

# Building Industry Fairness Reforms: Project Bank Accounts

## Principal Guidelines

December 2019



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## Introduction

The objective of the *Building Industry Fairness (Security of Payment) Act 2017* (the BIF Act) is to improve security of payment in the building and construction industry by providing for effective, efficient and fair processes for securing payment. One of the ways the Act will achieve this is through the introduction of project bank accounts (PBAs) for certain State Government building and construction projects. Other key reform measures in the BIF Act, including streamlined and modernised processes for progress payments, adjudication and subcontractors' charges, will also lead to faster and fairer processes for securing payment, and are expected to commence in the coming months.

This guideline is produced by the Department of Housing and Public Works (HPW) to explain the requirements for PBAs on certain Queensland Government building projects.

This guideline should be read by Principals (Queensland Government officers or their agents) involved in the procurement and/or management of building projects.

There are additional separate guidelines for Head Contractors and Subcontractors seeking to work on government building projects.

### Key terms



## Overview of project bank accounts

The Queensland Government has introduced the framework to establish PBAs to improve the security of payment for Subcontractors in the building and construction industry. From 1 March 2018, a PBA is required for certain Queensland Government building projects. It is important that all persons involved in building and construction projects are aware of their obligations set out in:

- chapter 2 of the *Building Industry Fairness (Security of Payment) Act 2017* (the BIF Act),
- the *Building Industry Fairness (Security of Payment) Regulation 2018* (BIF Regulation), and

A PBA is comprised of three bank accounts that operate under a trust for building contracts, where the Head Contractor is the 'trustee', and the Head Contractor and first-tier Subcontractors are 'beneficiaries' to that account. Progress payments, retention and disputed amounts are held in the PBA trust accounts.

Payments are paid into the PBA and funds are dispersed by the financial institution to the regular accounts of Head Contractors and Subcontractors, rather than progress payments being made from the Principal (in Phase 1 of implementation, the State Government) directly to the regular banking accounts of the Head Contractor.

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*Principals of State Government projects should note that standard contracts AS2124, AS4300, AS4305 and AS4122, maintained by Contract Services on behalf of the Department of Housing and Public Works for use by the State, have been amended for PBA provisions. Various clauses within the contracts must be considered in the administration of project bank account provisions and have been reflected in this guideline where relevant.*

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## When is a project bank account required?

### Issuing and accepting a tender

The introduction of project bank accounts does not change how the Queensland Government tenders for and awards building contracts.

The Queensland Government's tender documentation includes information regarding the PBA requirements.

The PBA requirements only apply to certain 'building work' projects tendered after 1 March 2018 where the 'Principal' is the State of Queensland (or Statutory Authority if it has elected to require a PBA). While it is the responsibility of the Head Contractor to determine whether a PBA is, or will be, required, the Principal (or Principal's agent) may provide general advice to support this determination and guide contractors through the PBA tender documentation.

Head Contractors may include principal consultants, architects, and building inspectors if these agents engage a Subcontractor to perform all or part of the work they are contracted to undertake.

If a tenderer is unsure about whether a PBA is required, they should be directed in the first instance to the Head Contractor Guidelines, Checklists and Factsheets, and then to HPW Contract Services. If specific advice about the contract and/or PBA applicability is required, Head Contractors may need to seek independent legal advice.

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*The Queensland Government's tender documentation includes information regarding the PBA requirements and requires certain information from the tenderer to inform the Principal about whether the contractor has considered the PBA thresholds and determined whether a PBA is likely to be required (should they be the successful tenderer).*

*If the Principal is a State authority, the Annexure in the Conditions of Contract states whether the Principal has decided that a PBA is to be established for the Contract, provided the other matters that determine when a PBA is required under the BIF Act are satisfied.*

*An assessment shall be made by the agent of the Principal at the time of tender as to whether the contract is likely to be a contract that requires a PBA. A returnable tender schedule is required with the tender where:*

- 1. The Principal is the State, or a Statutory Authority that has decided a PBA is required for this contract (refer Annexure);*
  - 2. The scope of work under the contract is 'building work' (see s.8 BIF Act);*
  - 3. The scope of work is not only maintenance work (see s.8 BIF Act); and*
  - 4. Residential construction work is not covered however as part of the government rollout and where there are at least three living units and the Department of Housing and Public Works is the Principal, PBAs will apply.*
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Where a returnable schedule is required the tenderer must advise 'yes' or 'no' as to whether:

- 50 per cent or more of the tender sum is for 'building work' as defined in section 8 of the BIF Act; and
  - The tenderer will enter into one or more subcontracts as described in section 6 of the BIF Act, in performing the work under the Contract if it is the successful tenderer.
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While it is the responsibility of the Head Contractor to determine whether a PBA is required, the Principal may refer to the information above to provide general advice to the tenderer about whether a PBA may be required; and the information above may also inform the Principal about whether a contractor has not met its legislative obligations to establish a PBA in accordance with the BIF Act.

## **PBA threshold self-assessment tests**

There are three 'threshold tests' that need to be considered to determine if a PBA is, or will be, required for a contract. When ALL THREE thresholds are met, the contract is considered a 'PBA contract' and a PBA is required. Refer to the decision tree at Appendix A for a summary of the PBA thresholds.

Note that for the first stage of implementation of PBAs, the Principal can only be the State Government or a State Government authority which has elected to establish PBAs.

### **Threshold test 1: Is it a contract for 'building work'?**

A PBA may be required if the building contract is for the carrying out of activities defined under the BIF Act as '**building work**', and when **more than 50 percent** of the contract price is for that type of 'building work'. Refer to Attachment 1 for definitions of building work.

### **Threshold test 2: Is the total value of the contract price between \$1 million and \$10 million?**

A contract for building work where the accepted contract price is between \$1 million and \$10 million (inclusive of GST) is a 'PBA Contract' and may require that a PBA be established if threshold test 3 is also satisfied.

### **Threshold test 3: Will Subcontractors be engaged under the contract?**

A contract for 'building work' with a contract price between \$1 million and \$10 million is a PBA contract only if the contractor has or will engage at least one Subcontractor, other than a supplier, in relation to the work under the building contract. Refer to Attachment 1 for definitions for Subcontractor and supplier.

However, a PBA will not be required if the Head Contractor can prove there is less than 90 days between the date a PBA is required and the Date for Practical Completion for that project. Refer to Section 23 (8) of the BIF Act for more information.

Example of PBA contracts (all values incl. GST)	Examples of contracts that are not PBA contracts (all values incl. GST)
<ul style="list-style-type: none"> <li>• Busway lift modernisation works plus ongoing service and maintenance by Department of Transport and Main Roads with a contract price of \$1.8 million and the lift modernisation works' component is \$1.2 million (more than 50 per cent of the contract price). Note, the PBA will not be required for the ongoing service and maintenance after the modernisation work is complete.</li> <li>• Construction of 18, 2-bedroom apartments by the Department of Housing and Public Works with a contract price of \$3 million.</li> </ul>	<ul style="list-style-type: none"> <li>• Upgrade of an ambulance station by Queensland Ambulance Services where the accepted contract price is \$800,000.</li> <li>• Redevelopment of a surgical outpatient unit by a Hospital and Health Service that has not elected to require a PBA*.</li> <li>• New primary school construction by Department of Education and Training with a contract price of \$36 million.</li> <li>• Courthouse upgrade by Department of Justice and Attorney-General with a contract price of \$11 million.</li> </ul> <p><i>*If the HHS had decided to opt-in, then this project could be a PBA Contract subject to other thresholds being met.</i></p>

### Variations and amendments during a building contract

The BIF Act provides for the inclusion of building contracts after amendment or variation. If there is a variation to the building contract, Head Contractors will need to consider whether these amendments cause the contract to become a 'PBA contract'.

If a building contract did not require a PBA be established at the outset, but the contract is amended in such a way that it then meets the conditions that would make it a 'PBA Contract', a PBA will be required to be established from the point of the agreed amendment or variation. Principals (and Principal's agents) must monitor contract variations for changes that may cause a contract to become a PBA contract and ensure the Head Contractor is aware of the requirements for PBAs in situations of contract amendment.

An amendment or variation can include a change in scope of building work (e.g. adding an additional dwelling unit to a residential construction project or additional design work) or a variation to the contract value.

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*For example, a contract for building work (where Subcontractors are engaged) with an original value of \$900,000 (inclusive of GST) is amended eight months into the contract period, with the variation increasing the contract value to \$1.25 million. The Head Contractor for the contract would need to establish a PBA within 20 business days after the variation was agreed and then ensure compliance with the BIF Act from that point onwards. (Note: the BIF Act does not require retrospective compliance if a PBA is established because of contract variation or amendment. Although once the PBA is established, any and all retention money held for a subcontractor must be transferred into the retention trust account).*

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Note however, for an increase in the contract price that increases the total value over \$1 million (inclusive of GST), a PBA is only required where the accumulative price increase is 30 per cent or more of the original accepted contract value.

If a PBA has already been established and a contract amendment or variation then affects the thresholds, the PBA must remain in use. For example, if a variation increases the value of a PBA building contract from \$9.2 million to \$11 million (inclusive of GST), the requirement for a PBA continues irrespective of the increased contract price being greater than the upper price threshold of \$10 million.

## How the PBA works and is to be used

### When the Head Contractor enters into the first subcontract

The point at which the Head Contractor enters into the first subcontract under the building contract is essentially the trigger for the requirement to establish a PBA (unless a contract specifies an earlier date for establishment).

**After** entering into a subcontract, the Head Contractor must provide to the Principal information about the subcontract including the:

- name of the Subcontractor (i.e. registered business name and/or trading name)
- name of the Subcontractor's financial institution
- the subcontractors bank account name (i.e. the name of the account holder which could be the business name or private individuals/business owners)
- bank account details of the subcontractor including the BSB and account number.

