

The *Building and Construction Industry (Security of Payment) Act 2021 (Act)* retention money trust scheme now applies to construction contracts valued over AU\$1 million in Western Australia.

## What Do I Need to Know?

From 1 February 2023 to 31 January 2024, construction contracts valued at over AU\$1million will be subject to the retention trust scheme under the Act (save for minor exclusions).

During this time, if your construction contract is valued at less than AU\$1 million at the time it is entered into, but the contract value is later varied to exceed AU\$1 million, the statutory trust scheme for retention money will apply to retention money retained after the contract value exceeds AU\$1 million.

This AU\$1 million contract value threshold will apply until 1 February 2024, when the threshold will be lowered and the retention trust scheme will apply to construction contracts valued at over AU\$20,000.

## What is the Retention Trust Scheme?

Retention money under a construction contract must be held on trust in a retention money trust account by the party retaining the money, or the party to whom the money is paid. Parties withholding retention or cash security must ensure that the money is paid into a separate trust account with a recognised financial institution. Once the account is in place, parties will have limited recourse to access the money. The money in a retention money trust account can only be withdrawn in accordance with the specific requirements prescribed by the Act and the regulations.

## What Do I Need to Do?

If retention money is chosen as the form of security, ensure strict compliance with the Act and regulations. A retention money trust account must be established within 10 business days after the parties enter into the construction contract. If the money will be separately paid as security, the trust account must be established before the money is paid as security under the contract.

The Act also prescribes requirements relating to the establishment and operation of retention money trust accounts, including correctly naming the account and giving written notice of the establishment of or changes to the account.

Failure to comply with these obligations is an offence under the Act and could result in a significant fine.

## Key Contacts



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