



Trust information session

ADMINISTERING A TRUST ACCOUNT



Session overview

Overview

- trustee obligations
- rules for administering the trust account

Making payments

- deposits into a trust account
- withdrawals from a trust account
- payment notifications

Maintaining trust records

- general requirements
- trust account ledger
- record of deposits and withdrawals
- monthly bank reconciliation

Account reviews

- what is it and who can complete it?
- engaging an auditor

Question and Answer session

OVERVIEW

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
- a trustee may choose to seek assistance with their administration functions or delegate any or all of their trustee powers.



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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).



Rules for administering a trust account



1. making payments



2. maintaining trust records



3. reconciling accounts

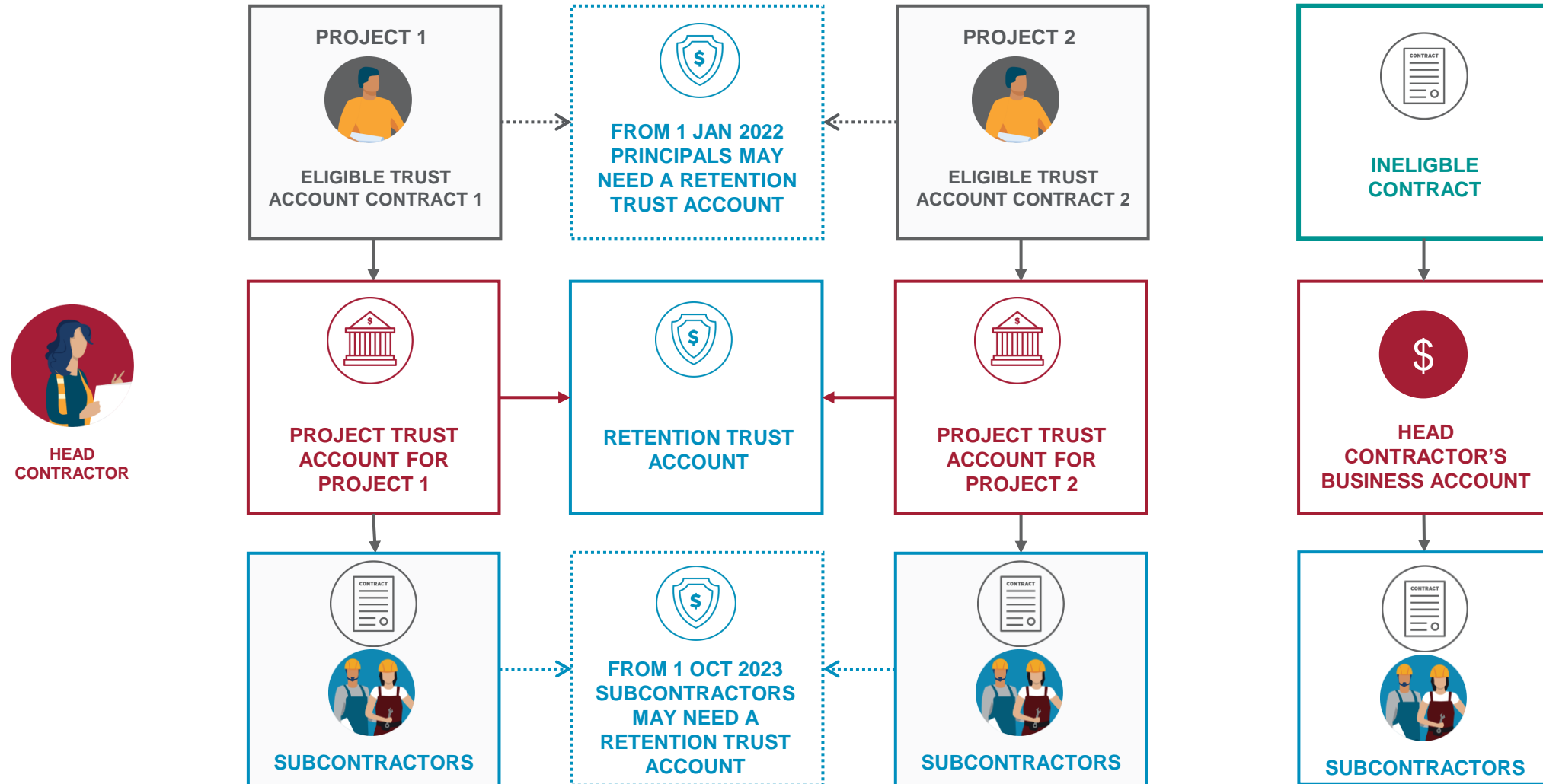


4. account reviews.

