small scale **residential construction work** (for one or two living units)
- contracts where **maintenance work** is the only work to be completed
- contracts where the **only work** is design, advisory or contract administration work
- contracts with **less than 90 days** until practical completion
- contracts **between** the state and a state authority.



Exemption examples

Example 1:

QLD State Government awards a \$5M contract for alterations to some government buildings.

- 75% of the contract price is for the alteration works
- 25% of the contract price covers upfront architectural and engineering design work.

Would a project trust and project trust account be required?

Example 2:

A private developer enters into two separate contracts for alterations to building.

- Contract one is for architectural and engineering design work only.
- Contract two is for the construction of the building.

Would a project trust and project trust account be required?



Other considerations

Contract amendments (variations)

A contract amendment can cause a contract to become eligible for a project trust, except when:

- contract price increase is less than 30% of the original contract value; or
- less than 90 days remains until practical completion.

The start date for the requirement will be when the amendment is agreed or accepted by the contractor.

Contract eligibility assessed against criteria that applied at the time the contract entered NOT at the date of the amendment.

Subcontracts as eligible contracts

If the contracted party (head contractor) and a subcontractor are related entities, the subcontract will need to be assessed against the project trust account criteria and may also be an eligible contract.

WHEN IS A RETENTION TRUST ACCOUNT REQUIRED?

Eligible amounts



Retention trust eligibility criteria



1. A cash retention amount is withheld



2. Is it a project trust account project?



3. Who is withholding the cash retention?



1. A cash retention amount is withheld

Retention trusts are only required when:

- **cash** retention amounts are being withheld under a contract.

Not required for other types of security such as bank guarantees, insurance bonds or property.





2. Is it a project trust account project?



Retention trusts are only required when:

- the head contract meets the eligibility criteria for a project trust
- the head contractor has or must have a project trust account.



3. Who is withholding the cash retention?

Certain parties become eligible for a retention trust at different times:





Other considerations

Contract amendments (variations)

If a contract amendment causes a contract to become 'eligible' for a project trust account, all parties within the contractual chain may be required to withhold cash retentions in a retention trust (subject to phases).

The start date for the requirement will be when the amendment is agreed or accepted by the contractor. Retentions withheld before the start date will need to be transferred into the account.

Related entities

If a related entity subcontractor is required to have a project trust, then any cash retentions they withhold must be held in a retention trust.

More information

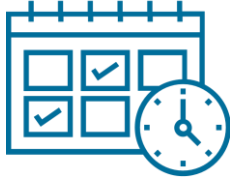
There are detailed guides on the QBCC website that step through the eligibility criteria for both project trust accounts and retention trust accounts.

You can access these by selecting Resources on the QBCC website.



HOW TO SET UP A TRUST ACCOUNT

Setting up a trust account



1. Time limits for opening account.



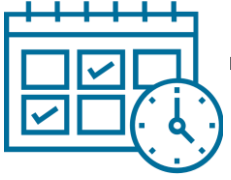
2. Selecting a financial institution.



3. Rules for naming and structuring account.



4. Notifying QBCC and other parties.



1. Time limits for opening

There are strict time limits for when trust accounts must be opened.

- ✓ Project trust account – **within 20 business days** of entering the first subcontract.
- ✓ Retention trust account – **before any retentions are withheld.**

Other considerations:

- where does the principal pay progress payments?
- how long does it take to set up the account?
- how will you know if there is a retention trust account for the head contract?



2. Selecting a financial institution

Trust accounts **must only** be opened at an **approved** financial institution.

Current approved financial institutions are listed on the QBCC website.

- ANZ
- Commonwealth Bank of Australia
- HSBC
- Macquarie Bank
- National Australia Bank
- Westpac.





3. Naming and structuring accounts

Account name must include:

- trustee's name
- the word 'trust'.

Account structure:

Project trusts

- cannot be subordinate or linked to another account
- one project trust account per project – cannot be split into multiple accounts or combine projects into the one account.

Retention trusts:

- single or multiple accounts (only one is required).