This information must be provided using the approved form within 5 business days of entering into the subcontract. A separate form is required to be provided for each Subcontractor.

**During** the subcontract, if there is a change to the Subcontractor information, the Head Contractor must advise the Principal of the updated/changed information using the approved form within 5 business days of becoming aware of the changes.

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*Note: In accordance with the Special Conditions of Contract (AS2124, AS4300 and AS4305), a Head Contractor must:*

1. *not subcontract any of the work or allow a Subcontractor to assign or subcontract any of the work under the contract without the prior written approval of the Superintendent. Head Contractors must submit the required request for approval to subcontract form to the Superintendent **before** engaging Subcontractors. This is a contractual obligation and does not relate or affect in any way the Head Contractor's obligations under the BIF Act;*
2. *from the commencement of work under the Contract until Practical Completion, maintain a Site Personnel Register in the form attached to the Contract Conditions of all individuals who carry out work under the Contract on Site; and*
3. *provide a statutory declaration with each payment claim submitted declaring that all Subcontractors and Sub-subcontractors performing work under the Contract have been approved by the Superintendent; and that the Site Personnel Register is maintained and is current and correct.*

*The Principal should maintain a register of approved Subcontractors and Sub-subcontractors which includes details of the value of the subcontract and sub-subcontract. The Principal should also keep a register of the information about subcontracts provided in the s50 notice (Subcontractor name and bank account details). These registers should be used to monitor the compliance of the Head Contractor with respect to PBAs:*

- *The Principal should confirm that all Subcontractor beneficiaries have been notified in accordance with s50 of the BIF Act and/or that all Subcontractors were approved by the Superintendent prior to engagement in accordance with the contract.*
- *The Principal may use the Site Personnel Register to validate names of Subcontractors against the register of approved Subcontractors and to confirm that all Subcontractor beneficiaries have been notified in accordance with s50; the site personnel register may also inform a review of the transaction history of the trust accounts of the PBAs to confirm all Subcontractors are being paid for the work being performed.*
- *The value of the subcontract and the trade cost breakdown can provide indicators as to whether Subcontractors are claiming for and being paid for the work they have completed when reviewed against the transaction history of the trust accounts of the PBAs and/or when reviewing payment instruction information.*

*The above checks and reviews of the approved Subcontractors' register should be conducted periodically (refer to Principal's checklist) throughout the contract. Any inconsistencies should be notified to the Superintendent for follow up with the Head Contractor and/or reported to the Queensland Building and Construction Commission (QBCC) for further investigation.*

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## Related entities

The purpose of the related entity provisions is to ensure Head Contractors cannot use a corporate structure (e.g. subcontracting to a family member) to avoid paying actual Subcontractors through the PBA. The Act imposes particular obligations if parties to a contract and subcontract are 'related entities'. A person is a 'related entity' if:

- for individuals, they are members of the same family (including a person's spouse, parent or grandparent, child or grandchild, brother, sister, nephew or niece either by birth or marriage)
- for an individual and a corporation, the person is a majority shareholder, director or secretary of the corporation or its related body corporate, or the person has an interest of 50 percent or more in the corporation
- for corporations, they are related bodies corporate.

Where a Head Contractor enters into a subcontract with a related entity, the Head Contractor must advise the Principal (and the QBCC Commissioner) using the approved form within 5 business days after entering into the subcontract.

If a related entity relationship exists, certain additional obligations will apply; refer to s19-s21 of the BIF Act.

### Principal's obligations for related entities

Upon being notified about a related entity from the Head Contractor, or after otherwise becoming aware that a Subcontractor is a related entity to the Head Contractor, the Principal must also advise the QBCC Commissioner of the matter in the approved form'. The BIF Act also provides that 'the Principal is taken to know a Subcontractor beneficiary is a related entity for the Head Contractor if the Principal ought reasonably to know'.

A Principal could 'reasonably' inform themselves of a related entity in the following ways:

- Being in receipt of a copy of the 'Notice of related entity form' provided by the Head Contractor in accordance with s21(4)
- Upon review of the information provided about a Subcontractor (e.g. in the *Request for approval to subcontract* form or *s50 Notice of Subcontractors* form).

A Principal should then execute its obligation to notify the Commissioner by either of the following:

- After receiving the *Notice of related entity* form provided by the Head Contractor, the Principal completes part 6 'Principal's declaration' on the form and forwards the form to the QBCC (*Note: the Principal should date stamp and sign the form upon receipt and keep a copy of the completed form for records*).
- If the Principal becomes aware of or suspects a possible related entity relationship between the Head Contractor and a Subcontractor and has not received a copy of the *Notice of related entity* form from the Head Contractor, the Principal should notify the QBCC using the '*PBA Complaints*' form (selecting 'failure to notify of related entity' as the nature of complaint).

### When the Head Contractor establishes the Project Bank Account

It is the responsibility of the Head Contractor to determine if a PBA is required under the building contract, to establish the PBA and ensure that the PBA is used in accordance with the law.



## When and how the Project Bank Account must be established

If a building contract provides a date by which the PBA must be established by the Head Contractor, then it must be established by that date. Otherwise, the PBA must be established within 20 business days after entering into the first subcontract.

Note: State Government standard contracts provide for the establishment of a PBA within 20 business days from acceptance of tender.

After opening a PBA, the Head Contractor must give the Principal written notice stating the name of the trust account/s, name of the financial institution where the trust account is held, and the BSB and account number for the account/s of the PBA. This notice must be given within 5 business days. A notice must also be provided to the Principal within 5 business days whenever there is a change to any of the PBA trust account information.

## Principal's viewing and oversight of a PBA

Head contractors must ensure the Principal (for Phase 1, is only employees and/or agents of State Government departments and statutory authorities) is provided the information to enable electronic viewing access of the project bank account. Electronic viewing access is intended to give the Principal line of sight of:

- deposits of amounts to and withdrawals from the trust accounts of the PBA and the descriptions about those transactions
- information relevant to the payment instructions given to the financial institution about the PBA
- account payment reports.

Principals should advise the Head Contractor of the officer/s to be given electronic viewing access. It is possible for more than one officer to be provided electronic viewing access and access can be changed as required. Note: the processes for providing authorised viewing access to the PBA accounts may differ across banking institutions. For example, Principals (and/or their delegates) may be required to provide proof of identity to the financial institution as part of the authorisation process for viewing access.

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*When provided with the viewing access details, the Principal should confirm the access information enables viewing of all three trust accounts, the transaction history of the accounts and printing of transaction reports for each of the accounts. The Principal should also confirm the PBA has been established in accordance with the BIF Act.*

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If a Principal becomes aware of a Head Contractor's non-compliance with any of the requirements for the trust accounts of the PBA, the Principal should report these to the QBCC Commissioner. (Refer to Attachment 6 'Principal's Checklist' for more information about notifications).

## When the Project Bank Account trust account is closed

The Head Contractor may 'dissolve' the PBA only when:

- there are no longer any Subcontractor beneficiaries for the PBA (i.e. when all amounts, including retention amounts, have been paid in accordance with the subcontract), OR
- if the only remaining work to be carried out under the contract is for maintenance (where maintenance work does not include any work for which a retention amount has been withheld under a subcontract).

There are significant penalties, including imprisonment for unlawfully dissolving a PBA.

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*Note: In accordance with the Special Conditions of Contract (AS2124, AS4300 and AS4305), a Head Contractor must:*

1. *provide written notice of their intent to dissolve the account/s of the PBA at least 5 business days before the accounts are closed; and*
2. *provide the Principal with a printed copy of the final balance sheet for each account of the PBA detailing the balance of each account of the PBA.*

*When advised that a PBA is to be dissolved, the Principal should review the written reports provided by the Head Contractor against transaction records of the PBA accounts; and ensure that a final transaction report is printed and retained for record-keeping purposes. The Principal should at this time verify there is not any remaining amounts or balances in any of the three accounts, other than amounts stated in the written reports and/or owing to the Head Contractor.*

*Note: The Principal has viewing access to the accounts of the PBA and may become otherwise aware that accounts of the PBA have been closed (dissolved). The Principal should report to the QBCC using the 'PBA Complaint Form' if it becomes aware of the closure of any trust accounts of the PBA while they are still required in accordance with the BIF Act.*

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**After closing** the accounts of the PBA, the Head Contractor must within 5 business days give written notice to the Principal that the PBA trust account/s have been closed.

## How will payments work using a Project Bank Account?

The Head Contractor will be entitled to make progress claims to the Principal in accordance with the building contract and other building legislation. The Principal is required to ensure that all payments made to a Head Contractor under a PBA contract are paid into the PBA for that project. The BIF Act also requires that payments into a PBA must only occur via an electronic bank transfer (i.e. must not occur by cheque or cash payment).

Head Contractors will also concurrently receive payment claims from the Subcontractors engaged under subcontracts. The Head Contractor will make progress payments to Subcontractors in accordance with the subcontract or Chapter 3 of BIF Act. The diagram at Attachment 3 shows the process for claims and payments.

### Payment Instruction (PI) and making payments from a Project Bank Account

Any withdrawal (payments) from a PBA trust account and transfers between PBA trust accounts must only be made using a **payment instruction** given to the financial institution by the Head Contractor.

The payment instruction is a direction to the bank to pay Subcontractors and the Head Contractor amounts due from the amount held in the PBA and/or transfer amounts between the accounts of the PBA. Payment instructions, which are used by banks for batch transactions, can be generated using most accounting software packages or the online customer platforms of the financial institutions.

