

Queensland



TRUST ACCOUNTS AMENDMENT ACT 1997

Act No. 55 of 1997

Queensland



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TABLE OF PROVISIONS

Section		Page
1	Short title	4
2	Commencement	4
3	Act amended	4
4	Amendment of s 4 (Interpretation)	4
5	Insertion of new s 4E	5
	4E Meaning of "supervising entity"	5
6	Amendment of s 5 (Trustee to give notice to chief executive etc.)	6
7	Amendment of s 6 (Accounts to be kept by trustees)	7
8	Amendment of s 7 (Moneys received by trustee to be paid into a trust account)	8
9	Amendment of s 8 (Purposes for which money may be withdrawn from trust account)	8
10	Amendment of s 11 (Claims and liens not affected)	9
11	Amendment of s 12 (Disbursements from trust account)	9
12	Amendment of s 14 (Trustee to appoint auditor)	9
13	Amendment of s 15 (Qualifications, resignation, termination of appointment of auditor)	10
14	Amendment of s 16 (Audit of trust accounts)	11
15	Amendment of s 17 (Duties of auditor)	13
16	Amendment of s 18 (Auditor to make unannounced examinations)	13
17	Amendment of s 19 (Auditing of accounts on ceasing to be trustee)	14
18	Amendment of s 20 (Report of auditor to be laid before Minister in certain cases)	14
19	Amendment of s 21 (Power of Minister to appoint independent auditor) ..	15
20	Amendment of s 23 (Auditor to report to Minister)	15

21	Amendment of s 25 (As to right of auditors and employees to communicate certain matters)	16
22	Amendment of s 26 (Books, accounts and records to be produced upon demand)	16
23	Amendment of s 27 (Duties of bank relating to trustee's accounts)	16
24	Insertion of new ss 28A–28B	16
	28A Supervising entity to report annually to Minister	17
	28B Duty of supervising entity to report suspected offences	17
25	Replacement of s 30 (Inspection of auditor's reports)	18
	30 Inspection of auditor's reports	18
26	Amendment of s 33 (Return of property in trustees' hands to which beneficiaries are absolutely entitled)	18
27	Amendment of s 34 (When public trustee may control operations on trust accounts)	19
28	Amendment of s 36 (Act to apply in respect of certain moneys and bank accounts)	20
29	Replacement of ss 38 and 39	20
	38 Proceedings for offences are summary proceedings	20
30	Insertion of new ss 42–43	21
	42 Transitional provision about financial period	21
	43 Chief executive to give information to supervising entity	21
	SCHEDULE	22
	MINOR AMENDMENTS	

Queensland



Trust Accounts Amendment Act 1997

Act No. 55 of 1997

An Act to amend the *Trust Accounts Act 1973*

[Assented to 16 October 1997]

The Parliament of Queensland enacts—**Short title**

1. This Act may be cited as the *Trust Accounts Amendment Act 1997*.

Commencement

2. This Act commences on a day to be fixed by proclamation.

Act amended

3. This Act amends the *Trust Accounts Act 1973*.

Amendment of s 4 (Interpretation)

- 4.(1) Section 4, heading—

omit, insert—

‘Definitions’.

- (2) Section 4(1), definitions “**approved**”, “**financial period**”, “**repealed Acts**” and “**trust account**”—

omit.

- (3) Section 4(1)—

insert—

“financial period”, for a trustee, means—

- (a) for the first period after the trustee becomes a trustee—the period (not more than a year) starting on the day the trustee becomes a trustee and ending on 31 March; or
- (b) for any other period—a year ending on 31 March.

“supervising entity” see section 4E.

“trust account” means a trust account kept under this Act, whether established before or after 1 July 1973.’.

(4) Section 4(1), definition “**trustee**”, from ‘includes’—
omit, insert—

‘includes a person declared under a regulation to be a trustee.’.

(5) Section 4(2), as heading—
insert—

‘References to moneys received by a trustee’.

(6) Section 4(3), as heading—
insert—

‘References to books, accounts etc. of trustee in partnership’.

(7) Section 4(4), as heading—
insert—

‘Act continues to apply to particular persons after they stop being trustees’.

(8) Section 4(5)—
omit.

(9) Section 4(6), as heading—
insert—

‘Act applies to trustees and receivers appointed under Queensland Law Society Act 1952’.

(10) Section 4(2) to (4) and (6)—
renumber as sections 4A to 4D.

Insertion of new s 4E

5. After section 4D, as renumbered—
insert—

‘Meaning of “supervising entity”

‘4E.(1) A “**supervising entity**” is an entity that under subsection (2) or (4) is the supervising entity for a trustee.