4. Giving notifications

When opening a project trust

- ✓ QBCC – **within 5 business days**
- ✓ Principal – **within 5 business days**
- ✓ Subcontractors (as beneficiaries) – **within 10 business days** or **before entering** into a subcontract (if account already opened).

When opening a retention trust

- ✓ QBCC – **within 5 business days**
- ✓ Beneficiaries – **before** the retention amount is withheld or **within 5 business days** if account opened after a retention was withheld.

Notifications are also required when changing the name, transferring or closing a trust account.



4. Giving notifications



Notification of project trust account opening: Subcontractors

A project trust account will be used for all payments relating to the project trust contract.
Details of the project trust account are:

Is this a transition from a project bank account? No

Trustee Name

ABC Holdings Pty Ltd

Account Name

Trustee ABC project 2265

Financial Institution

ANZ BANKING GROUP LTD

BSB

000-000

Account Number

123456789

Date Account Opened

15/07/2021

Details of the project trust contract:

Contracting Party

Pete Smith

Contracted Party

ABC Holdings Pty Ltd

ALL notifications to the QBCC must be submitted:

- ✓ online via myQBCC
- ✓ using the approved form.

Notifications to other parties must be in writing and provided in the required timeframe. You can create your own versions or use:

- ✓ copies after lodging online through myQBCC
- ✓ template notices available on the QBCC website.

TRUST ACCOUNT ADMINISTRATION



Who can administer a trust account?

The trustee can:

1. administer the trust account themselves (or their employees)
2. employ an agent (a bookkeeper or an independent accounting firm)
 - cannot recover costs from trust funds
 - trustee remains liable for all acts and defaults.
3. delegate their powers (e.g. contract administrator)
 - cannot recover costs from trust funds
 - limited to a person in Queensland
 - records of delegation required.

Set up myQBCC permissions for other parties to submit forms to the QBCC.



Other actions

The trustee can:

1. change the name of an account
 - naming requirements
 - notify the QBCC and parties.
2. change financial institutions
 - approved financial institution
 - naming requirements
 - open new account, transfer funds then notify the QBCC and parties.

A beneficiary can:

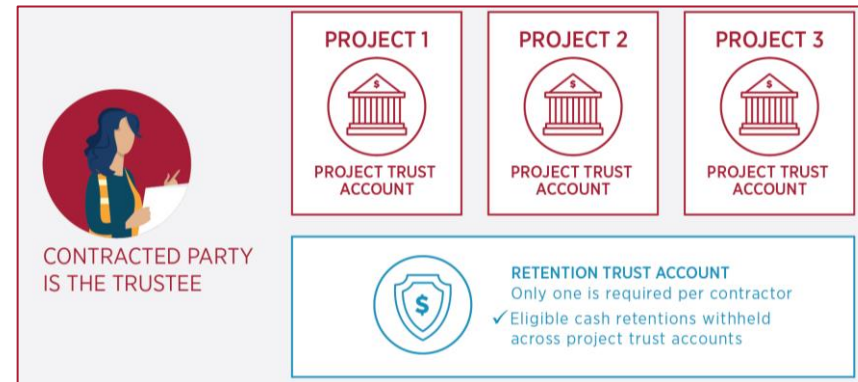
1. request trust information
 - provide within 10 business days
 - only relates to that beneficiary.



Where are amounts to be held?

All eligible cash retention amounts **must** be held in a retention trust.

Cash retentions amounts that are not eligible **must not** be held in a retention trust.





Closing a trust account

An account can only be closed if:

- there are no longer any amounts to be paid to subcontractor beneficiaries
- only maintenance work remains
- change of financial institutions and trust has been transferred.



Reminder:

- one project trust account **per project** – close the account upon completion of the project
- one retention trust account **per contracting party** – keep the account open and use across all project trust account projects.

More information

There are detailed guides on the QBCC website that step through the eligibility criteria for both project trust accounts and retention trust accounts.

You can access these by selecting Trust Accounts from the Industry tab.



THANK YOU

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