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*Note: Depending on the financial institution, payment instructions can be known as ABA files, Cemtext files, BECS files, payment files, direct entry (DE) files or pay anyone files. These files allow for batch processing of multiple payments. Most banking platforms provide the option of manually creating payment file using a multiple pay anyone function.*

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After uploading a payment instruction to the financial institution, the Head Contractor must ensure a copy of the following information, which must be contained in the payment instruction (i.e. the payment instruction information), is given to the Principal:

- name of each payee or person (e.g. Subcontractor, Head Contractor)
- name of the payee's or person's account
- bank account details (name of financial institution, BSB and account number)
- amount to be paid to the person or an account (including amounts paid to retention or disputed funds trust accounts)
- date the payment has been or is to be paid.

Payment instruction information must be provided to the Principal for ALL withdrawals (payments) to Subcontractor beneficiaries and to the Head Contractor, deposits into the retention and disputed funds trust accounts, and withdrawals (transfers and payments) from the retention and disputed funds trust accounts.

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*After receiving the payment instruction information, the Principal should verify that the payments listed in the payment instruction information match the actual transactions in PBA accounts (by viewing the account transaction history or payment reports). If the payment instruction information relates to future dated payments that have not yet been executed, the Principal may also be able to view the actual payment file in the PBA account, and this can also be used to verify the payment instruction information.*

*The Principal must also review the payment instruction information for 'discrepancies', which under the BIF Act means:*

- *an error in the account number for a Subcontractor beneficiary*
- *payment to an entity other than the Head Contractor that is not a Subcontractor beneficiary*
- *payment to a Subcontractor beneficiary if the name of the Subcontractor beneficiary and the account name do not match.*

*In order to identify discrepancies, the Principal should check/compare the following:*

- *to confirm payments have not been made to entities other than beneficiaries (see b), check the names and account details listed in the payment instruction information and/or account transaction reports against the S50 notice (Principal to be given information about subcontracts form), register of approved Subcontractors and the account information of the Head Contractor*
- *to confirm there are no errors in the account number (a) and account name (c) for a Subcontractor, check name of the payee, name of account and account numbers listed in the payment instruction information and/or account transaction reports against the Subcontractor details provided on the S50 notice.*

*Note: The name on the Subcontractor's bank account can be different to the trading name of the Subcontractor. For example, the Subcontractor's bank account might be in a joint family name or personal name different to the registered business name of the Subcontractor. The s50 Notice of Subcontracts requires both the Subcontractor name and bank account name to be provided. Regardless of a difference in the name of the beneficiary and the account name, if the information on the S50 notice matches the account name on the payment instruction information, this should not be considered a reportable discrepancy. A difference in an account name is only a reportable discrepancy if the payment instruction information does not match the S50 notice.*

*The Principal must report any discrepancies or other compliance matters to the QBCC Commissioner using the 'PBA Complaints Form'.*

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## Retention amounts held in the PBA

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*In accordance with the Special Conditions of Contract, a Head Contractor must submit with each payment claim a completed Subcontractor Payment Summary using the form attached to the contract conditions. A separate Subcontractor Payment Summary is required for each Subcontractor and must include summary information about all Subcontractor payment claims received and all payment instructions made by the Head Contractor up to that date. The Principal or Superintendent is not required to provide any review, comment, approval, expression of satisfaction or dissatisfaction concerning a Subcontractor Payment Summary.*

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Where a subcontract provides for retention money to be withheld from progress payments, the Head Contractor must ensure these retention amounts are held only in the retention trust account for the PBA.

The Head Contractor must direct, via a payment instruction, the retention amount into the retention trust account of the PBA (at the same time the progress payment is directed to the Subcontractor) and ensure that amount is **identifiable** as being held for the Subcontractor beneficiary entitled to that amount. A copy of the payment instruction information must also be provided to the Principal and the Subcontractor.

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*Payment instruction information will include details about amounts paid into the retention trust account of the PBA. After receiving the payment instruction information, the Principal should verify that the payments listed in the payment instruction information match the actual transactions (by viewing the account transaction history or payment reports) executed in PBA accounts; and that these payments have been made in accordance with the BIF Act including that:*

*all amounts held in the retention trust account are 'identifiable' as being held for a Subcontractor beneficiary*

*there is reasonable evidence of retention amounts being paid 'against' all known Subcontractors*

*all deposits into and withdrawals out of the retention trust account have been notified to the Principal (via a copy of the payment instruction information) in accordance with S51.*

*payments from the retention trust account are made only to Subcontractor and Head Contractor beneficiaries.*

*The Principal should notify the QBCC using the 'PBA Complaint Form' if it has concerns about retention amounts or if it identifies any discrepancies in the payments/withdrawals from the retention trust account.*

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## Disputed amounts held in the PBA

Under the BIF Act, a **'payment dispute'**, for the purposes of the disputed funds trust account, occurs if:

1. after the Subcontractor makes a valid payment claim and the Head Contractor provides a payment schedule, there is a difference between the amount that the Head Contractor scheduled to pay the Subcontractor beneficiary and the amount that the Head Contractor actually pays the Subcontractor beneficiary through the payment instruction. In this case, the **'disputed amount'** that must be transferred to the disputed funds account is the difference between the scheduled amount and the amount paid to the Subcontractor beneficiary (or the full amount the Head Contractor is 'liable' to pay if no payment instruction is made).
2. after the Subcontractor makes a valid payment claim and the Head Contractor does not provide a payment schedule to the Subcontractor beneficiary and does not prepare a payment instruction to pay the full amount claimed by the Subcontractor beneficiary. In this instance the **'disputed amount'** that must be transferred to the disputed funds trust account by the Head Contractor is the full amount the Head Contractor is 'liable' to pay the Subcontractor under the payment claim.

When a 'payment dispute' occurs, the Head Contractor must transfer the 'disputed amount' to the disputed funds account of the PBA. This amount must be transferred at the same time the progress payment is directed to the Subcontractor (via the payment instruction) or at the point the Head Contractor becomes liable to pay (if a simultaneous payment is not being made to the Subcontractor). Amounts held in the disputed funds account must be **identifiable** as being held for the Subcontractor beneficiary that may be entitled to be paid the amount. A copy of the payment instruction information must be provided to the Principal and the Subcontractor.

If, 60 business days after written notice of the transfer to the disputed funds account, the disputed amount is still being held in the disputed funds account and is no longer the subject of an ongoing **dispute resolution process**, the Head Contractor must return (via a payment instruction) the amount to the general trust account (or retention trust account if applicable). A copy of the payment instruction information must also be provided to the Principal and the Subcontractor.

A '**dispute resolution process**' includes an adjudication by a court or tribunal, an adjudication of a payment claim as provided for under the BIF Act or arbitration as required for and conducted in accordance with a subcontract.

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*Payment instruction information will include details about amounts paid into the disputed funds trust account, amounts withdrawn from the disputed funds trust account and/or amounts paid to beneficiaries. After receiving the payment instruction information, the Principal should verify that the payment instruction information matches the actual transactions in PBA accounts (by viewing the account transaction history or payment reports); and that these payments have been made in accordance with the BIF Act including that:*

*all amounts in the disputed funds account are 'identifiable' as being held in relation to a dispute with a Subcontractor beneficiary*

*payments are made only to beneficiaries (or to return amounts to the general account) and there are not 'discrepancies' in the account details relating to such payments*

*where an amount has been returned to the general account, the Principal should confirm at least 60 business days has elapsed since the amount was first deposited into the account*

*all deposits into and withdrawals out of the account have been notified to the Principal (via a copy of the payment instruction information) in accordance with S51.*

*The Principal should notify the QBCC using the 'PBA Complaint Form' if it has concerns about retention amounts or if it identifies any discrepancies in the payments/withdrawals from the retention account.*

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## Head Contractor's agent or delegate

The Head Contractor may employ or engage an agent to do any act relating to the PBA on behalf of the Head Contractor. A Head Contractor may also, using the approved form, delegate to a person resident in Queensland any powers of the contractor in relation to a PBA (other than the power to delegate). The delegation takes effect if the person accepts the delegation, and during the periods stated in the approved form.

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*In accordance with the Special Conditions of Contract (AS2124, AS4300 and AS4305), if the contractor delegates to another person any powers of the contractor in relation to a PBA, in accordance with s42 of the BIF Act the Head Contractor must provide a copy of the completed approved form to both the Principal and any Subcontractor.*

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## Termination or insolvency of Head Contractor

If the contract is terminated for any reason or the Head Contractor enters into insolvency, the Principal *may* step into the role of trustee. A QBCC *S54 Notice of Principal as Trustee* form may be provided to the Head Contractor, the effect of which is to discharge the Head Contractor as trustee, appoint the Principal as trustee and divest the amounts held in trust under the PBA to the Principal as the appointed trustee.

Upon receipt of this notice, the Head Contractor must:

- inform the relevant financial institution that the Principal will act as trustee
- give the Principal the information required to act as trustee including details of the relevant financial institution, bank account details and contact information for each Subcontractor beneficiary
- give the Principal a copy of the written records of all transactions involving amounts held in the trust accounts of the project bank account as required to be kept under section 45(1) of the BIF Act.

After it is appointed as trustee, the financial institution where the project bank account is held must ensure the Principal can access those accounts to execute its role as trustee in accordance with the BIF Act.

Whilst the Head Contractor remains liable for any act or omission concerning the PBA and must continue to comply with its obligations under the BIF Act, the Principal as trustee of the Principal's PBA must ensure it complies with Chapter 2 of the BIF Act when undertaking any requirement with regards to the accounts of its PBA (e.g. the Principal may make a payment instruction to pay amounts owing to Subcontractor beneficiaries or the Head Contractor (as a beneficiary) as required under the BIF Act).