‘(2) An entity is the “**supervising entity**” for a trustee if a regulation declares the entity to be the supervising entity for the trustee.

‘(3) However, a regulation may declare an entity to be a supervising entity only if the chief executive is satisfied—

- (a) the entity has the qualifications, experience or standing necessary to perform the functions of a supervising entity under this Act; and
- (b) anyone the entity employs to perform the functions has the qualifications, experience or standing necessary to perform the functions.

‘(4) If a regulation does not declare an entity other than the chief executive to be the supervising entity for a trustee, the chief executive is the supervising entity for the trustee.

‘(5) A reference to a supervising entity made in relation to a trustee is a reference to the trustee’s supervising entity.

‘(6) A reference to a supervising entity made in relation to an auditor performing duties as an auditor under this Act is a reference to the supervising entity of the trustee in relation to whom the duties are performed.’.

Amendment of s 5 (Trustee to give notice to chief executive etc.)

6.(1) Section 5, heading, ‘**chief executive etc.**’—

omit, insert—

‘**supervising entity**’.

(2) Section 5(1) and (2) to (4), ‘chief executive’—

omit, insert—

‘supervising entity’.

(3) Section 5(1) and (2) to (4)—

insert—

‘Maximum penalty—5 penalty units.’.

(4) Section 5(5) and (6)—

omit, insert—

‘(5) A trustee must immediately give to the supervising entity written notice of the establishment of a trust account and the name and the office or branch of the financial institution at which the account is established.

Maximum penalty—100 penalty units.

‘(6) If any of the following happen, the trustee must immediately give to the supervising entity written notice of that fact—

- (a) a change in the name of a trust account;
- (b) the transfer of a trust account to another office or branch of the financial institution at which the account is established;
- (c) the transfer of a trust account to another financial institution;
- (d) the closing of a trust account.

Maximum penalty—100 penalty units.’.

Amendment of s 6 (Accounts to be kept by trustees)

7.(1) Section 6(1), (4), (5) and (7)—

insert—

‘Maximum penalty—10 penalty units.’.

(2) Section 6(3)—

omit, insert—

‘**(3)** Unless—

- (a) the supervising entity otherwise approves in writing; or
- (b) an auditor has actual possession of a trustee’s accounting and other records relating to trust moneys for the time reasonably necessary to audit them under this or any other Act;

a trustee must keep all accounting and other records relating to trust moneys at the trustee’s sole or principal place of business or at another place of the trustee’s business the supervising entity approves in writing.

Maximum penalty—10 penalty units.’.

(3) Section 6(4), ‘*Evidence (Reproductions) Act 1970*, section 11’—

omit, insert—

‘*Evidence Act 1977, section 111*’.

Amendment of s 7 (Moneys received by trustee to be paid into a trust account)

8.(1) Section 7—

insert—

‘**(1A)** However, a trustee is not required to pay trust moneys into a trust account if—

- (a) the trust moneys consist of a cheque drawn in favour of someone else; and
- (b) the trustee is satisfied the person is lawfully entitled to the moneys; and
- (c) the trustee immediately gives the person the cheque, personally, by post or at the person’s direction.’.

(2) Section 7(4)—

omit, insert—

‘**(4)** A person must not contravene this section.

Maximum penalty—

- (a) 50 penalty units; or
- (b) if the offence is committed with intent to defraud—100 penalty units or 1 year’s imprisonment.’.

(3) Section 7(5)—

omit.

Amendment of s 8 (Purposes for which money may be withdrawn from trust account)

9. Section 8(1) and (2)—

insert—

‘Maximum penalty—100 penalty units or 1 year’s imprisonment.’.

Amendment of s 11 (Claims and liens not affected)

10. Section 11, ‘Nothing’—

omit, insert—

‘Subject to section 33(5) and (5A), nothing’.

Amendment of s 12 (Disbursements from trust account)

11.(1) Section 12(1), (3) and (4)—

insert—

‘Maximum penalty—10 penalty units.’

(2) Section 12—

insert—

‘**(5)** This section does not prevent a financial institution causing a payment to be made from a trustee’s trust account kept at a financial institution by electronic funds transfer.

‘**(6)** However, the financial institution must ensure it keeps accurate records of each transfer and the purpose of the transfer.

‘**(7)** Subsection (5) applies only if the trustee has the written approval of the supervising entity to make electronic funds transfers from the trust account.’

Amendment of s 14 (Trustee to appoint auditor)

12.(1) Section 14(1)—

insert—

‘Maximum penalty—50 penalty units.’