1. MAKING PAYMENTS



Trust account framework





Deposits into a project trust account

Only the principal and the trustee can deposit amounts into the PTA, and only in particular circumstances.



The principal can deposit amounts:

- ✓ as claimed by head contractor
- ✓ as scheduled
- ✓ as ordered by a court, adjudication decision or dispute resolution process
- ✗ they cannot deposit amounts owed relating to different projects.



The trustee can deposit amounts:

- ✓ to repay an incorrect withdrawal
- ✓ to top up the account.



Withdrawals from a project trust account

Only the trustee can withdraw or transfer amounts from the PTA, and only in particular circumstances.



Only the trustee can withdraw amounts:

- ✓ to pay a subcontractor beneficiary
 - ✓ to transfer a retention amount to the RTA
 - ✓ as ordered by a court, adjudication decision or dispute resolution process
 - ✓ to claim interest earned
 - ✓ to return an incorrect deposit
 - ✓ to pay the themselves.
- × they cannot transfer amounts to non-beneficiaries of the trust (e.g. suppliers or employees).



Payments from a project trust account



1. payment claim received
2. check the contract for payment and retention terms
3. either:

- a) agree to pay in full by the due date; or
- b) give a payment schedule.



4. on or before the due date, transfer the full or scheduled payment amount from your project trust account to the subcontractors' nominated account



5. at the same time, transfer the subcontractors' retentions from the project trust account to retention trust account
6. give a notice of the payment (and retention amount transfer) to the subcontractor.



Deposits into a retention trust account

Only the trustee can make deposits into the retention trust account, and only in particular circumstances.



Only the trustee can deposit amounts:

- ✓ that are cash retentions amounts
- ✓ to repay an incorrect withdrawal
- ✓ to top up the account
- × they cannot deposit non-eligible cash retention amounts.



Withdrawals from a retention trust account

Only the trustee can withdraw or transfer amounts from the retention trust account, and only in particular circumstances.



Only the trustee can withdraw amounts:

- ✓ to pay a retention amount to:
 - 1) the party it was withheld from
 - 2) the trustee or
 - 3) another person engaged to correct incomplete or defective work
- ✓ to claim interest earned.
- × they cannot borrow money to pay other bills/amounts owed or fund new projects.



Payments from a retention trust account



1. at practical completion or final payment claim received
2. check the contract for retention terms – confirm amounts due to be released
3. release retention amounts:
 - **If no defects** – release retentions to the beneficiary
 - **OR if defects or omissions** – give a payment schedule, attempt to resolve the issue or engage another party to rectify. If you've engaged another party, pay using beneficiaries RTA funds
4. give notice of the withdrawal to the affected beneficiary.





Payment notices

Beneficiaries must be notified within 5 business days of the following transactions:

- withdrawal from project trust account to beneficiary
- deposit into retention trust account for beneficiary
 - these two notices can be combined if relating to the same payment claim
- withdrawal from retention trust account to beneficiary
- withdrawal from retention trust account to pay someone else to fix defects or omissions.

All notices must be in writing and can be given:

- as remittance advice
- by email to the beneficiary.

Prescribed information **must be included on notices.**



Other considerations

What if there are insufficient funds to pay everyone?

The trustee must top up the account so that all amounts owed to subcontractors can be paid by the due date for payment.

What if the principal hasn't paid yet?

The head contractor cannot delay payment to subcontractors due to a delayed or non-payment from the principal.

How to calculate retention amounts to be withheld?

- as per contract terms
- restrictions on certain retention amounts that can be withheld.

What happens when a trust account is set up part way through a project?

All project funds must be transferred into the new account/s.



Other considerations

Can the trustee still use bulk payments?

If your software allows and records the correct information on the ledger and record of deposits and withdrawals, then yes (even though it shows as the one transaction/total amount withdrawn on the bank statement).