Note: Nothing in the BIF Act compels a Principal to step in as trustee; however, when acting as trustee the Principal should ensure they are aware of and act in accordance with the requirements for establishing, using and closing a PBA.

## Reporting and record keeping

### Reporting discrepancies and other matters to the QBCC Commissioner

If the Principal suspects a Head Contractor has not complied with a requirement under the Act or otherwise becomes aware of a Head Contractor failing to meet any of its legal obligations (under BIF Act and other relevant Acts), the Principal may report the matter, as a complaint, to the QBCC.

To raise a complaint with the QBCC, a Principal should complete a '*PBA Complaint Form*' and lodge it with the QBCC, together with any supporting evidence relevant to the complaint. A copy of this form is available on the QBCC and HPW websites.

The complaint form should also be used for informing the QBCC Commissioner of any discrepancies in payment instruction information in accordance with S52 of the BIF Act.



## Information security and record keeping

The *Public Records Act 2002* and relevant principles contained in the Queensland Government Information Standards *18: Information Security*, *40: Recordkeeping* and *31: Retention and disposal of public records*, require Queensland Government agencies to make and keep full and accurate records of their activities.

Agencies must ensure appropriate security controls are implemented to protect the information they hold and minimise the risk of loss or misuse of information assets.

Full and accurate records of the government's activities in relation to exercising its statutory, administrative or other public responsibilities under the BIF Act must be made and kept for as long as they are required for business, legislative, accountability and cultural purposes.

Public records may only be disposed of in accordance with a *Retention and Disposal Schedule* authorised by the State Archivist, after approval from an appropriately delegated officer of the department.

## Next Steps

The introduction of PBAs has not changed how the Queensland Government tenders for and awards building contracts. These guidelines should be read alongside the existing building and construction industry contract, payments and legal framework.

A suite of industry guidelines, frequently asked questions, checklists and other tools to help building and construction contractors understand and comply with the PBA requirements are available on the HPW and QBCC websites.

If you have questions or need further information about the requirements for PBAs, please contact HPW Contract Services.

*Disclaimer: the contents of these guidelines are intended to provide general advice only. Nothing in these guidelines constitutes legal advice. Tendering and/or contracting parties should gain independent legal advice specific to their circumstances.*



## Attachment 1: When is a PBA Required – Definitions for threshold tests

'**Building work**' for the purposes of requiring a PBA, includes the following activities:

- erection or construction of (and any related site work for) a building
- the renovation, alteration, extension, improvement or repair of (and any related site work for) a building
- the provision of (and any related site work for) lighting, heating, ventilation, scaffolding, air-conditioning, water supply, sewerage or drainage for a building
- the preparation of plans or specifications (including work performed by architects, engineers and licenced surveyors) and the carrying out of completed building inspections for the building work
- carrying out of fire protection work, termite inspections and investigations, contract administration, building certification or the assessment of energy efficiency of or for a building
- the erection, management and removal of scaffolding if it is or was used for carrying out other building work

For Chapter 2 of the BIF Act, a '**building**' means a fixed structure that is wholly or partly enclosed by walls or is roofed.

'Building work' does not include civil engineering and infrastructure projects such as bridges, roads, tunnels and ports; public transport infrastructure such as busways, railways and associated bus/rail stations; or an authorised activity under a resource authority. These types of projects therefore DO NOT require a PBA.

'Building work' also does not include activities which are made exempt under Part 2, Division 2 of Chapter 2 of the BIF Act (**exempt building work**) including:

- Contracts for **residential construction work** (except for residential construction contracts for three or more living units where the Department of Housing and Public Work is the Principal). For example:
  - construction of a duplex, with each unit containing two bedrooms by the Department of Housing and Public Works.
  - Queensland Police Service residential accommodation where the Public Safety Business Agency is the Principal.
- Contracts for **maintenance work** where maintenance work includes ongoing restoration, repair or replacement of a building or part of a building (and excluding building refurbishment and capital improvements). For example, a service agreement for water treatment management.
- Government contracts advertised or tendered before 1 March 2018.

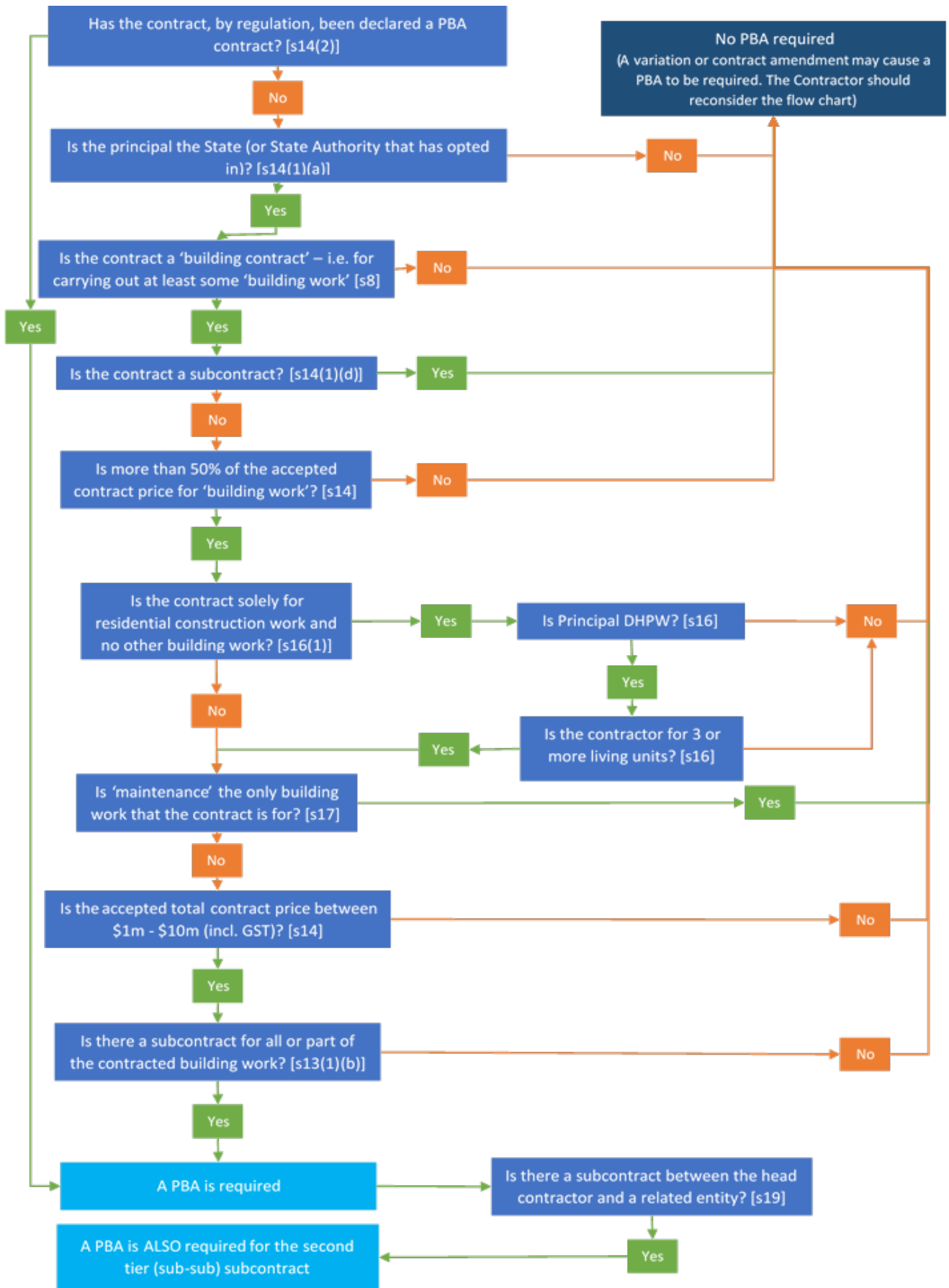
*Note: Please refer to further definitions at S8 and Schedule 2 of the BIF Act, and Part 2 of the Building Industry Fairness (Security of Payment) Regulation 2018.*

A '**Subcontractor**' for a building contract means a Subcontractor for a first-tier subcontract. Generally, a '**supplier**' is **NOT considered** a Subcontractor for the purposes of requiring a PBA. However, if the supplier is required to hold a licence or authority issued under any of the following Acts in order to provide the goods or services, they are a subcontractor for the purposes of requiring a PBA.

