

# Ethical Supplier Threshold – Standard operating procedure

Queensland Government Procurement



**Queensland**  
Government

## The State of Queensland (Department of Energy and Public Works) 2021



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## 1 Purpose

The Ethical Supplier Threshold (the Threshold) and the *Ethical Supplier Mandate 2021* (the Mandate) are an integral part of the *Buy Queensland* procurement approach and Queensland's economic recovery plan.

Queensland Government is committed to supporting ethically, socially and environmentally responsible Queensland businesses and keeping the economy moving by backing small business. The Threshold and the Mandate support the overarching Queensland Procurement Policy (QPP) and keeping Queenslanders in quality, secure and safe local jobs.

This document provides guidance for the process of applying the Threshold for Queensland Government buyers.

This procedure does not preclude the agency from complying with the requirements of the Queensland Procurement Policy (QPP). In accordance with the QPP, agencies will ensure processes are in place to manage contracts, including performance and renewal.

## 2 Scope

This procedure applies to all Queensland Government procuring agencies that manage suppliers subject to the Threshold.

From 1 August 2019, the Threshold applies to all suppliers engaged by any procuring agency governed by the QPP; including statutory bodies, government-owned corporations (GOCs) and special purpose vehicles.

The application of the Threshold to GOCs and statutory bodies where these organisations are the supplier to government will be considered in 2021.

The Mandate sets out the system for penalising non-compliant suppliers under the Threshold.

### 2.1 Low value procurement

The Threshold (and the Mandate) apply to purchases of any value; however, exceptions should be considered for processes outlined in Section 3 – Applying the Threshold in a circumstance of low value procurement. Low value procurement may commonly occur where procuring agencies make immediate purchases and buyers by default accept a supplier's terms and conditions for the purpose of the procurement activity (i.e., over the counter or online transactions).

Low value procurement is defined by an agency's existing purchasing threshold, where this value is less than \$20,000 (per purchase or order). Where an agency's low value procurement threshold exceeds \$20,000; that agency's definition of low value spend will be capped at \$20,000 for the purpose of the Threshold.

Where a transaction falls into the category of low value procurement, procuring agencies:

- should ensure engagement with the supplier does not defy sanction notices issued by the Queensland Government Procurement (QGP) Compliance Branch,
- will not be required to perform a Threshold compliance check as outlined in Section 3.3,
- will not be required to insert contract clauses as outlined in Section 3.4.

The QGP Compliance Branch will notify procuring agencies when a supplier has received a sanction and cannot be engaged (regardless of the value of the procurement) until the penalty period has lapsed.

Where an arrangement exceeds the agencies purchasing threshold and is not considered low value procurement, an engagement method as outlined in Section 3 should apply.

## 3 Applying the Threshold

In order to implement the Threshold agencies are asked to perform key compliance activities through the procurement life cycle.

### 3.1 Invitation to offer conditions

Tender documentation, generally an invitation to offer (ITO), resulting in the award of a contract falling within scope of the Threshold must include declaratory references to the policy (see **Appendix 5** for example clauses).

Agencies conducting the procurement will be responsible for ensuring all appropriate references are included, possibly via standard contract suites maintained by category lead agencies.

Standard contract suites with updated template documentation should be available for all relevant spend categories at [www.forgov.qld.gov.au/procurement](http://www.forgov.qld.gov.au/procurement).

### 3.2 Threshold compliance declaration

Prior to a contract being awarded, suppliers are required to complete a declaration (refer to **Appendix 1** for an example) advising of their compliance status with the criteria of the Threshold and providing consent for information sharing authorities. Agencies conducting the procurement are responsible for facilitating the completion of this declaration.

The declaration also includes a section addressing previous non-compliant activity that has been considered and determined not to be a breach of the Threshold. In this circumstance suppliers will be allocated a reference number for inclusion on all future declarations. Refer to Section 3.2.2 for further information on this process.

A Threshold declaration is a point-in-time report of the supplier's compliance status and is required for each individual engagement with that supplier.

Where no formal tender process is required, Threshold declarations should be provided with any appropriate procurement/order documentation, i.e., invitation to offer, request for quote, purchase order, or standard email/written correspondence.