(2) Section 14(2) and (3)—

omit, insert—

‘**(2)** Within 1 month after a person becomes a trustee, the trustee must give to the supervising entity, in writing, the full name and business address of the auditor appointed under subsection (1).

Maximum penalty—50 penalty units.

‘(3) If, for any reason, the appointment of an auditor ends, the trustee must—

- (a) immediately give to the supervising entity written notice that the appointment has ended; and
- (b) within 1 month after the appointment ends—give to the supervising entity, in writing, the full name and business address of the auditor appointed to replace the auditor whose appointment has ended.

Maximum penalty—50 penalty units.’.

Amendment of s 15 (Qualifications, resignation, termination of appointment of auditor)

13.(1) Section 15(1)(d)(ii), ‘member’—

omit, insert—

‘person who holds a current practice certificate’.

(2) Section 15(1)—

insert—

‘Maximum penalty—100 penalty units.’.

(3) Section 15(2)(d)(ii), ‘member’—

omit, insert—

‘person who holds a current practice certificate’.

(4) Section 15(2)(e), ‘chief executive’—

omit, insert—

‘supervising entity’.

(5) Section 15(2)—

insert—

‘Maximum penalty—100 penalty units.’.

(6) Section 15(9)—

omit, insert—

‘(9) If an auditor resigns, the auditor must immediately give to the supervising entity written notice of the resignation.

Maximum penalty—50 penalty units.’

(7) Section 15(13), ‘chief executive thereon’—

omit, insert—

‘supervising entity on the auditor’s actions or proposed actions’.

(8) Section 15(13A)—

omit, insert—

‘(13A) If the supervising entity considers it appropriate, the supervising entity may give to the Minister a copy of the report.’

(9) Section 15(14), ‘chief executive’—

omit, insert—

‘supervising entity’.

(10) Section 15(15), ‘subsection (14)’—

omit, insert—

‘subsection (12)’.

(11) Section 15(13) to 15(15)—

renumber as section 15(10) to (13).

Amendment of s 16 (Audit of trust accounts)

14.(1) Section 16(1)—

omit.

(2) Section 16(2)—

omit, insert—

‘(2) A trustee must, for each financial period for the trustee and within 2 months after the end of the financial period—

- (a) ensure the trustee’s auditor audits the accounting and other records and the trust accounts kept by the trustee under this Act;
- and

- (b) give to the supervising entity an auditor's report containing the information prescribed under a regulation.

Maximum penalty—200 penalty units.’

(3) Section 16(2A) to (3)—

omit, insert—

‘(3) However, if the supervising entity is satisfied, on the trustee's written application, there are special reasons for extending the time for compliance with subsection (1)(b), the supervising entity may approve an extension, of not more than 3 months, of the time for compliance with the subsection.

‘(3A) The supervising entity may approve the extension on conditions stated in the approval.’

(4) Section 16(4), ‘subsection (2)’—

omit, insert—

‘subsection (1)’.

(5) Section 16(4)—

insert—

‘Maximum penalty—200 penalty units.’

(6) Section 16(6), penalty, ‘20 penalty units’—

omit, insert—

‘200 penalty units’.

(7) Section 16(7)—

omit.

(8) Section 16(9), ‘subsection (2)’—

omit, insert—

‘subsection (1)’.

(9) Section 16(10), ‘chief executive’—

omit, insert—

‘supervising entity’.

(10) Section 16(10)(a), ‘subsection (8) or (9)’—

omit, insert—

‘subsection (7) or (8)’.

(11) Section 16(10)(b), ‘subsection (8)’—

omit, insert—

‘subsection (7)’.

(12) Section 16(12)—

insert—

‘Maximum penalty—50 penalty units.’.

(13) Section 16(2) to (3A) and (8) to (12)—

renumber as section 16(1) to (3) and (7) to (11) respectively.

Amendment of s 17 (Duties of auditor)

15. Section 17, from ‘shall within 7 days’—

omit, insert—

‘must, within 7 days after becoming aware of the matter, give to the supervising entity and the trustee a written report on the matter.

Maximum penalty—200 penalty units.’.

Amendment of s 18 (Auditor to make unannounced examinations)

16.(1) Section 18(2), from ‘in respect of’—

omit, insert—

‘for the relevant financial period given to the supervising entity a statement that an unannounced examination has been made on a stated date.’.

(2) Section 18(3), ‘chief executive’—

omit, insert—

‘supervising entity’.

(3) Section 18(3)—

insert—

‘Maximum penalty—50 penalty units.’.

(4) Section 18(4), from ‘The chief executive’ to ‘deems’—

omit, insert—

‘The supervising entity may, if it considers’.