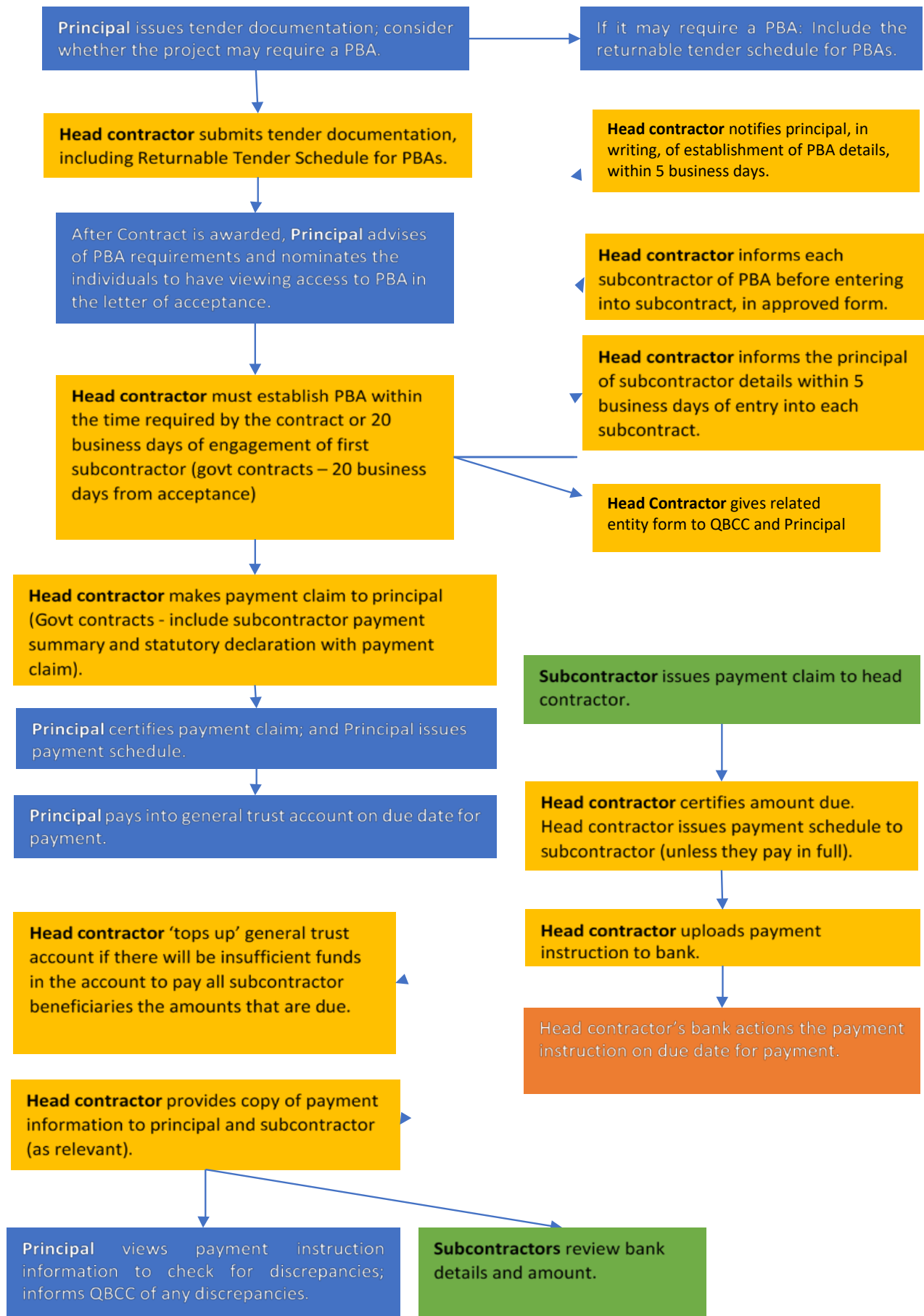
- *Building Act 1975*
- *Electrical Safety Act 2002*
- *Plumbing and Drainage Act 2002* OR
- *Queensland Building and Construction Commission Act 1991.*

Only Subcontractors and Head Contractors can be paid as beneficiaries from a PBA. Suppliers cannot be paid from the PBA. A Head Contractor is still, however, obligated to pay suppliers in accordance with existing contract and industrial laws.

**Attachment 2: Decision tree – when a PBA is required**



### Attachment 3: PBA establishment and payment process flowchart



## Attachment 4: Requirements for project bank accounts

When establishing, operating and/or making payments from the trust account, the Head Contractor must be aware of the following obligations:

- a PBA must consist of a general trust account, retention trust account and disputed funds trust account, and the description or name of each account must include the word ‘trust’
- a PBA may only be set up for a specific contract, and may not cover multiple contracts (even if it is with the same Principal or Subcontractors)
- the PBA must allow for the electronic uploading of the payment instructions (e.g. an ABA file), and allow for the Principal and/or the Principal’s nominees to have electronic viewing access to the project bank account to see transactions and any funds in all three trust accounts, information relevant to payment instructions, and account payment reports
- when using the PBA, deposits into the trust account can only be made by electronic transfers; and a payment instruction must be used for all withdrawals from the trust accounts and transfers between the trust accounts
- all payments from a Principal to the Head Contractor (and any other payment or deposit made by the Head Contractor) must be deposited by electronic transfer into the general trust account for the PBA, and in the event an amount has not been paid into the PBA (for example if a payment was made before the PBA was established), the Head Contractor must transfer that amount into the correct account as soon as possible after receiving it
- amounts held in the retention and disputed funds trust accounts are to be paid against individual Subcontractors, so the beneficiary for each amount is identifiable
- the Head Contractor must not withdraw an amount from a trust account to pay itself unless there will be sufficient available funds after the withdrawal to pay all amounts due to Subcontractors at the time of the withdrawal (noting that an amount owing to a Subcontractor becomes ‘due’ when the payment schedule is issued, irrespective of the date the amount is payable in accordance with the subcontract)
- if there will be insufficient funds available in the PBA trust accounts to pay an amount due to a Subcontractor, the Head Contractor is required to top-up the trust account with an amount equal to any shortfall
- if there are insufficient funds available in a trust account, the Head Contractor must not pay itself or make a prescribed payment until the Subcontractor’s amount is paid in full (except where it is to make a payment ordered by a court or for an adjudication)
- if there are two or more Subcontractor beneficiaries due to be paid an amount from the trust account at the same time and there are insufficient funds available to pay each in full, the Subcontractors are to be paid a pro-rata amount (i.e. reduce the amounts due by an equal proportion)
- the PBA cannot be used for any purpose other than paying the Head Contractor and/or a Subcontractor, paying amounts held as retention or the subject of a payment dispute, or paying an amount resulting from an adjudication
- the PBA cannot be used for payment of Head Contractor’s debts or taken in execution under a court order for the benefit of a Head Contractor’s creditors
- no entitlement to a Subcontractor’s charge exists to the extent it relates to money held in trust under the PBA
- amounts held in a trust account for the PBA must not be invested in any form of investment (this does not apply to interest earned on an amount held in the trust account)
- the Head Contractor is not entitled to reimbursement or payment from the PBA for fees or costs incurred in administering the PBA

- the Head Contractor is entitled to any interest earned on amounts held in a trust account; and may withdraw an amount equal to the interest earned once every 12 months or on the authorised closure of the PBA
- the PBA may only be closed (dissolved) when there are no longer any Subcontractor beneficiaries (i.e. there are no longer any amounts held in the trust accounts of the PBA and/or owing to Subcontractors).
- A PBA may also be dissolved when the only remaining work under the building contract is for maintenance (however, there must also be no retention amounts in the PBA owing to Subcontractor beneficiaries; and the maintenance work must not include provision for retention amounts to be withheld for any Subcontractors performing the maintenance work, otherwise a PBA will still be required).

## Attachment 5: Notices required to be provided by the Head Contractor

The table below summarises the notices that a Head Contractor must provide under the BIF Act:

Name of notice (including hyperlink to where it can be found)	Details
<a href="#">S21 - Notices about related entities</a>	Approved form Provided to the Principal and QBCC 5 business days after entering into the subcontract
<a href="#">S26 – Notice of trust account’s opening, closing or name change</a>	Approved form Provided to Principal 5 business days of a trust accounts opening, closing or name change
<b>S36 – Payment of amount into disputed funds trust account</b>	Written notice Provided to Subcontractor Immediately upon transfer of funds
<b>S37 – Notice of intent to dissolve PBA</b>	Written notice Provided to Principal 5 business days in advance of the accounts’ closure
<a href="#">S42 – Appointment of Head Contractor’s delegate</a>	Approved form Provided to Principal and Subcontractors
<a href="#">S49 – notice of PBA before entering subcontract</a>	Approved form Provided to Subcontractor Before entering into a subcontract (or within 10 business days of the start date, where a PBA is required due to contract variation/amendment)
<a href="#">S50 – information about Subcontractor/ change of Subcontractor’s information</a>	Approved form Provided to Principal 5 business days after entering into a subcontract and/or after becoming aware of change of Subcontractor’s information
<b>Payment instruction information</b>	Written notice Provided to Principal (and relevant Subcontractor) As soon as practicable after providing the payment instruction to the financial institution