#### 3.2.1 A compliant Threshold declaration

A supplier is considered compliant with the Threshold where they return a declaration response of 'No' to each criteria item. In this circumstance, procuring agencies should retain the compliant supplier declaration with the appropriate contract documentation and can proceed with the procurement process.

There is no onus of proof requirement in relation to 'No' responses to the Threshold declaration. Procuring agencies are not required to substantiate responses of this kind; however, are welcome to validate declaration responses with the appropriate regulating body if they deem appropriate.

If a supplier is found to have provided false information on a declaration submission, they will be liable for possible exclusion and sanction under the Threshold and should be treated in line with the breach process.

#### 3.2.2 A non-compliant Threshold declaration

Where a supplier has responded 'Yes' to any one criteria item on the Threshold declaration, procuring agencies will be responsible for taking the following actions:

- confirming with the supplier that this was an accurate reflection of their compliance status, and not an incorrect submission,
- confirming that the self-reported non-compliant activity falls within scope of the Threshold,
- obtaining further details on the reported non-compliant activity, including:
  - when the non-compliance occurred
  - what the non-compliance was and how it occurred

- whether the activity has been rectified
- whether any business improvements were implemented to address any potential future non-compliance
- obtaining evidence and outcome (where applicable) of the non-compliant activity, either via the supplier directly, or where necessary, through the appropriate regulator
  - evidence standards remain consistent with the details outlined in Section 5.7 of this document.
  - compelling evidence may also apply to Threshold declarations (refer to Section 5.7.1).

Only once the above actions accurately confirm the supplier's compliance status can the Threshold declaration be considered non-compliant.

Non-compliant Threshold declarations, along with all associated documentation and evidence, should be escalated to the procuring agency's Chief Procurement Officer (CPO) for review. It is the responsibility of the appropriate CPO to make a determination on whether the self-reported non-compliant activity should be escalated as a breach of the Threshold, or not.

For a non-compliant Threshold declaration not to be considered as a breach of the Threshold, the CPO must be satisfied that either:

- the supplier can demonstrate the non-compliant activity was a result of an honest mistake or oversight and business improvements or restitution has been made, or
- a regulator has provided an outcome indicating the non-compliant activity was not a breach of legislation.

Where a supplier declaration is considered to be a breach of the Threshold, in each instance the procuring agency is responsible for conducting the breach process (refer to Section 5).

Where a CPO has approved a non-compliant Threshold submission for progression through the tender process, the decision must be documented and defensible.

It is the responsibility of the procuring agency to advise the QGP Compliance Branch of this decision. A template report will be available for agency completion, inclusive of all case reference materials. After processing the non-compliance matter the QGP Compliance Branch will provide the agency with a reference number issued for the supplier, which should be noted on all future Threshold declarations indicating a previous determination has been made on the specific matter of non-compliance. Where a declaration is lodged quoting a reference number of this kind, procuring agencies are responsible for contacting the QGP Compliance Branch to validate the number and confirm the status of the supplier's compliance.

If a non-compliant declaration is not considered a breach of the Threshold, dependant on the ITO conditions, the offer may be considered non-conforming and must be treated by the evaluation panel in accordance with the ITO conditions. Where an agency's standard practice does not include the consideration of non-conforming tender submissions, an alternative offer process may be used if permitted under the ITO conditions.

### 3.3 Threshold compliance check

Prior to a contract being awarded, procuring agencies are responsible for performing a supplier compliance check, to ensure businesses have not been sanctioned under the Threshold or the Mandate. An online checking tool, managed by the QGP Compliance Branch, has been developed to facilitate this process. Procuring agencies are responsible for using the checking tool to confirm compliance ahead of engaging a supplier.

If a supplier does have a non-compliance record under the Threshold or Mandate, this information will be provided on the checking tool using the Australian Business Number/Australian Company Number search function. The checking tool offers a point-in-time account of a supplier's compliance under these policies, therefore procuring agencies will be required to keep a record of the supplier's compliance status prior to entering into any contractual arrangements.

Details of a supplier's compliance history remain confidential and are published for internal government use only. Procuring agencies will not have the authority to publicly release compliance details under the Threshold or Mandate, unless agreed contract terms allow agencies to do so.

