

WHO TO PAY FROM A PROJECT TRUST ACCOUNT

There are strict rules for who should and should not be paid from a trust account. It's not as simple as all payments related to a project, it's parties that carry out protected work or supply related services. This is basically all subcontractors, consultants, and some suppliers. Use this factsheet to make sure that you're managing trust funds correctly and avoiding compliance risk.

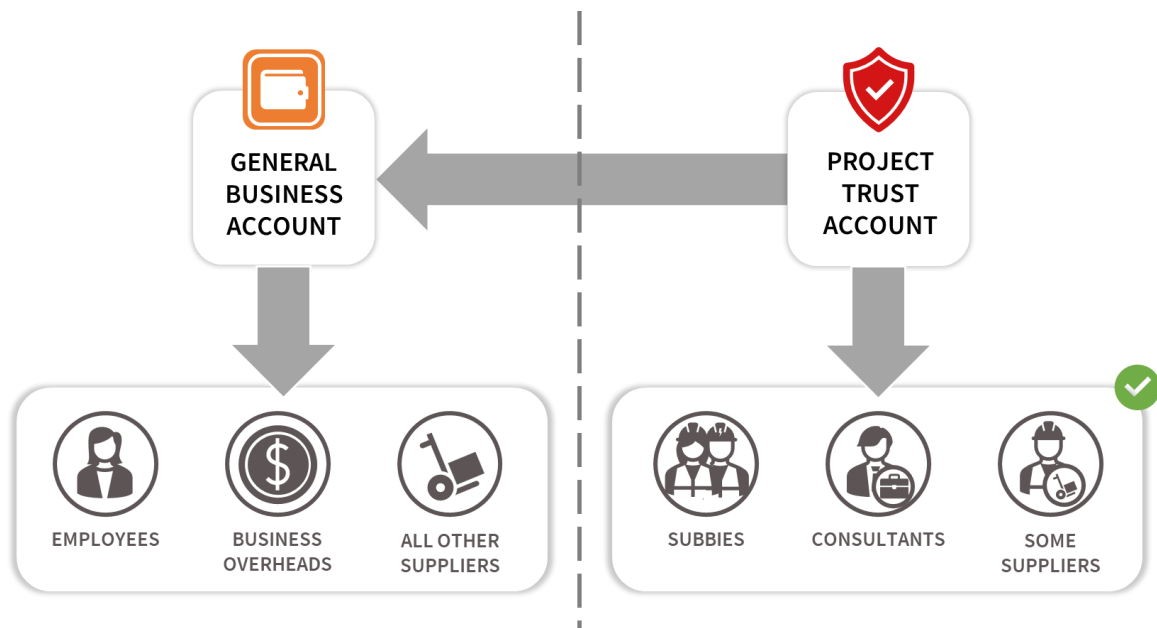
Who to pay

- All subcontractors
- Consultants
- Some suppliers – that also install on site or that make prefabricated components.

Who NOT to pay

- Employees
- Most suppliers – parties that supply goods only
- Other parties that cover general business expenses.

See the table below for a detailed list of parties who should be paid from the project trust account.



How to pay other parties

From your general business account.

As trustee, you can withdraw funds from the project trust account during the project to pay yourself and cover expenses, as long as other parties do not have a beneficial interest in those funds.

What is a beneficial interest and when does it occur?

A beneficial interest is an entitlement to funds that are being withheld.

A beneficial interest occurs when:

1. When you have certified or assessed a claim as payable

2. When you have given a payment schedule advising of an amount to be paid
3. When a due date for payment has occurred and you haven't paid someone
4. When you have withheld cash retentions from payment
5. When a court, tribunal or adjudicator has decided that an amount is payable.

What amounts can I withdraw from the trust as trustee?

Amounts that other parties do not have a beneficial interest in (ie. what trust funds remain after all amounts owed to other parties are accounted for).

What if I pay the wrong party from the trust?

Check that there are sufficient funds in the trust account and top it up if required for the amount that was paid incorrectly. You'll need to record this in your trust records and add information about the error and steps taken to resolve.

What is the consequence for paying the wrong party or not paying a beneficiary from the trust?

There are various consequences depending on the intent, severity and impact caused by the non-compliance and the QBCC will consider this when choosing an appropriate response. Potential consequences are outlined below for each offence.

Paying the wrong party from the trust

- Education/informal warning
- Formal warning
- Fine – \$3,096 for an individual (20 penalty units) or \$15,480 for a corporation (100 penalty units).
- Licence action such as an imposed condition, licence suspension or cancellation – for QBCC licensees only
- Prosecution – maximum penalty is \$46,440 (300 penalty units) or 2 years imprisonment.

Not paying a party from the trust that should have been

- Education/informal warning
- Formal warning
- Fine – \$3,096 for an individual (20 penalty units) or \$15,480 for a corporation (100 penalty units).
- Licence action such as an imposed condition, licence suspension or cancellation – for QBCC licensees only
- Prosecution – maximum penalty is \$30,960 (200 penalty units) or 1 year's imprisonment

(current penalty unit value is \$154.80 as at 1 July 2023)

Do I split payments to a supplier if they do some supply only and some supply and install?

No. Make all payments to them from the project trust account. If they are carrying out any protected work or supplying related services, all payments to that party for that project are to be paid from the trust account.

What if a party's invoice includes claims for multiple jobs?

You'll need to split up the payment and pay the correct amounts from each project trust account. It may be easier to request separate invoices to assist.

What about sub-subcontractors? Do I have to pay them as well from the trust?