**Attachment 6: Checklist of Principals PBA oversight responsibilities**

Stage/Timing	PBA Establishment	Reference Date for Payment Claim e.g. 1 <sup>st</sup> day of each month	Payment Due Date e.g. 15 <sup>th</sup> day of each	End of PBA/Completion of building work
Trigger	Receipt of S26 written notice of PBA opening (or otherwise aware of establishment date for PBA)	Receipt of payment claim from Head Contractor	Before/upon payment to Head Contractor	Receipt of notice of intent to dissolve PBA OR time of final payment claim/s OR issue of final certificate
PBA Review Actions	<ul style="list-style-type: none"> <li><input type="checkbox"/> Confirm receipt of S26 Notice of PBA opening within 5 business days</li> <li><input type="checkbox"/> Confirm PBA was established within timeframe required by contract (20 business days from date of acceptance) or in accordance with S23 of Act (20 business days after entering first subcontract)</li> <li><input type="checkbox"/> Confirm receipt of Section 50 notice about subcontracts for all known Subcontractors engaged under building contract</li> <li><input type="checkbox"/> Review any related entities' forms and send signed/dated forms to QBCC (If suspected related entity, refer complaint to QBCC)</li> <li><input type="checkbox"/> Confirm receipt of information to enable electronic viewing access to PBA and check access capability</li> </ul> <p>Enter electronic platform to view the accounts of the PBA and check the following:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> All three accounts of the PBA have been established and can be viewed</li> <li><input type="checkbox"/> All three accounts include the words 'trust account' in their names</li> <li><input type="checkbox"/> That the account details of the accounts (BSB and Acct no.) matches the details provided in the S26 notice</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Confirm Subcontractor payment summary and statutory declaration has been provided with the payment claim</li> <li><input type="checkbox"/> Confirm all deposits of amounts into the accounts have been made by electronic transfer</li> <li><input type="checkbox"/> Confirm (where necessary) the Head Contractor has topped up the balance of the account to ensure all payment instructions are executed</li> <li><input type="checkbox"/> Check for reasonable evidence of retention amounts being paid against all known Subcontractors</li> <li><input type="checkbox"/> For retention accounts, confirm there has not been any unauthorised or unexplained withdrawals/ payments</li> <li><input type="checkbox"/> For disputed funds trust account, confirm amounts are returned to the general trust account only after 60 days from the transfer date</li> <li><input type="checkbox"/> Confirm that none of the accounts of the PBA have been closed while still being required.</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Review payment instruction information for 'discrepancies'</li> <li><input type="checkbox"/> Verify payments and transfers listed in the payment instructions match the actual transactions executed in the PBAs</li> <li><input type="checkbox"/> Confirm no payments made to entities other than beneficiaries</li> <li><input type="checkbox"/> Confirm payment instruction information has been received to account for all withdrawals from and/or transfers between accounts</li> <li><input type="checkbox"/> Confirm all retention amounts (and amounts held in disputed funds trust account if relevant) are 'identifiable'</li> </ul> <p><i>Note: It is suggested that a Principal can collect and retain payment instruction information notices (PIIs) to conduct a single monthly review and verification process. However subject to the volume of PPIs, a Principal can elect to review/verify PPIs more frequently than once monthly if for operational reasons it is more efficient to do so.</i></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Confirm receipt of notice of intent to dissolve account PBA within 5 business days before closure</li> <li><input type="checkbox"/> Confirm there are no amounts owing to Subcontractor beneficiaries in the trust accounts of the PBA (or a payment instruction information has been provided accounting for all remaining balances in the account)</li> <li><input type="checkbox"/> Print and retain a copy of a transaction report/s from the accounts of the PBA</li> </ul>



AUTHORITY	PROCESS	SUGGESTED ACTION
	<b>Principal engages a Head Contractor in building contract</b>	
	Principal ascertains the need for a building contract, obtains finance to fund it and calls for tenders. <ul style="list-style-type: none"> <li>• The Queensland Government will issue tender documentation with information regarding PBA requirements (for tenders issued after commencement of Chapter 2)</li> <li>• Head Contractor will determine, based on assessment of the PBA thresholds, whether the ‘building contract’ is a ‘PBA contract’</li> </ul>	
CC cl	<ul style="list-style-type: none"> <li>• In accordance with contract provisions the tenderer will submit the returnable tender schedule (or returnable offer schedule for consultants) indicating if they believe a PBA will be required</li> </ul>	
	<ul style="list-style-type: none"> <li>• Principal engages a Head Contractor under a ‘building contract’ to carry out building work</li> </ul>	The Principal provides the Head Contractor with a letter of acceptance including: <ul style="list-style-type: none"> <li>• the name and position of the delegated officer/s to be given electronic viewing access. (Note: more than one officer can be provided with authorised viewing access.)</li> <li>• how written information/notices must be provided to the Principal.</li> </ul>
	<b>Head Contractor seeks approval to engage Subcontractor/Sub-subcontractor</b>	
CC cl 9.2.1	Prior to engaging a Subcontractor under the contract, the Head Contractor must seek the written approval of the Superintendent. <ul style="list-style-type: none"> <li>• A request for approval to subcontract must be made by the Head Contractor to the Superintendent in the form attached to the special conditions of contract.</li> </ul>	
CC cl 9.2.6	The Head Contractor must also ensure that a Subcontractor does not further subcontract any of the work under the contract to a second-tier Subcontractor without seeking the written approval of the Superintendent. <ul style="list-style-type: none"> <li>• A request for approval to sub subcontract must be made by the Head Contractor to the Superintendent in the form attached to the special conditions of contract.</li> </ul>	
CC cl 9.2.4	The Principal (Superintendent) within fourteen (14) days after a request by the Head Contractor for approval, approve the Subcontractor and/or Sub-subcontractor or advise the Head Contractor of its objections.	The Principal should maintain a register of approved Subcontractors. (This will serve as a tool to check compliance with certain obligations under the BIF Act.)

	<b>Head Contractor engages Subcontractor in subcontract</b>	
S50	The Head Contractor must within 5 business days after entering into a subcontract give the Principal the required information about the Subcontractor using the approved form.	<p>The Principal should reasonably be aware of the engagement of a Subcontractor based on the previous request for approval to engage a Subcontractor; and/or as a result of site inspections revealing commencement/completion of works.</p> <ul style="list-style-type: none"> <li>Principal should report to the QBCC if approved form has not been provided to the Principal within 5 days of entering into a subcontract.</li> </ul> <p>Upon receipt of the form, the Principal or its delegate should check the details of the form to confirm all details have been reported as required (i.e. all required fields are completed).</p> <ul style="list-style-type: none"> <li>Principal should report to the QBCC if the notice does not provide the regulated information.</li> </ul> <p>The Principal should keep a record of the Subcontractor’s banking details for future reference. The details provided in this form should be used to check for ‘discrepancies’ in payment instruction information.</p> <p>The information contained in this form will also be an indicator and inform Principals of possible ‘related entity’ relationships between the Head Contractor and its Subcontractor/s.</p>
	<b>Notice of related entity</b>	
S20	If a Subcontractor for a first-tier subcontract is a related entity to the Head Contractor, and the Subcontractor further subcontracts all or part of the building work, the first-tier Subcontractor must also establish a project bank account.	
S21 (4)	If the Head Contractor enters into a subcontract with a related entity, the Head Contractor must advise the QBCC and Principal in the approved form of the related entity within 5 business days of entering into the subcontract.	<p>This form should be provided at the same time as advising about the engagement of the Subcontractor (S50 Form).</p> <p><i>Note: The role of the QBCC in this instance is to communicate with the Head Contractor and the Subcontractor to ensure they have been made aware of their obligations to establish an additional PBA for the second-tier subcontract; and to ensure compliance with this obligation. If however the Principal and/or its delegates become aware that the second tier PBA has not been established, the Principal should raise the complaint with the QBCC.</i></p>
S21 (2)	If the Principal knows (or reasonably suspects/ought to know) that a Subcontractor is a related entity, the Principal must advise the Commissioner of the matter using the approved form within 5 business days after becoming aware.	

	<p>There are two possible scenarios by which the Principal could reasonably become aware that a Subcontractor is or may be a related entity to the Head Contractor:</p> <ol style="list-style-type: none"> <li>1. In accordance with S21(4) of the Act, the Head Contractor provides to the Principal a copy of the <i>S21 Notice of related entity</i> form. <ul style="list-style-type: none"> <li>• The Principal date stamps, signs and makes a copy of the original form and files it in accordance with internal record-keeping procedures. <ul style="list-style-type: none"> <li>○ The copy of the form is sent/forwarded to the QBCC within 5 business days of receiving the notice from the Head Contractor.</li> </ul> </li> </ul> </li> <li>2. The Principal does not receive a copy of the <i>S21 notice of related entity</i> form from the Head Contractor, but upon review of other documentation*, identifies a possible related entity relationship between the Head Contractor and approved Subcontractor.</li> </ol> <p>The Principal provides a copy of the <i>S21 Notice of related entity</i> form to the QBCC.</p>	<p><i>*Note: A Principal can inform themselves about a related entity by referring to the information provided about a Subcontractor under s26 and s50 notices; a Principal ought to reasonably know if the information available to them can suggest a relationship between the Subcontractor and Head Contractor and/or if information about persons involved with a business is publicly available or known to the principal.</i></p>
<p><b>If a project bank account is required for a building contract under section 13</b></p>		
<p>S23</p>	<p>The Head Contractor must establish a project bank account by opening a general, a retention and a disputed funds trust account, within 20 business days after entering into the first subcontract; or the date directed under the contract.</p>	
<p>CC cl. 43A.3 (c)</p>	<p>Where the contract is a PBA contract at the date of acceptance of tender, the Head Contractor must ensure the PBA has been established by the date that is 20 business days after the date of acceptance of tender.</p>	
<p>S26 CC cl. 43A.3</p>	<p>The Head Contractor must give the Principal <u>written notice</u> of the project bank account’s opening within 5 business days of its opening, providing the required information (name of PBA, name of trust account, name of financial institution, the BSB and account number of the PBA).</p> <p><i>Note: The Act does not require that this notification be provided on a standard/approved form; the Act requires that this only be provided in writing. It is essential that Principals provide clear guidance to the Head Contractor about what mediums satisfy the ‘written’ notice and this should align with existing practice and systems. However, in accordance with the Statutory Instruments Act, written notice is limited to provision of notice by hand delivery, post or faxed; email is only permitted to the extent that a contract has explicitly indicated acceptance of email notification.</i></p>	<ul style="list-style-type: none"> <li>• Report to QBCC if written notice of a trust account’s opening is not received within: <ul style="list-style-type: none"> <li>○ 30 business days (the cumulative date of 20 establishment + 10 notification days) of the date of acceptance of the contract (if establishment date has been stated in the contract); OR</li> <li>○ 25 business days (the cumulative date of 20 establishment + 10 notification, less 5 days for notification of subcontract under S50) of the date on which the first subcontract was entered into.</li> </ul> </li> </ul>