Procuring agencies can only access the online checking tool if they are using a government network. This resource is available here: [www.forgov.qld.gov.au/complete-supplier-check](http://www.forgov.qld.gov.au/complete-supplier-check).

Where procuring agencies have the opportunity to approve subcontractors engaged through the contract supply chain, they will be responsible for performing this same compliance check on proposed subcontracting businesses. While the procuring agency does not have the authority to share sanction information between suppliers (unless publication of sanction contract clauses apply), the agency still maintains the right to reject a proposed subcontractor.

In upholding the principles of the Threshold, suppliers should not knowingly engage subcontractors who are sanctioned by the Queensland Government.

Procuring agencies should contact the QGP Compliance Branch at [ethicalsupply@epw.qld.gov.au](mailto:ethicalsupply@epw.qld.gov.au) if they require further information on a matter of non-compliance.

### 3.3.1 Exemptions from Threshold compliance checks

The QGP Compliance Branch will facilitate removal of suppliers from the following systems in a circumstance where they have been excluded from doing business with the Queensland Government under the Threshold (or Mandate) for a nominated period:

- the Prequalification System of the Capital Works Management Framework
- the National Prequalification System for Civil (Road and Bridge) Construction Contracts
- arrangements administered by General Goods and Services, Department of Energy and Public Works and
- the QBuild Register

Where procuring agencies are engaging suppliers through the above channels, they are exempt from the requirement to perform a compliance check ahead of contract award.

Agencies conducting low value procurement are also exempt from performing Threshold compliance checks; however, should remain conscious not to defy sanction notices issued by the QGP Compliance Branch.

Refer to Section 2.1 for more information on the low value procurement process.

## 3.4 Contract clauses

All contracts in scope of the Threshold should include related declaratory contract clauses (see **Appendix 5** for example clauses). It is the responsibility of procuring agencies (possibly via category lead agencies) to update all contracts to include these references. Treatment of these contract clauses may vary, as outlined in **Appendix 6**.

Where a procuring agency has awarded a contract omitting Threshold-related contract references, the procuring agency should seek advice on undergoing a variation to contract process to remedy the oversight.

Declaratory contract clauses are not appropriate in a circumstance of low value procurement (refer to Section 2.1).

In addition to considering the requirements of the QPP when establishing contractual terms, procuring agencies also have access to compliance tools which may be appropriate for inclusion in the contract. These tools include available contract clauses allowing for the publication of sanctions (see **Appendix 5** for example clauses).

Procuring agencies should, where appropriate, include clauses enabling the publication via media and other channels of suppliers subject to a sanction, following the accumulation of twenty (20) demerits. The inclusion of such terms provides a deterrent and would allow procuring agencies to publish any breaches of the Threshold, on the specified contract. See **Appendix 5** for example clauses.

## 3.5 Finalising the arrangement

Prior to entering an arrangement, or asking a supplier to agree to contract terms, it is the responsibility of the procuring agency to ensure all parties to the contract have a complete and comprehensive understanding of their obligations. This includes providing an explanation of the Threshold and the implications on suppliers for any non-compliances performed on that contract.

Procuring agencies should also address a principal contractor's responsibility to apply the Threshold down the supply chain where subcontractors are required to complete the project.

### 3.5.1 Suppliers engaging subcontractors

The definition of 'supplier' includes subcontractors within the supply chain (see **Appendix 2**). This means that subcontractors may be subject to a penalty, and suppliers may be penalised for breaches by their subcontractors; except where the supplier has taken reasonable action to prevent the breach by their subcontractors.

See Section 5.8.1 for further details on 'reasonable action'.

Procuring agencies will be responsible for advising all principal contractors that the Threshold will apply to all subcontractors involved in a contract supply chain. Agencies should ensure principal suppliers include provisions in all subcontractor arrangements applying the Threshold and committing the subcontractor to information sharing terms and cooperation with investigations and audits.

Where a breach by a subcontractor is identified, principal contractors will be required to obtain related details and documentation on behalf of the procuring agency, enacting the information sharing terms agreed to by the subcontractor. Refer to Section 6 for further information on the investigation process.