Is a trustee allowed to pay themselves before others?

Only if there are sufficient funds in the account to pay the other beneficiaries.

Should the account always equal zero?

No, not necessarily. Because there may be disputed amounts, work that's not yet claimed or interest accumulating.

2. MAINTAINING TRUST RECORDS



What are trust records?



Section 52 BIF Act, together with *Section 10F BIF Reg*, defines trust records.

These records can be categorised in 4 categories:

1. **general project documents**
2. **trust account financial records**
3. **notices given and received**
4. **account review reports (where applicable).**

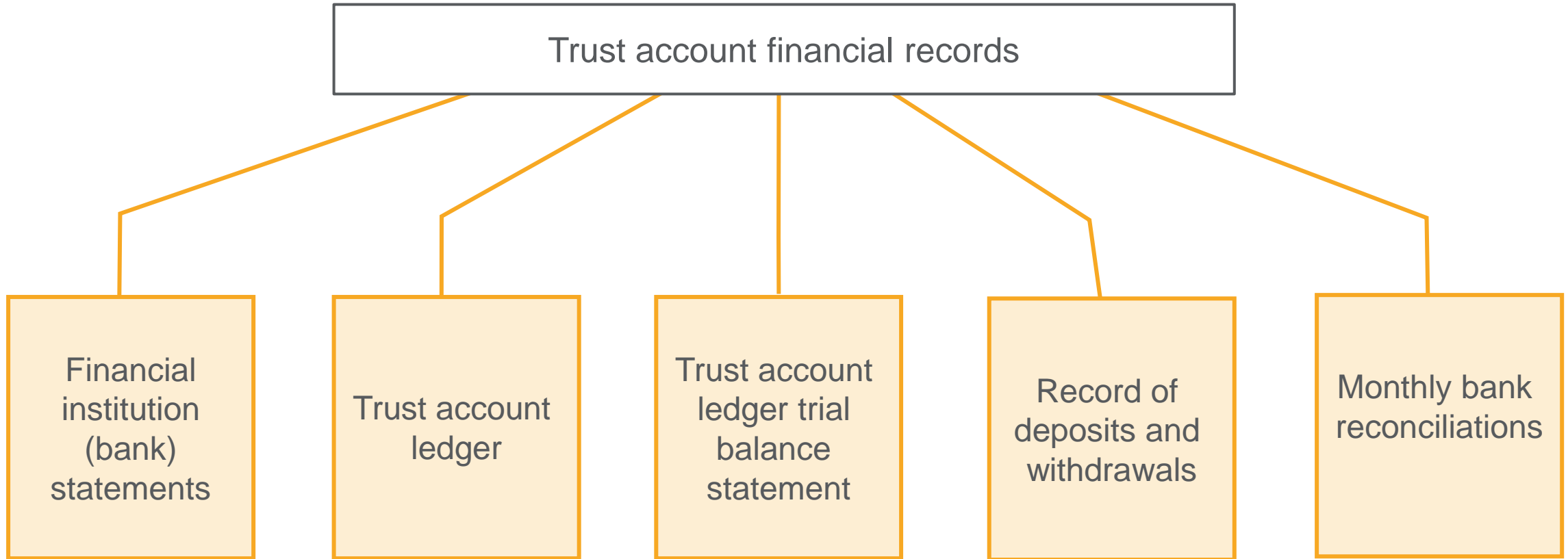


General project documents

- copies of contracts (head contract and related subcontracts)
- any contract variation/amendment documents
- payment claims/schedules given and received
- supporting documents of any changes to:
 - trust account ledger
 - trust account ledger trial balance statement
 - record of deposits and withdrawals
 - bank reconciliation.



Trust account financial records





Trust account ledger

A separate trust account ledger must be kept for each trust account.

The trust account ledger must be capable of providing separate information for each beneficiary of the trust, including a complete record of transactions.

All transactions must be recorded in order of date and within 5 business days.

There is specific information that the ledger must record for each transaction.