S24(2)	<p>The Head Contractor must provide the Principal (and its authorised nominees) with the information to enable electronic viewing of the account. Electronic viewing access must as a minimum allow the Principals to view:</p> <ul style="list-style-type: none"> <li>deposits of amounts to and withdrawals of amounts from the accounts of the PBA</li> <li>information relevant to payment instructions given to the financial institution</li> <li>account payment reports.</li> </ul> <p>The processes for providing authorised viewing access to the PBA accounts differs slightly across banking institutions.</p>	<ul style="list-style-type: none"> <li>Notification to the QBCC using the <i>PBA Complaint Form</i> if the Principal is not provided details to enable viewing/access to the PBA account.</li> </ul> <p>After being given authorisation to access/view the project bank account, the Principal should ensure that the PBA has been established in compliance with the requirements for PBAs.</p> <p>The principal should:</p> <ol style="list-style-type: none"> <li>Confirm the log in details are correct and that the principal can view all information/transactions of the PBA, e.g. access transaction reports, print reports, can open and view all three accounts</li> <li>Check the names of the accounts that they include the words ‘trust account’ e.g. General Trust Account, Retention Trust Account, Disputed Funds Trust Account.</li> </ol> <p>The Principal should report to the QBCC using the <i>PBA Complaint Form</i> if the PBA is not compliant with the ‘particular requirements’ for PBAs, particularly if a reasonable attempt has been made to request the Head Contractor correct the access limitation and/or names of the trust account.</p>
<b>Payments to the project bank account</b>		
	Head Contractor submits payment claim to Principal (based on reference dates established in contract)	
CC cl. 43A.5	The Head Contractor must submit with the payment claim a completed Subcontractor Payment Summary in the form attached to the contract conditions and for each Subcontractor beneficiary engaged under the contract.	<i>The Principal should confirm the Subcontractor payment summary and statutory declaration has been provided with the payment claim.</i>
	Principal, via Superintendent, assesses work completed and issues payment schedule to the Head Contractor identifying the amount the Principal will pay the Head Contractor.	
S27	All payments from the Principal must be deposited into the general trust account for the PBA unless it was due to be paid before the project bank account was established, or the Principal has a reasonable excuse.	

S28	<p>The Head Contractor must not cause an amount to be deposited into a trust account for any purpose other than:</p> <ul style="list-style-type: none"> <li>• payments made to the Head Contractor by the Principal</li> <li>• topping up balance of the general trust account to pay a Subcontractor beneficiary</li> <li>• paying an amount into the retention trust account in accordance with the subcontract</li> <li>• paying an amount, the subject of a dispute, into the disputed funds trust account</li> <li>• making another payment prescribed by regulation (e.g. a court ordered payment).</li> </ul>	<ul style="list-style-type: none"> <li>• The Principal has viewing access to the accounts of the PBA and should report to the QBCC using the <i>PBA Complaint Form</i> if (when periodically accessing the bank accounts), it becomes aware of amounts deposited into a trust account, other than for the purposes allowed.</li> </ul>
<b>Payments from the project bank account</b>		
S24	<p>Withdrawals from, or transfers between, the trust accounts of the PBA can only be made using a payment instruction given to the financial institution.</p>	<ul style="list-style-type: none"> <li>• The Principal has viewing access to the accounts of the PBA and should notify the QBCC using the <i>PBA Complaint Form</i> if the Principal becomes aware of payments made by means other than a payment instruction.</li> </ul>
S31	<p>Money can only be withdrawn from the project bank account for paying a Subcontractor beneficiary, paying the Head Contractor, returning an amount paid in error by the Principal or transferring money between trust accounts of the PBA (e.g. paying into the retention or disputed funds trust accounts)</p> <p>Subcontractors submit payment claims to Head Contractor (based on reference dates established in subcontracts).</p> <ul style="list-style-type: none"> <li>• Head Contractor assesses work completed and either issues payment schedule to the Subcontractors identifying the amounts to be paid (Note: the Head Contractor need not provide a payment schedule if they intend to pay the claimed amount in full)             <ul style="list-style-type: none"> <li>• Head Contractor provides a payment instruction (i.e. an ABA file) to the financial institution identifying:                 <ul style="list-style-type: none"> <li>▪ amounts to be paid to the Subcontractors</li> <li>▪ retention amounts to be paid into the retention trust account</li> </ul> </li> </ul> </li> </ul> <p>amounts to be paid to the Head Contractor</p>	<ul style="list-style-type: none"> <li>• The Principal has viewing access to the accounts of the PBA and should notify the QBCC using the <i>PBA Complaint Form</i> if the Principal identifies any payments made to other persons (i.e. those not notified as being Subcontractor beneficiaries).</li> </ul>
S51	<p>As soon as practicable after giving the financial institution the payment instruction, the Head Contractor must provide a copy of the payment instruction information to the Principal.</p>	<ul style="list-style-type: none"> <li>• The Principal has viewing access to the accounts of the PBA and may become aware of payments made from the account. The Principal should notify the QBCC using the '<i>PBA Complaint Form</i>' if the Principal is not provided with a copy of the payment instruction information for each relevant payment made from the accounts of the PBA.</li> <li>• Notification to the QBCC using the <i>PBA Complaint Form</i> if the payment instruction information does not provide the required information.</li> </ul>