#### Best Practice Principles Deeds Poll

As outlined in Section 5.8 limitations exist for procuring agencies when communicating with subcontractors. To remove complexities in seeking compliance related information from subcontractors, projects applying the Best Practice Principles (BPP) will have access to the use of Deeds Poll (see **Appendix 7**).

A Deed Poll is an agreement between the Queensland Government and the subcontractor, authorising direct communication with the subcontractor. It is the responsibility of the agency managing the contract to ensure a Deed Poll is signed by each subcontractor engaged on a BPP project or where significant procurement occurs.

## 4 Types of Threshold breaches

For non-compliant supplier conduct to be considered a breach, the activity must apply to one of the Threshold categories.

The non-compliance categories under the Threshold are:

- a) contravened a civil remedy provision of Chapter 2 or Chapter 3 of the *Fair Work Act 2009* (Cth), or committed an offence against the *Fair Work Act*
- b) contravened a civil remedy provision of Chapter 2, 3, 4, 5, or 7 of the *Industrial Relations Act 2016*, or committed an offence against the *Industrial Relations Act*, or failed to pay employment related levies, or other payments, established under Queensland legislation
- c) failed to make superannuation contributions on behalf of employees in accordance with law
- d) purported to treat employees as independent contractors, where they are not
- e) required persons who would otherwise be employees to provide an Australian Business Number so that they could be treated as independent contractors
- f) engaged persons on unpaid work trials or as unpaid interns, where they should be treated as employees

- g) entered into an arrangement for the provision of labour hire services with a person who is not licensed under the *Labour Hire Licensing Act 2017*, or a supplier who is an unlicensed provider under the *Labour Hire Licensing Act 2017*
- h) paid employees wages below those provided for in an applicable modern award.

## 5 Breach process

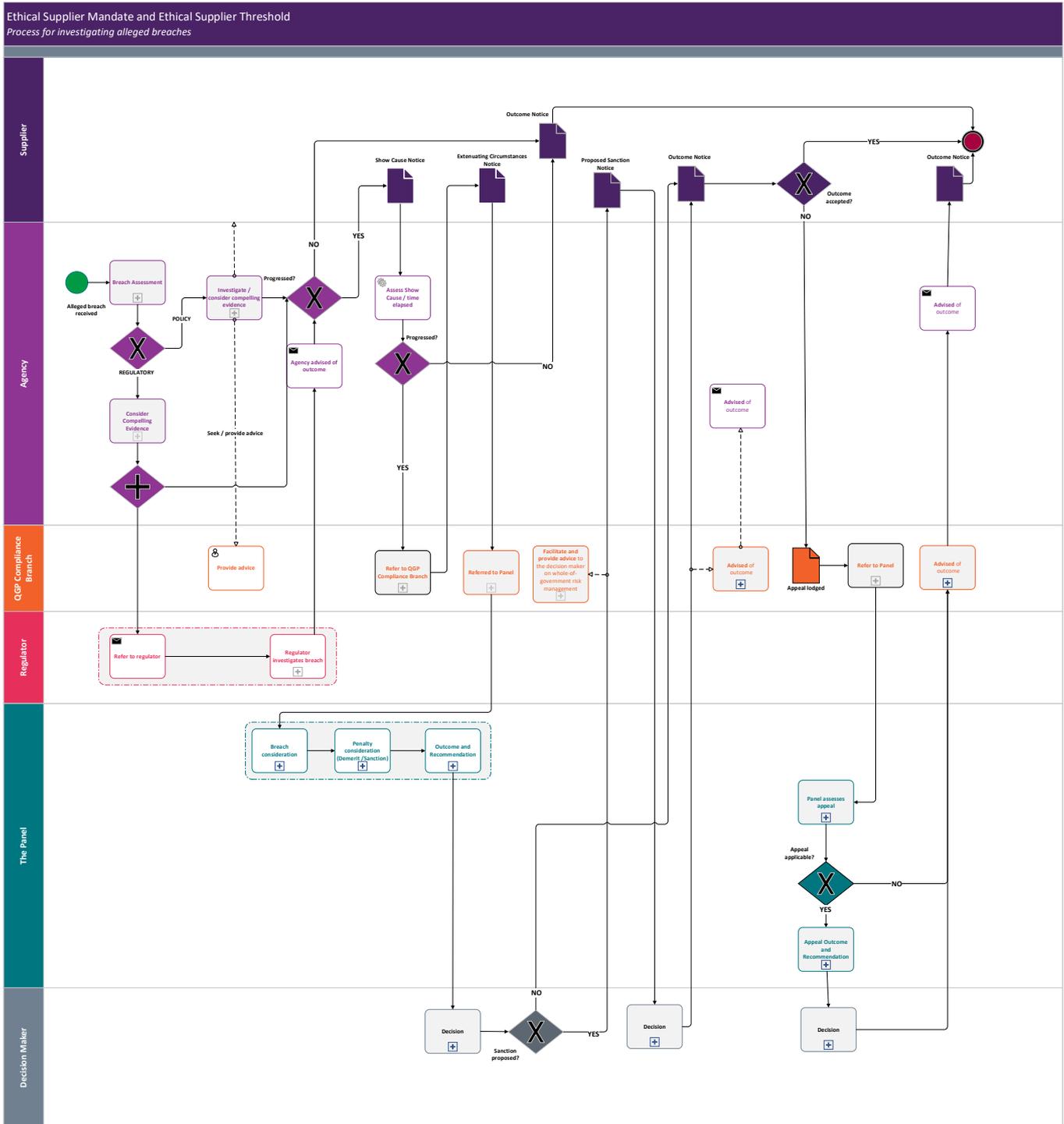
The Threshold is both a pre-condition for supply and a commitment from suppliers to maintain the standards set out. Where a supplier has been found to be non-compliant with the criteria of the Threshold while engaged by government, it will be the responsibility of the procuring agency to conduct the breach process.