Example

Trust Account Ledger for Project Trust Account					
Date	Audit No.	Transaction Details	Corresponding Account	Dr (Cr)	Balance
		Bank Account (Project Trust Account)			\$0.00
25/03/2022	54	Payment received into the trust account from ABC Developer for progress claim #258	Trustee Pty Ltd	\$152,369.00	\$152,369.00
27/03/2022	56	To take up the payments net of retentions to contractors from the trust account	AD Electrician Pty Ltd, CA Carpenter Pty Ltd, NJ Plumbing Pty Ltd	(\$79,505.10)	\$72,863.90
27/03/2022	57	To take up the payments of retentions to the retention trust account	AD Electrician Pty Ltd, CA Carpenter Pty Ltd, NJ Plumbing Pty Ltd	(\$3,552.90)	\$69,311.00
15/04/2022	59	To take up interest earned in the Project trust account	Trustee Pty Ltd	\$3.99	\$69,314.99
25/04/2022	65	Payment received into the trust account from ABC Developer for progress claim #259	Trustee Pty Ltd	\$358,000.00	\$427,314.99
26/04/2022	67	Payment of Beneficial Interest to Trustee Pty Ltd	Trustee Pty Ltd	(\$125,000.00)	\$302,314.99
		AD Electrician Pty Ltd			\$0.00
31/03/2022	51	Take up Beneficial Interest to AD Electrician Pty Ltd - payment claim #210 - due 31/3/2022	Trustee Pty Ltd	(\$12,000.00)	(\$12,000.00)
31/03/2022	56	To take up the payments net of retentions to contractors from the trust account - Payment Claim #210	Bank Account (Project Trust Account)	\$12,000.00	\$0.00
		AZ Concreter Pty Ltd			\$0.00
30/04/2022	58	Take up Beneficial Interest to AZ Concreter Pty Ltd payment claim #26 - due 30/4/2022	AZ Concreter Pty Ltd	(\$56,324.00)	(\$56,324.00)
		CA Carpenter Pty Ltd			\$0.00
24/03/2022	53	Take up Beneficial Interest to CA Carpenter Pty Ltd - payment claim #300 - due 25/3/2022	Trustee Pty Ltd	(\$39,000.00)	(\$39,000.00)
31/03/2022	56	To take up the payments net of retentions to contractors from the trust account - Payment Schedule #851	Bank Account (Project Trust Account)	\$37,050.00	(\$1,950.00)
31/03/2022	57	To take up the payments of retentions to the retention trust account - due 31/3/22 - Payment Schedule #851 Varied (retained amount)	Bank Account (Project Trust Account)	\$1,950.00	\$0.00
26/04/2022	66	Take up Payment schedule varying the amount and beneficial Interest date - payment claim #301 & #302 - variation	Trustee Pty Ltd	(\$21,999.00)	(\$21,999.00)
30/04/2022	63	Take up Beneficial Interest to CA Carpenter Pty Ltd - payment claim #302 - due 30/4/2022	Trustee Pty Ltd	(\$1,256.00)	(\$23,255.00)
		NJ Plumbing Pty Ltd			\$0.00
31/03/2022	50	Take up Beneficial Interest to NJ Plumbing Pty Ltd - payment claim #21 - due 31/3/2022	Trustee Pty Ltd	(\$32,058.00)	(\$32,058.00)
27/03/2022	56	To take up the payments net of retentions to contractors from the trust account - Payment Claim #21	Bank Account (Project Trust Account)	\$30,455.10	(\$1,602.90)
27/03/2022	57	To take up the payments of retentions to the retention trust account - Payment claim #21 (retained amount)	Bank Account (Project Trust Account)	\$1,602.90	\$0.00
30/04/2022	64	Take up Beneficial Interest to NJ Plumbing Pty Ltd - payment claim #22 - due 30/4/2022	Trustee Pty Ltd	(\$32,058.00)	(\$32,058.00)
		Trustee Pty Ltd			\$0.00
25/03/2022	53	Take up Beneficial Interest to CA Carpenter Pty Ltd - payment claim #300 - due 25/3/2022	CA Carpenter Pty Ltd	\$39,000.00	\$39,000.00
25/03/2022	54	Payment received into the trust account from ABC Developer for progress claim #258	Bank Account (Project Trust Account)	(\$152,369.00)	(\$113,369.00)
31/03/2022	50	Take up Beneficial Interest to NJ Plumbing Pty Ltd - payment claim #21 - due 31/3/2022	NJ Plumbing Pty Ltd	\$32,058.00	(\$81,311.00)
31/03/2022	51	Take up Beneficial Interest to AD Electrician Pty Ltd - payment claim #210 - due 31/3/2022	AD Electrician Pty Ltd	\$12,000.00	(\$69,311.00)
15/04/2022	59	To take up interest earned in the Project trust account	Bank Account (Project Trust Account)	(\$3.99)	(\$69,314.99)
25/04/2022	65	Payment received into the trust account from ABC Developer for progress claim #259	Bank Account (Project Trust Account)	(\$358,000.00)	(\$427,314.99)
26/04/2022	67	Payment of Beneficial Interest to Trustee Pty Ltd	Trustee Pty Ltd	\$125,000.00	(\$302,314.99)
30/04/2022	58	Take up Beneficial Interest to AZ Concreter Pty Ltd payment claim #26 - due 30/4/2022	AZ Concreter Pty Ltd	\$56,324.00	(\$245,990.99)
30/04/2022	63	Take up Beneficial Interest to CA Carpenter Pty Ltd - payment claim #302 - due 30/4/2022	CA Carpenter Pty Ltd	\$1,256.00	(\$244,734.99)
30/04/2022	64	Take up Beneficial Interest to NJ Plumbing Pty Ltd - payment claim #22 - due 30/4/2022	NJ Plumbing Pty Ltd	\$32,058.00	(\$212,676.99)
30/04/2022	66	Take up Payment schedule varying the amount and beneficial Interest date Payment Schedule # 852- due 30/4/22	CA Carpenter Pty Ltd	\$21,999.00	(\$190,677.99)