No, only first tier subcontractors that you engage directly are paid from the trust. If a subcontractor further subcontracts out all or part of the work, the subcontractor pays them separately and as per the terms of their contract.

Why aren't all parties paid from the trust?

Other protections apply for suppliers under general consumer law. Suppliers can also claim payment in advance of goods delivered or larger deposits upfront. The Government's intent of the trust account requirements is to help ensure that parties are paid for the work that they do and increase trust and transparency in payments/in the construction industry.

Employee payments are not protected by a trust account as they have other rights under general employment laws and entitlements and are one of the first parties to be paid if the company goes insolvent.

How do I know if someone is a contractor or an employee?

A contractor decides how to do the job they have been contracted to do and invoices the person who hired them for the work, which results in a profit or loss for the contractor.

An employee performs the jobs set by their employer, in the way their employer tells them to, receives payment regularly, and bears no financial risk.

What if the party has factoring or invoice financing arrangements in place?

You are not allowed to make payment to the third party. All payments from the trust must be made to an account that is nominated and controlled by the beneficiary.

What if there isn't enough money in the trust to pay someone?

As trustee, there is a requirement to top up the account if there are insufficient funds.

How do I know if the supply of "prefabricated components" is included or not?

Generally speaking, workers prefabricating complete buildings or components of a building (e.g. modules) would be considered subcontractor beneficiaries of a project trust (and therefore paid from the project trust account). However, it is not the intent to capture parties contracted to supply 'on/to order' building materials such as windows, doors, cabinetry or furniture.

Still unsure?

Send an email to laura@buildingtrusts.com.au or lodge an online enquiry to seek further assistance.

There is also tool on the QBCC website which can be used to determine who to pay from the project trust account.

<https://my.qbcc.qld.gov.au/myQBCC/s/trust-accounts-tool>

WHO	PAY FROM PTA?	COMMENTS
SUBCONTRACTORS		
Airconditioning and refrigeration mechanic	Yes	
Bricklayer	Yes	
Cabinet maker	Yes	
Carpenter	Yes	
Civil works contractor	Yes	
Cleaner	Yes	Including a site cleaner/professional cleaner and internal slab sweepers that is carried out during the course of the construction work.
Concreter	Yes	Including the concrete pump operator, a toppings or coatings specialist, or a post tensioning or pre-stressing contractor.
Demolition contractor	Yes	
Dewatering specialist	Yes	
Earthworks contractor	Yes	
Electrician	Yes	
Excavation contractor	Yes	
Fencing contractor	Yes	
Fire safety professional	Yes	
Floor sander	Yes	
Formwork contractor	Yes	
Gasfitter	Yes	
Glazier	Yes	
Landscaper	Yes	
Machine operator	Yes	
Painter	Yes	
Piling specialist	Yes	
Plasterer	Yes	
Plumber	Yes	
Pool builder	Yes	
Rofer	Yes	
Scaffolder	Yes	
Shop fitter	Yes	
Stone mason	Yes	
Surveyor	Yes	
Termite and pest control contractor	Yes	
Tiler	Yes	
Waterproofer	Yes	
CONSULTANTS		
Architect	Yes	
Building Inspector	Yes	
Certifier	Yes	
Civil Engineer	Yes	
Construction manager	Yes	
Contract administrator	Yes	

Decorator	Yes	
Designer	Yes	
Draftsperson	Yes	
Electrical engineer	Yes	
Engineer	Yes	
Fire engineer/specialist	Yes	
Geotechnical engineer	Yes	
Hydraulic engineer	Yes	
Landscape architect	Yes	
Mechanical engineer	Yes	
Project manager	Yes	
Quantity surveyor	Yes	
Steel reinforcement contractor	Yes	If involved in the placement of the steel as well then yes.
Structural engineer	Yes	
Surveyor	Yes	
Town planner	Yes	
SUPPLIERS		
Brick/block supplier	No	
Crane/hoist supplier	No	This is for both the hire of equipment only and when hiring an operator as well.
Concrete supplier	No	
Doors and windows supplier	Maybe	If the parties are making prefabricated components and/or coming to site and installing the works, then yes. Not for supply only of products that are off the shelf.
Fencing supplier	No	Not for supply only.
Fire alarm systems	Maybe	If also installing on site then yes, not for supply only.
Hardware supplier	No	
Hoardings/temporary fences	Maybe	If also installing on site then yes, not for supply only.
Lift	Yes	
Precast concrete/tilt panels	Yes	
Reinforcement (supply only)	No	Not for supply only. If also placing steel, then yes.
Scaffolding (hire only)	No	Not for the hire of the equipment only.
Shower screen/mirrors/sliding door supplier	Maybe	If the parties are making prefabricated components and/or coming to site and installing the works then yes. Not for supply only of products that are off the shelf.
Site accommodation	No	Even if delivered and off loaded/installed on site by the company.
Small plant (hire only)	Maybe	Not for hire of equipment only. If the contract is also for an operator carrying out site works, then yes.
Structural steel	Maybe	If the parties are making prefabricated components and/or coming to site and installing the works then yes. Not for supply only of products that are off the shelf.

Timber supplier	No	
Wall and soffit cladding supplier	Maybe	Not for supply only. If also installing, then yes.
OTHER		
Labour hire company	No	Even if the work carried out by the workers that the hire company organises meets the definition of protected work.
Site security	No	This includes if they are onsite or conduct inspections.
Site accommodation	No	This is even if the building is prefabricated and installed on site.

The information in this factsheet is general and not intended as legal advice. Seek further guidance on your specific circumstances.