Where a possible breach is identified, however the non-compliant activity does not relate to a Queensland Government contract, the lead category of spend associated with the supplier will be responsible for managing the breach process.

Supplier's conduct will be a breach in circumstances where the supplier has negligently, deliberately and/or repeatedly been non-compliant with a criterion of the Threshold, and not due to an honest mistake or oversights that are found and corrected.

The appropriate agency will be responsible for conducting due process and determining whether the breach is capable of being progressed. In achieving this, agencies must first establish sufficient evidence.

## 5.1 Process overview



## 5.2 Method received

The procuring agency (contract manager or nominated officer) is responsible for identifying and receiving alleged breaches of the Threshold.

This may occur via any of the following:

1. review of the Supplier's Performance Report
2. advice from the project manager

3. referral from a regulator
4. audit of the relevant project in which the supplier was contracted
5. complaint by a current or former employee of the supplier, other businesses, or any member of the public via:
  - telephone
  - email
  - in person
  - letter.
6. advice from the Deputy Director General – Procurement (DDG)

Complaints raised as an alleged breach of the Mandate that are vexatious in nature and do not provide sufficient detail of a non-compliance having occurred, should be handled in a manner consistent with the agencies existing complaints management processes.

A complaint may also be raised directly with the QGP Compliance Branch. If this occurs the Compliance Coordination and Referral Team will refer the complaint to the relevant agency for investigation.

### 5.3 Initial enquiries

If further information is required to assess whether to proceed, the procuring agency may conduct some preliminary enquiries prior to commencing an investigation. The agency may also contact the supplier requesting any additional information required to assess the non-compliance matter. This is not an opportunity for the supplier to show cause.

If the agency has a reasonable suspicion the supplier would destroy evidence if notified of the investigation, it is recommended the agency not inform the supplier until the show cause stage.

Once these enquiries have been made (if required), the agency will assess the non-compliance and determine whether to proceed with an investigation.

### 5.4 Assessing alleged breaches

On receipt of information that a supplier has, or may have, failed to meet a policy, contractual or legislative requirement, the agency party to the contract or arrangement will take steps to determine whether the alleged non-compliant activity relates to a breach of the Mandate. This consideration of scope should occur ahead of an investigation.

A checklist is available for procuring agencies to assess alleged breaches under the Mandate (see **Appendix 4**).

### 5.5 Breach register

When a breach is identified by an agency, it is recommended best practice that a breach register (or similar) be maintained. A sample breach register can be found with the complementary suite of policy resources.