Bank Account – Project Trust Account

AD Electrician Pty Ltd

AZ Concreter Pty Ltd

CA Carpenter Pty Ltd

NJ Plumbing Pty Ltd

Trustee Pty Ltd





Record of deposits and withdrawals

The trustee must keep a record of deposits and withdrawals for each trust.

It's a list of all transactions for the account, in order of date and includes specific information for each transaction.

The information must be recorded within 5 business days of the transaction occurring.

Example

Record of Deposits and Withdrawals for Project Trust Account							
Date	Audit No.	Transaction Details	Corresponding Account	BSB	Account No.	Transaction Amount	Balance
25/03/2022	54	Payment received into the trust account from ABC Developer for progress claim #258	Trustee Pty Ltd			\$152,369.00	\$152,369.00
31/03/2022	56	To take up the payments net of retentions to contractors from the trust account - Payment Schedule #851	CA Carpenter Pty Ltd	064258	258569	(\$37,050.00)	\$115,319.00
31/03/2022	56	To take up the payments net of retentions to contractors from the trust account - Payment Claim #21	NJ Plumbing Pty Ltd	069865	3698252	(\$30,455.10)	\$84,863.90
31/03/2022	56	To take up the payments net of retentions to contractors from the trust account - Payment Claim #210	AD Electrician Pty Ltd	068953	9955544	(\$12,000.00)	\$72,863.90
31/03/2022	57	To take up the payments of retentions to the retention trust account - Payment Schedule #851 Varied (retained amount)	CA Carpenter Pty Ltd	064258	258569	(\$1,950.00)	\$70,913.90
31/03/2022	57	To take up the payments of retentions to the retention trust account - Payment Claim #21 (retained amount)	NJ Plumbing Pty Ltd	069865	3698252	(\$1,602.90)	\$69,311.00
15/04/2022	59	To take up interest earned in the Project trust account	Trustee Pty Ltd			\$3.99	\$69,314.99
25/04/2022	65	Payment received into the trust account from ABC Developer for progress claim #259	Trustee Pty Ltd			\$358,000.00	\$427,314.99
26/04/2022	67	Payment of beneficial Interest to Trustee Pty Ltd	Cash at Bank (Business Working Account)	046200	123456	(\$125,000.00)	\$233,000.00



Monthly bank reconciliation

A bank reconciliation is the process of comparing bank records against the trustee's records.