Amendment of s 19 (Auditing of accounts on ceasing to be trustee)

17.(1) Section 19(1)(c)—

omit, insert—

‘(c) give to the supervising entity the auditor’s report mentioned in paragraph (b).’.

(2) Section 19(1)—

insert—

‘Maximum penalty—50 penalty units.’.

Amendment of s 20 (Report of auditor to be laid before Minister in certain cases)

18.(1) Section 20(1)—

omit, insert—

‘20.(1) If after considering an auditor’s report given under section 16(1), 16(9) or 17 in relation to a trustee, the supervising entity is satisfied that the financial position of the trustee does not allow the trustee to meet all the trustee’s commitments as a trustee, the supervising entity must give to the Minister a copy of the report with any further report on it the supervising entity considers appropriate to make.

‘(1A) Subsection (1) does not limit the circumstances in which the supervising entity may give to the Minister a copy of an auditor’s report.’.

(2) Section 20(2), ‘section 15(13), 16(2) or (10)’—

omit, insert—

‘section 15(10), 16(1) or (9)’.

(3) Section 20(2) and (4) to (6), ‘chief executive’—

omit, insert—

‘supervising entity’.

(4) Section 20(2), ‘section 16(7) or’—

omit.

(5) Section 20(2), ‘15(13) if’—

omit, insert—

‘15(10) if’.

(6) Section 20(5), penalty—

omit, insert—

‘Maximum penalty—100 penalty units or 1 year’s imprisonment.’.

Amendment of s 21 (Power of Minister to appoint independent auditor)

19. Section 21(1), from ‘Where the Minister’ to ‘thinks proper’—

omit, insert—

‘If the Minister has received an auditor’s report sent to the Minister under section 15(10) or for another reason the Minister considers appropriate.’.

Amendment of s 23 (Auditor to report to Minister)

20. Section 23(2), ‘Queensland Law Society Incorporated’—

omit, insert—

‘supervising entity’.

Amendment of s 25 (As to right of auditors and employees to communicate certain matters)

- 21.** Section 25, ‘chief executive’—
omit, insert—
‘supervising entity’.

Amendment of s 26 (Books, accounts and records to be produced upon demand)

- 22.** Section 26(5) and penalty at end of subsection—
omit, insert—
‘(5) A person must not—
- (a) contravene subsection (1), (2) or (3); or
 - (b) give to an auditor appointed under section 21 or 22 or a person who produces a written authority given under section 24(1)(c) a false or misleading answer to a question asked under subsection (2); or
 - (c) impede, delay or otherwise obstruct, or attempt to impede, delay or otherwise obstruct a person mentioned in paragraph (b) who is exercising powers or performing duties under this Act.

Maximum penalty—20 penalty units or 1 year’s imprisonment.’.

Amendment of s 27 (Duties of bank relating to trustee’s accounts)

- 23.** Section 27(2), from ‘chief executive’ to ‘forthwith’—
omit, insert—
‘supervising entity immediately’.

Insertion of new ss 28A–28B

- 24.** After section 28—
insert—

‘Supervising entity to report annually to Minister

‘28A.(1) A supervising entity must, as and when required by the Minister, give to the Minister an annual report on its functions under this Act.

‘(2) The report may be about all or any of the trustees for which the entity is the supervising entity.

‘(3) Without limiting subsection (1), the report must include an analysis of the extent to which the trustees reported on complied with section 16(1).¹

‘(4) This section does not apply to a supervising entity who is the chief executive.’.

‘Duty of supervising entity to report suspected offences

‘28B.(1) This section applies if a supervising entity suspects on reasonable grounds, after performing functions under this Act or otherwise, that a person has committed an offence against this Act.

‘(2) If the *Queensland Law Society Act 1952*, section 50A² does not apply to the supervising entity, the supervising entity must—

- (a) report the suspected offence to the commissioner of the police service or other appropriate prosecuting authority; and
- (b) make available to the commissioner or authority the documents and information relevant to the suspected offence in its possession or under its control.

‘(3) The obligation under subsection (2)(b) to make available the documents and information continues while the supervising entity holds the relevant suspicion.

‘(4) If the *Queensland Law Society Act 1952*, section 50A applies to the supervising entity, the supervising entity must, within 14 days after becoming aware of the suspected offence, give to the Minister a written report on the matter, including details of the action the supervising entity proposes to take in relation to the matter.’.