### 5.6 Advice from the QGP Compliance Branch

The procuring agency may seek advice from the QGP Compliance Branch within the Department of Energy and Public Works during the investigation of a breach.

The Compliance Branch may offer advice in the areas of process, applying the Mandate, and investigatory activities. Any advice provided by the Compliance Branch is considered non-binding. It is the responsibility of the procuring agency to determine whether a breach is capable of being progressed.

## 5.7 Evidence types

Non-compliance categories have different evidence requirements dependent on the subject matter covered and subsequent complexity.

The two types of evidence applicable to breaches under the Threshold are:

- compelling evidence and
- regulator outcomes.

### 5.7.1 Compelling evidence

The Threshold and Mandate are mechanisms for government to assess supplier behaviour; not to determine guilt in terms of legislative compliance. Consequently, compelling evidence can be used to assess the behaviour of a supplier, in some cases where a regulator outcome is yet to be established.

Compelling evidence relates to materials and artefacts that are not open to different interpretations however offer tangible proof of a circumstance (e.g., payslips and/or bank statements showing incorrect payment of wages or statements demonstrating the underpayment of superannuation).

Compelling evidence may be established in lieu of a regulator outcome, in matters relating to:

- underpayment of wages,
- underpayment of superannuation,
- certain instances of sham contracting.

Agencies will remain responsible for also referring the alleged non-compliant activity in these areas to the appropriate regulator or law enforcement agency. Referral should occur regardless of agency investigations or a Tripartite Procurement Advisory Panel (the Panel) consideration on recommendations.

The Panel (see Section 9.3) may determine the agency has provided insufficient evidence to allow a recommendation to be made. In this circumstance the matter may be referred back to the agency to either seek further information or request a regulator outcome is obtained e.g., particularly regarding complex regulatory matters, such as some instances of sham contracting.

### 5.7.2 Regulator or law enforcement outcomes

Particular criteria under the Threshold require a regulator outcome in order to be progressed. In this circumstance, it is the responsibility of the procuring agency to seek evidence of this outcome from the supplier, or if required, the appropriate regulator.

Applicable criteria categories and the relevant regulatory bodies include:

- a) contravened a civil remedy provision of Chapter 2 or Chapter 3 of the *Fair Work Act 2009* (Cth), or committed an offence against the *Fair Work Act* – Fair Work Ombudsman (FWO)
- b) contravened a civil remedy provision of Chapter 2, 3, 4, 5, or 7 of the *Industrial Relations Act 2016*, or committed an offence against the *Industrial Relations Act*, or failed to pay employment related levies, or other payments, established under Queensland legislation – Queensland Industrial Relations Commission

Compelling evidence may be used in some areas of these criterion.

Regulator outcomes that are applicable to other criteria categories under the Threshold may also be used as evidence for non-compliance matters; however, they are not a requirement for progression through the breach process.

## 5.8 Breach by subcontractors

Suppliers may be penalised for breaches by their subcontractors, except where the supplier has taken reasonable action to prevent the breach by their subcontractor.

In this circumstance, procuring agencies will remain responsible for conducting the breach process related to the non-compliant activity. Where an investigation is performed in relation to a possible subcontractor breach, procuring agencies will be required to make two determinations:

- can sufficient evidence be established to progress a breach, and separately
- can sufficient evidence be established indicating the principal supplier has not taken reasonable actions to prevent the breach by their subcontractors.

The breach process should be performed separately for principal suppliers, where appropriate.

When managing an investigation for a subcontractor non-compliance, procuring agencies do not have the necessary authority to contact the alleged offending subcontracting company directly. Procuring agencies will be responsible for requesting all case related information through the principal supplier of the project.

The exception to these limitations occurs on projects that apply BPPs or for significant procurement, where a Deed Poll has been signed. Deeds Poll are an agreement between the Queensland Government and the subcontractor, authorising direct communication with the subcontractor.