The trustee is responsible for completing a **monthly** bank reconciliation for each trust account **within 15 business days** after the end of each month

Steps:

1. compare the bank statement to the trustee's record of deposits and withdrawals for the month
2. compare the trustee's record of deposits and withdrawals to the trust account ledger trial balance statement for the month



Bank reconciliation record

ABC Trust Pty Ltd – Retention trust account				
Account number	Account name	Date of reconciliation	End of month bank statement	End of month account balance (\$)
123-11103	ABC Trust Pty Ltd retention trust account	10/06/2022	31/05/2022	50,003.60
Reconciliation			Value (\$)	
Bank Statement Reconciliation				
Account balance on 31/05/2022				50,003.60
Add: Deposits in Record of Deposits and Withdrawals but NOT in bank statement				10157.00
Add: Withdrawals on the bank statement that are NOT in Record of Deposits and Withdrawals				0
Subtotal				60160.60
Deduct: Withdrawals in the Record of Deposits and Withdrawals but NOT in bank statement				0
Deduct: Deposits on the bank statement that are NOT in Record of Deposits and Withdrawals				0
A: Expected balance on Record of Deposits and Withdrawals				60160.60
Record of Deposits and Withdrawals Reconciliation				
Balance of the trust account at the start of the month, as shown in the Record of Deposits and Withdrawals				50,003.60
Add: all deposits recorded in the Record of Deposits and Withdrawals for the month				10,157.00
Deduct: all withdrawals recorded in the Record of Deposits and Withdrawals for the month				0
B: Balance of the trust account at the end of the month, as shown in the Record of Deposits and Withdrawals				60,160.60
Trust Account Ledger Trial Balance				
C: Total balance held from the trust account ledger trial balance statement for the month				60,160.00
A = B = C means the account is reconciled				



Trial balance statement

Trust Account Ledger Trial Balance Statement for Project Trust Account (PTA)

For Period ended 30/4/2022

Account	Dr	Cr
Bank Account (Project Trust Account)	\$302,314.99	
AD Electrician Pty Ltd		\$0.00
AZ Concreter Pty Ltd		\$56,324.00
CA Carpenter Pty Ltd		\$23,255.00
NJ Plumbing Pty Ltd		\$32,058.00
Trustee Pty Ltd		\$190,677.99
	\$302,314.99	\$302,314.99

Trust Account Ledger Trial Balance Statement for Retention Trust Account (RTA)

For Period ended 30/4/2022

Account	Dr	Cr
Bank Account (Retention Trust Account)	\$3,562.90	
CA Carpenter Pty Ltd		\$1,950.00
NJ Plumbing Pty Ltd		\$1,602.90
Trustee Pty Ltd		\$10.00
	\$3,562.90	\$3,562.90



How are records to be kept

Retain trust records

- ✓ for at least 7 years.

Computer systems used to keep trust records

- ✓ capable of producing separate reports for
 - particular periods
 - particular beneficiaries
- ✗ NOT capable of deleting all or part of the ledger or record of deposits and withdrawals.

Record transactions

- ✓ in Australian dollars
- ✓ with English language explanations
- ✓ in chronological order
- ✓ within 5 business days of the transaction
- ✓ accurately.



Who can request copies of trust records

Beneficiaries may request:

- ✓ a statement of balance
- ✓ a copy of transactions
- ✓ a copy of the trust records
- ✓ and for a project trust account only, a copy of 'supporting statements' given by the head contractor to the contracting party.

The trustee must provide within 10 business days of the request.

The QBCC may request copies of documents and information through an audit or investigation.



Other considerations

What sort of errors may be identified and what do I do?

- **an overpayment** – try to recover funds (or schedule and pay a lesser amount in the next payment cycle)
- **an underpayment** – organise for payment of the outstanding amount (you may need to top up the account)
- **payment to wrong party** – you may need to top up the account, organise payment to the right party then try to recover the funds

How does the trustee record a top up?

A top up is a deposit from the trustee into the trust account. Just like any other deposit, the ledger must detail top-ups including the date, the amount, the reason and how the top-up affects the amounts held in trust for each beneficiary. The record of deposits and withdrawals will also need to detail the deposit.

4. TRUST ACCOUNT REVIEWS



Trust account review

A trust account review is an auditor's review of a trust account to conclude if the trustee has complied with administration requirements.

For retention trust accounts:

- annually
- upon closure of an account
- when directed to by the QBCC.

For project trust accounts – by QBCC direction only

- the review period and timeframes for compliance will be stated in the direction.



