

CLOSING A PTA

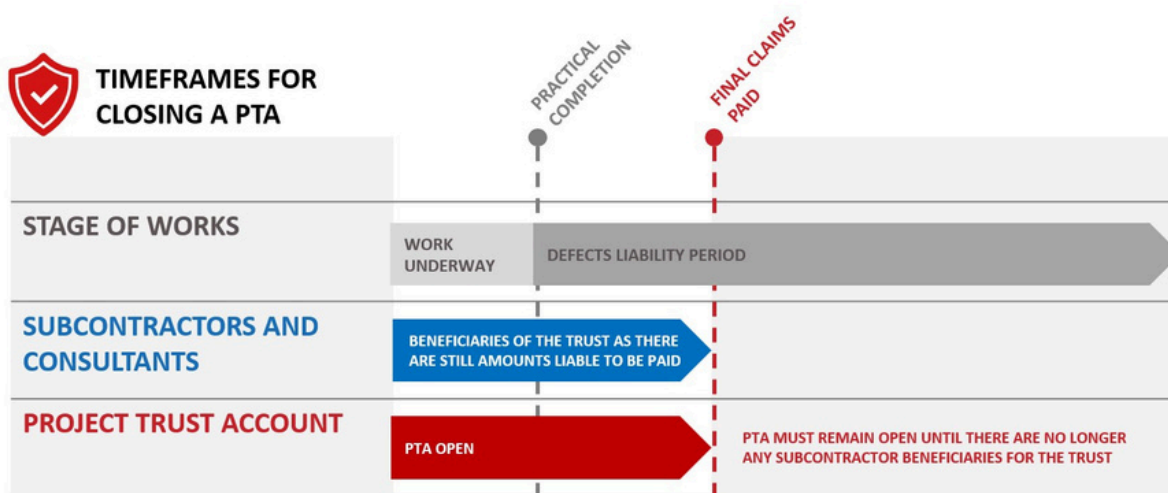
There are certain rules and restrictions in place for when you can close a project trust account (PTA).

WHEN TO CLOSE THE PTA

The PTA is intended to be closed shortly after practical completion has been reached.

The account can only be closed once there are no longer any subcontractor beneficiaries for the trust – this means that you have paid all amounts that are liable to be paid to subcontractors under their relevant subcontracts.

This excludes retention amounts that may still be withheld in the retention trust account (RTA).



HOW TO CLOSE THE PTA

1. Determine whether all amounts that are owed to beneficiaries have been paid.
2. Withdraw any remaining interest and amounts in the account that are not owed to a subcontractor beneficiary.
3. Organise for the account to be closed with the financial institution.
4. Notify the QBCC and contracting party that the account has been closed.

Reminder – it's important to keep all associated documentation and records for at least 7 years after closing the account.

RECTIFICATION WORK DURING THE DEFECTS LIABILITY PERIOD

If there are any defects or omissions in work performed by a subcontractor beneficiary and you organise for another party to correct these. Pay the other party directly from the RTA (and notify the original subcontractor of the payment).



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NOTIFICATION REQUIREMENTS

Within 5 business days of organising for the account to be closed, you must notify:

- the QBCC via the online form in myQBCC; and
- the contracting party (client) in any format, but including the following mandatory information:
 - trustee name
 - account details including the financial institution, account name, BSB and account number
 - date of closure.

DEFECTS LIABILITY PERIOD AND MAINTENANCE WORK

The PTA does not need to be left open for the duration of the defects liability period or if the only work remaining under the contract is for ongoing maintenance.

Any cash retentions that are being withheld from payment should be in the retention trust account (RTA) and when released, these amounts are to be paid directly from the RTA to the subcontractor beneficiary (not via the PTA).

If there is ongoing maintenance work, once the PTA has been closed, payment for this work can be from your regular business account.

WITHDRAWING REMAINING FUNDS

Before closing the account, you are entitled to withdraw any amounts that are not liable to be paid to a subcontractor beneficiary. This includes any interest earned on funds in the account, which are otherwise restricted to being withdrawn once every 12 month period.

ENTITLEMENT TO UNCLAIMED AMOUNTS

If there are amounts in the PTA that have not been claimed by a subcontractor beneficiary, it is recommended that you exercise caution before withdrawing these funds and closing the account.

It would be worthwhile checking the subcontract conditions for any time limits for when a subcontractor beneficiary can submit a final claim, there are also maximum timeframes in the legislation for this:

A claim that is NOT for a final payment must be given BEFORE the latest of the following:

- the latest date as per the construction contract (if any)
- six months after the completion of all the work or supply of all the goods or services under the construction contract.

A claim for a final payment must be given BEFORE the latest of the following:

- the latest date as per the construction contract (if any)
- six months after the completion of all the work or supply of all the goods or services under the construction contract
- 28 days after the end of the last defects liability period for the construction contract.



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If you have made genuine attempts to prompt the subcontractor to issue their final claims and they are beyond the time limits for submitting a claim, you may choose to withdraw these amounts from the trust.

DISPUTED AMOUNTS

If an amount is subject to a dispute, generally this does not need to be left in the project trust account. The amount must not be liable to be paid (ie. approved or certified, scheduled or ordered to be paid) if you are wanting to withdraw this amount from the PTA.

As an example:

- A subcontractor has claimed \$10,000, you issue a payment schedule proposing to pay \$5,000. The subcontractor disagrees with what you've scheduled and lodges an adjudication application.
- You are required to pay the scheduled amount of \$5,000 by the due date for payment.
- You are not required to leave the disputed \$5,000 in the project trust account.

RECTIFICATION WORK

If there are issues with work carried out by a subcontractor beneficiary, and you organise for another party to fix these defects or omissions, you are allowed to pay this other party directly from the RTA (not the PTA account). There are additional notification requirements to the original subcontractor beneficiary to inform them of the change to their entitlement to retention trust funds.

It is highly recommended that you pay these other parties directly from the RTA as you are restricted in withdrawing funds to reimburse yourself until after the DLP period has ended.

RELEASE OF RETENTIONS FROM THE CLIENT

Whilst the PTA is open, the principal (client) is required to make all payments to you via the PTA account. If they are withholding cash retentions, they are also required to set up and keep these amounts in their own retention trust account (RTA).

Rather than leaving the PTA account open until after the end of the DLP period, you can receive the final retention amounts in your normal business account. There is no restrictions in the legislation regarding this.

POTENTIAL CONSEQUENCES

The consequences for closing a PTA unlawfully are significant with a fine of \$80,650- or 1-year's imprisonment.

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