<p>S52</p>	<p>After receiving the payment instruction information, the Principal must review the payment instruction information for ‘discrepancies’.</p> <p>Discrepancies, for a payment instruction, means:</p> <ul style="list-style-type: none"> <li>a) an error in the account number for a Subcontractor</li> <li>b) payment to an entity other than the Head Contractor and Subcontractor beneficiary</li> <li>c) payment to a Subcontractor if the name of the beneficiary and the account name do not match.</li> </ul> <p>Concurrently the Head Contractor must provide each Subcontractor relevant extracts from the payment instruction. Each Subcontractor should check the details of the payment instruction and also alert the Head Contractor to any discrepancies or errors in the payment details.</p>	<p><i>After receiving the payment instruction information, the Principal should verify that the payments listed in the payment instruction information match the actual transactions (by viewing the account transaction history or payment reports) in PBA accounts. (Note: if the payment instruction information relates to future dated payments that have not yet been executed, the Principal can also view the actual payment file in the PBA account. This can also be used to verify the payment instruction information).</i></p> <p><i>To identify discrepancies, the Principal should check/compare the following:</i></p> <ul style="list-style-type: none"> <li>• <i>to confirm there are no errors in the account number for a Subcontractor, check account numbers listed on the PPI and in the account transaction reports against the Subcontractor details provided on the S50 notice to confirm payments have not been made to entities other than beneficiaries, check the names and account details listed on the PPI and in the account transaction reports against the S50 notice, register of approved Subcontractors and the account information of the Head Contractor</i></li> </ul> <p><i>Note: the name on the Subcontractor’s bank account can reasonably be different to the trading name of the Subcontractor. For example, the Subcontractor’s bank account might be in a joint family name or personal name different to the registered business name of the Subcontractor. The s50 notice requires both the Subcontractor name and bank account name to be provided. Regardless of a difference in the name of the beneficiary and the account name, if the information on the S50 notice matches the account name on the PII, this is <u>not</u> a reportable discrepancy. A difference in account name is only a reportable discrepancy if the PII does not match the S50 notice.</i></p> <ul style="list-style-type: none"> <li>• The Principal should alert the Head Contractor to any discrepancies identified, allowing the Head Contractor an opportunity to correct and reissue the payment instruction.             <ul style="list-style-type: none"> <li>• If discrepancies remain unaddressed and/or the Head Contractor does not have a reasonable excuse for the discrepancy, the Principal must notify the QBCC using the <i>PBA Complaint Form</i> of the discrepancies with the payment instruction information.</li> </ul> </li> </ul>
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<p>S30</p>	<p>If an amount is due to be paid from the trust account and there is insufficient funds to pay that amount, the Head Contractor must make a top-up payment into the PBA to cover the shortfall.</p> <p><i>Guide note: The Principal/Head Contractor should also be aware of and consider s32, requiring that the Head Contractor not pay itself unless there are sufficient funds to pay all amounts owing to the Subcontractor beneficiaries at the same time; and s 33 requiring that payments due to be paid at the same time to Subcontractors be paid on a pro-rata basis if there are insufficient funds to pay all amounts owing in full.</i></p> <p>Where a subcontract provides for retention money to be withdrawn from progress payments, the Head Contractor will retain a percentage of each payment otherwise due to the Subcontractor as retention money (security for performance).</p>	<ul style="list-style-type: none"> <li>• The Principal has viewing access to the accounts of the PBA and may become aware of payment instructions that have not been executed (i.e. payment have not been made to Subcontractors when due) because of insufficient funds being available in the accounts of the PBA. In this instance the Principal should notify the QBCC using the <i>PBA Complaint Form</i> that the Head Contractor has failed to comply with s 32 and s33 obligations.</li> <li>• The Principal may be made aware that payments have not been paid to Subcontractors through a complaint made to the Superintendent/Principal. When a complaint is made about (suspected/alleged) non-payment the Principal should in the first instance check the accounts of the PBA to identify if there are any ‘failed’ payment instructions. The Principal should notify the QBCC using the <i>PBA Complaint Form</i> if it has concerns the Head Contractor may not have paid Subcontractors for any reason.</li> </ul>
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<p>S34</p>	<p>Retention amounts for a subcontract must be held in the retention trust account for the PBA; and must be identifiable as being held for the Subcontractor entitled to be paid that amount.</p> <ul style="list-style-type: none"> <li>• The Head Contractor must direct, via the payment instruction, the retention amount into the retention trust account of the PBA.</li> <li>• The retention amounts in the retention trust account must be ‘identifiable’ against each Subcontractor, meaning that the reference against the amount in the payment instruction should state as a minimum ‘Retention - Subcontractor Name’ or ‘Retn – Subcontractor Name’.</li> <li>• The Principal (and relevant Subcontractor) will receive a copy of the payment instruction information for verification.</li> </ul> <p><i>Note: Amounts held in the retention trust account must be identifiable, which requires separate transactions (line items in the payment instruction). It is not sufficient for Head Contractors to deposit bulk amounts representing the total of all amounts owed to multiple Subcontractors as this does not achieve the intended transparency needed to improve security of payment for Subcontractors.</i></p> <p>The Head Contractor must not withdraw any amount from the retention trust account unless it is to pay the Subcontractor, to pay the Head Contractor for the correction of defects or to secure the performance of the subcontract.</p> <ul style="list-style-type: none"> <li>• The Head Contractor will make a payment instruction for the withdrawal of an amount from the retention trust account.</li> <li>• The Principal (and relevant Subcontractor) will receive a copy of the payment instruction information for verification.</li> </ul>	<p><i>Payment instruction information will include details about amounts paid into the retention account of the PBA. After receiving the payment instruction information, the Principal should verify that the payments listed in the payment instruction information match the actual transactions (by viewing the account transaction history or payment reports) executed in PBA accounts; and that these payments have been made in accordance with the BIF Act.</i></p> <ul style="list-style-type: none"> <li>• The Principal should check that all amounts held in the retention account are ‘identifiable’ as being held for a Subcontractor beneficiary.</li> <li>• The Principal should check the retention account for reasonable evidence of retention amounts being paid ‘against’ all known Subcontractors (i.e. confirm there are amounts held in the retention trust account for all or most Subcontractors listed on the register of approved Subcontractors and as notified by the S50 notices).</li> <li>• The Principal should also check the retention trust account to confirm all deposits into and withdrawals out of the account have been notified to the Principal (via a copy of the payment instruction information) in accordance with S51.</li> <li>• The Principal should check the retention trust account to confirm that payments from the retention trust account are made only to beneficiaries (i.e. by checking PIs against the account transaction history or payment reports to confirm the account name/number matches the S50 notice details).</li> </ul> <p><i>Note: A Head Contractor may pay itself from the retention trust account to correct defects in the building work or otherwise to secure the performance of the subcontract.</i></p> <p>The Principal should notify the QBCC using the <i>PBA Complaint Form</i> if it has concerns about retention amounts or if it identifies any discrepancies in the payments/withdrawals from the retention trust account.</p>
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<p>S36</p>	<p>Where a payment dispute occurs the Head Contractor must transfer the ‘disputed amount’ to the disputed funds trust account for the PBA; and it must be identifiable as being held in relation to a dispute with a Subcontractor beneficiary.</p> <ul style="list-style-type: none"> <li>• The Head Contractor must direct, via the payment instruction, the disputed amount into the disputed funds trust account of the PBA.</li> <li>• The disputed amounts in the disputed funds trust account must be ‘identifiable’ against each Subcontractor. The reference against the amount in the payment instruction should state as a minimum ‘Disputed funds - Subcontractor Name’ or ‘Disp – Subcontractor Name’</li> <li>• The Principal (and relevant Subcontractor) will receive a copy of the payment instruction information for verification.</li> </ul>	<p><i>Payment instruction information will include details about amounts paid into the disputed funds trust account of the PBA. After receiving the payment instruction information, the Principal should verify that the payments listed in the payment instruction information match the actual transactions (by viewing the account transaction history or payment reports) executed in PBA accounts; and that these payments have been made in accordance with the BIF Act.</i></p> <ul style="list-style-type: none"> <li>• The Principal should check that all amounts held in the disputed funds trust account are ‘identifiable’ as being held in relation to a dispute with a Subcontractor beneficiary.</li> </ul>
<p>S36</p>	<p>The Head Contractor must not withdraw any amount from the disputed funds trust account unless it is to pay the Subcontractor, to pay the Head Contractor in accordance with the outcome of dispute resolution process, or to transfer an amount back into the general trust account.</p> <ul style="list-style-type: none"> <li>• The Head Contractor will make a payment instruction for the withdrawal of an amount from the disputed funds trust account and/or a payment to a Subcontractor beneficiary and/or Head Contractor beneficiary.</li> <li>• The Principal (and relevant Subcontractor) will receive a copy of the payment instruction information for verification.</li> <li>• The Head Contractor must transfer the disputed amount back into the general account after 60 days if it is not or no longer subject to an ongoing dispute resolution process.</li> </ul>	<p><i>Payment instruction information will include details about amounts withdrawn from the disputed funds trust account of the PBA and/or paid to beneficiaries. After receiving the payment instruction information, the Principal should verify that the payments listed in the payment instruction information match the actual transactions (by viewing the account transaction history or payment reports) executed in PBA accounts; and that these payments have been made in accordance with the BIF Act.</i></p> <ul style="list-style-type: none"> <li>• The Principal should check the disputed funds trust account to confirm that payments are made only to beneficiaries (or to return amounts to the general trust account) and there are no ‘discrepancies’ in the account details relating to such payments.</li> <li>• Where an amount has been returned to the general trust account, the Principal should confirm at least 60 days has elapsed since the amount was first deposited into the account.</li> <li>• The Principal should also check the disputed funds trust account periodically to confirm all deposits into and withdrawals out of the account have been notified to the Principal (via a copy of the payment instruction information) in accordance with S51.</li> </ul> <p>The Principal should notify the QBCC using the <i>PBA Complaint Form</i> if it has concerns about disputed amounts or if it identifies any discrepancies in the payments/withdrawals from the disputed funds account.</p>

<p><b>Ending a project bank account</b></p>	<p>Whilst a project bank account is required for a building contract, the Head Contractor must not dissolve the project bank account or close any of the trust accounts of the PBA.</p> <p><i>Note: A PBA must not be dissolved unless there are no longer any Subcontractor beneficiaries (i.e. the Subcontractor/s has been paid all amounts, including any retention amounts, it is entitled to be paid under the subcontract) or the only building work to be carried out under the contract is maintenance work.</i></p> <ul style="list-style-type: none"> <li>• Before dissolving the project bank account, the Head Contractor must provide written notice of its intent to close the account/s of the PBA at least 5 business days before the accounts are closed. The Head Contractor must also provide to the Principal evidence that demonstrates the PBA is being dissolved in accordance with the BIF Act (i.e. copy of the account statements or balance sheet showing there are no amounts owing to Subcontractor beneficiaries and/or a copy of the payment instruction information showing how any remaining balances of the PBA accounts are to be paid.)</li> <li>• The Head Contractor must give the Principal written notice in the approved form that the project bank account has been dissolved (i.e. that the trust accounts have been closed). In accordance with section 26, this notice must be provided within 5 business days after taking the action.</li> <li>• The Head Contractor may withdraw and pay itself (using a payment instruction, a copy of which should be provided to the Principal) any amount that is interest, and/or any remaining amount in the account which is not otherwise owing to another person.</li> </ul>	<p>When advised that a PBA is to be dissolved, the Principal should review the account summary information and transaction records of the PBA accounts and ensure that a final transaction report is printed and retained for record-keeping purposes. The Principal should verify there are no remaining amounts or balances in any of the three accounts, other than amounts owing to the Head Contractor.</p> <p>The Principal has viewing access to the accounts of the PBA and may become otherwise aware that accounts of the PBA have been closed/dissolved. If this occurs:</p> <ul style="list-style-type: none"> <li>• Report to the QBCC using the <i>PBA Complaint Form</i> if any of the trust accounts of a PBA are closed while still being required and contrary to the BIF Act</li> <li>• Report to the QBCC using the <i>PBA Complaint Form</i> if written notice that the PBA has been dissolved has not been received within 10 business days of the PBA trust accounts being closed. &lt;if not received 5 business days before the accounts of the PBA are closed&gt;.</li> </ul> <p><i>Note: There is nothing in the Act that expressly prohibits a Head Contractor from shifting the project bank account to a different financial institution, provided it can meet its obligations under the BIF Act. In accordance with Sections 24 and 26 respectively, the Head Contractor must ensure the Principal is provided viewing access and is advised of any changes in relation to the project bank account.</i></p>
<p><b>Ongoing oversight and compliance monitoring</b></p>	<p>S50 (3)</p> <p>If the Head Contractor becomes aware of a change in any of the information about a Subcontractor previously given to it, the Head Contractor must notify the Principal using the approved form within 5 days of becoming aware of the change.</p> <p><i>Note: There is no requirement under the BIF Act that the Principal be notified of the completion or termination of a subcontract; nor that the Principal need be notified when a Subcontractor is no longer a beneficiary to the PBA.</i></p>	<p>Notification to the QBCC using the <i>PBA Complaint Form</i> is required if the Principal becomes aware of a change in the information about a Subcontractor and the approved form has not been provided to the Principal within 5 days after a change in information about a subcontract.</p>

S26 (2)	<p>If there is a change in the details about a project bank account or the trust accounts of the PBA (i.e. a name change) the Head Contractor must notify the Principal in writing of that change within 5 business days of making the change.</p>	<p>Notification to QBCC using the <i>PBA Complaint Form</i> if the Principal becomes aware of a change in the details about a project bank account or the trust accounts of the PBA and the written notice of a trust account’s opening, closing or name change has/was not provided to the Principal within 10 business days of the change.</p>
S42	<p>A Head Contractor may also, using the approved form, delegate to a person resident in Queensland any powers of the Head Contractor in relation to a PBA (other than the power to delegate). The delegation takes effect if the person accepts the delegation, and during the periods stated in the approved form.</p> <ul style="list-style-type: none"> <li>• A copy of the approved form must be provided to the Principal and the Subcontractor. The approved form must state which powers of the contractor are to be delegated and the period/duration of the delegation.</li> </ul>	