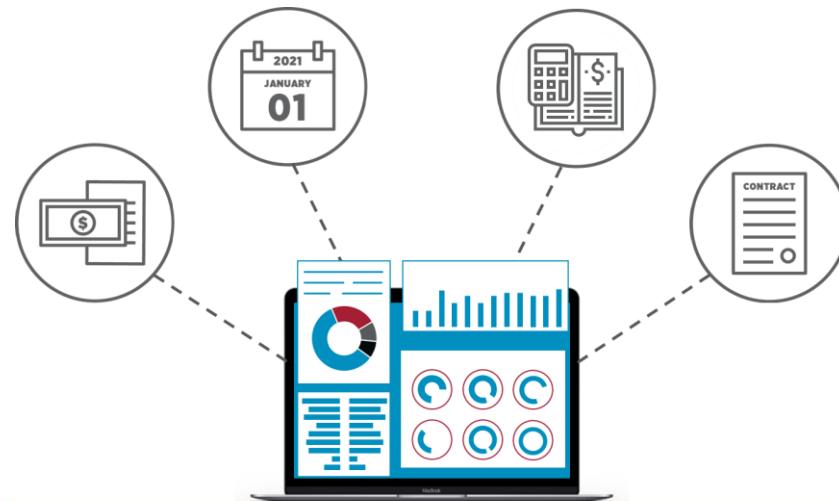
Who can complete a trust account review

An auditor must be:

- registered company auditor (listed on ASIC register)
- independent of the trustee
- not excluded by the QBCC commissioner.

The auditor is required to complete an account review report and submit to the QBCC:

- 40 business days to complete and a further 20 business days to submit
- copy provided to trustee.





Other considerations

What happens if a trustee can't find an auditor?

The legislation requires trustees to engage an auditor within specific timeframes.

If you are having difficulties, please contact your industry association and complete the required form to notify the QBCC why you haven't engaged one.

Is a trust account review required if the account isn't used?

If a retention amount was not held in the account during the review period then an audit is not required.

What is an auditor checking for?

A trust account review is a review of a trust account to conclude if the trustee has complied with the administration requirements. Things that they will be checking for include whether payments/withdrawals have been made and recorded correctly.

Will trustees know the outcome of the audit?

Yes, the auditor is required to provide a copy of the account review report to the trustee as well.



Other considerations

What happens if a breach is identified?

Serious and willful or repeated failures to comply must be reported to the QBCC within 5 business days of the auditor's finding. This may be before the full report submitted.

What is included in the account review report?

Information detailing any irregularities and non-compliance events identified and whether they were rectified by the trustee.

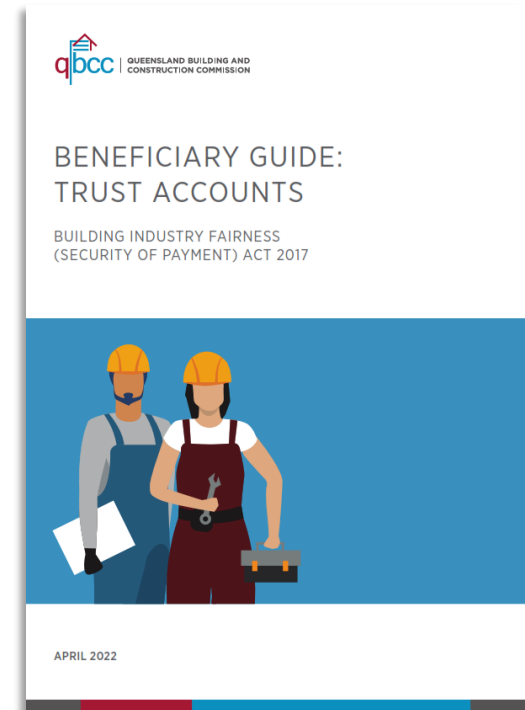
As trustee, can I refuse access to certain documents to the auditor?

No.

This is an offence. The auditor will contact the QBCC if they have problems accessing or believe that records have been hidden or destroyed.

More information

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



THANK YOU

The information given during presentations is of a general and educative nature only and does not amount to legal, financial or specialist advice and should not be relied upon for the purpose of making business or other decisions.

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