¹ Section 16 (Audit of trust accounts)

² Section 50A (Duty of council to report suspected offences)

Replacement of s 30 (Inspection of auditor's reports)

25. Section 30—

omit, insert—

'Inspection of auditor's reports

'30.(1) If—

- (a) an auditor's report is given under this Act to a supervising entity; and
- (b) the supervising entity is satisfied a person has enough interest in moneys in relation to which the report is given;

the supervising entity must, so far as the report relates to the moneys, make the report available for inspection by the person.

'(2) A supervising entity must make each auditor's report for a financial period available for inspection by—

- (a) the auditor appointed to audit the accounts of the trustee for the next financial period; or
- (b) anyone else the supervising entity considers has a genuine reason for wanting to inspect the report.

'(3) A person mentioned in subsection (2) may, with the supervising entity's approval, make a copy of, or take an extract from, the report.'

Amendment of s 33 (Return of property in trustees' hands to which beneficiaries are absolutely entitled)

26.(1) Section 33(1), '30 September'—

omit, insert—

'1 April'.

(2) Section 33(1), from 'within' to 'chief executive'—

omit, insert—

'not later than the following 1 June, lodge with the public trustee'.

(3) Section 33(1) and (3)—

insert—

‘Maximum penalty—50 penalty units.’

(4) Section 33(4)—

omit.

(5) Section 33(5)—

omit, insert—

‘(5) On receipt of a return under subsection (1), the public trustee may, by signed notice, require the trustee to transfer, assign, deliver, or pay over to the public trustee all property mentioned in the return within the time stated in the notice.

‘(5A) On the giving of a notice under subsection (5), any lien claimed against the property by the trustee stops having effect.’

(6) Section 33(7)—

omit, insert—

‘(7) In any proceeding, a certificate signed by the public trustee and stating that the public trustee has made under subsection (5) a requirement stated in the certificate is evidence of the making of the requirement.’

Amendment of s 34 (When public trustee may control operations on trust accounts)

27. Section 34(9)—

omit, insert—

‘(9) A trustee, manager, or principal or other officer of a financial institution, or any person authorised to operate on the trust account of a trustee (including a trustee who is authorised to operate on the trust account of another trustee) must not knowingly contravene this section.

Maximum penalty—50 penalty units.’

Amendment of s 36 (Act to apply in respect of certain moneys and bank accounts)

28.(1) Section 36, ‘deemed to be a trustee under section 4(5)’—

omit, insert—

‘declared under a regulation to be a trustee (“**declared trustee**”)’.

(2) Section 36, ‘other person so deemed to be a trustee’—

omit, insert—

‘declared trustee’.

(3) Section 36, ‘, as the case may be, person so deemed to be a trustee’—

omit, insert—

‘declared trustee’.

(4) Section 36, ‘or person so deemed to be a trustee’—

omit, insert—

‘or declared trustee’.

(5) Section 36(a), ‘shall be deemed’—

omit, insert—

‘are taken’.

(6) Section 36(b) and (c), ‘shall be deemed’—

omit, insert—

‘is taken’.

Replacement of ss 38 and 39

29. Sections 38 and 39—

omit, insert—

‘Proceedings for offences are summary proceedings

‘38. A proceeding for an offence against this Act is a summary proceeding under the *Justices Act 1886*.’.

Insertion of new ss 42–43

30. After section 41—

insert—

‘Transitional provision about financial period

‘42.(1) A trustee is taken to comply with section 16 in relation to a financial period that started before the commencement of this section if the person complies with that section as in force immediately before the commencement.

‘(2) This section expires 1 year after it commences.

‘Chief executive to give information to supervising entity

‘43.(1) This section applies if the chief executive stops being the supervising entity for a trustee and someone other than the chief executive becomes the supervising entity for the trustee.

‘(2) Within 3 months after the chief executive stops being the supervising entity, the chief executive must give to the supervising entity the information the chief executive considers necessary to enable the supervising entity to perform its functions under this Act.

‘(3) The chief executive or anyone else acting under the chief executive’s direction is not civilly liable for the giving of information to a supervising entity under this section.

‘(4) If subsection (3) prevents liability attaching to a person, the liability attaches instead to the State.’.

SCHEDULE**MINOR AMENDMENTS**

section 3

1. Section 13—*insert—*

‘Maximum penalty—50 penalty units.’.

2. Section 26A(9)—*insert—*

‘Maximum penalty—100 penalty units or 1 year’s imprisonment.’.

3. Section 26A(10)—*omit.***4. Section 28(1), penalty, ‘20 penalty units’—***omit, insert—*

‘100 penalty units’.

5. Section 31(1)—*insert—*

‘Maximum penalty—10 penalty units.’.

SCHEDULE (continued)

6. Section 31(2)—*insert—*

‘Maximum penalty—10 penalty units.’