### 5.8.1 Reasonable action

When assessing the reasonable actions of a principal contractor, procuring agencies may want to consider:

- did the principal contractor conduct reasonable due diligence to ensure the subcontractor was compliant with the Threshold before engagement, i.e., did the subcontractor complete a Threshold declaration;
- did the principal contractor ensure contracts with the subcontractor specifies a requirement for compliance with the Threshold, including;
  - providing principal contractors the ability to terminate the contract where a breach occurs,
  - requiring the subcontractor to correct errors/make reparation payments,
  - requiring the subcontractor to provide information or any relevant documents to the principal contractor, as requested;
- did the principal contractor conduct due diligence in regularly assessing subcontractor compliance with contract commitments;
- did the principal contractor take appropriate action after becoming aware the subcontractor potentially breached the Threshold during a contract, including;
  - advising the procuring agency;
  - implementing contract management measures
  - issuing notices
- did all parties respond to any *Show Cause Notices* (or other requests for information) that may have been issued.

## 6 Investigation process

If non-compliant supplier activity is identified as a possible breach of the Threshold, the procuring agency is responsible for conducting due process to establish sufficient evidence demonstrating the breach occurred. The standard of sufficient evidence will be established by the procuring agency, on a case-by-case basis.

Procuring agencies should apply proportionality when managing an investigation under the Threshold, dependent on the level of complexity and the evidence provided by the source of the allegation. For example, a minor breach where compelling evidence has already been provided, or obtained via preliminary enquiries, may not require additional investigation and can proceed straight to the show cause stage. This minimal approach to the investigation process may also apply in a circumstance where a regulator outcome provides sufficient details to advance a breach. However, a more complex breach where further evidence is required may take longer to investigate.

All outcomes and determinations made during the investigation process should be recorded by the procuring agency (either via a breach register, or similar).

### Step 1: Establish scope of the investigation

The following activities may assist in establishing the parameters and proportionality needed when conducting an investigation. Some of these activities may have been performed in order to complete the *Breach Assessment Checklist* (see Section 5.4) or as part of contract management.

- Identify the non-compliance category under the Threshold related to the breach (refer to **Appendix 3** for more information on non-compliance categories).
  - In a circumstance where the non-compliance category references an entire piece or section of legislation, determine the relevant item from the Act where compliance has not been achieved.
- Review the extent of information provided with the identification (source) of the breach, and through any initial enquiries performed, and establish whether sufficient evidence is available. Where sufficient evidence has already been obtained, and the procuring agency are in possession of all evidence necessary to provide a complete picture of the non-compliant conduct, the agency may not need to engage in any further investigation.

### Step 2: Understand the type of evidence required

Breaches in the following non-compliance categories may be progressed using compelling evidence:

- a. Contravened a civil remedy provision of Chapter 2 or Chapter 3 of the *Fair Work Act 2009* (Cth), or committed an offence against the Fair Work Act  
*In the areas of underpayment of wages or superannuation and some instances of sham contracting [only]*
- b. Contravened a civil remedy provision of Chapter 2, 3, 4, 5, or 7 of the *Industrial Relations Act 2016*, or committed an offence against the Industrial Relations Act, or failed to pay employment related levies, or other payments, established under Queensland legislation  
*In the areas of underpayment of wages or superannuation and some instances of sham contracting [only]*
- c. Failed to make superannuation contributions on behalf of employees in accordance with law
- d. Purported to treat employees as independent contractors, where they are not
- e. Required persons who would otherwise be employees to provide an Australian Business Number so that they could be treated as independent contractors
- f. Engaged persons on unpaid work trials or as unpaid interns, where they should be treated as employees
- h. Paid employees wages below those provided for in an applicable modern award.

Breaches in the following non-compliance categories can only be progressed with evidence of a regulator outcome:

- a. Contravened a civil remedy provision of Chapter 2 or Chapter 3 of the *Fair Work Act 2009* (Cth), or committed an offence against the Fair Work Act  
*Unless in the areas of underpayment of wages or superannuation and some instances of sham contracting, where compelling evidence is available.*
- b. Contravened a civil remedy provision of Chapter 2, 3, 4, 5, or 7 of the *Industrial Relations Act 2016*, or committed an offence against the Industrial Relations Act, or failed to pay employment related levies, or other payments, established under Queensland legislation  
*Unless in the areas of underpayment of wages or superannuation and some instances of sham contracting, where compelling evidence is available.*
- g. Entered into an arrangement for the provision of labour hire services with a person who is not licensed under the *Labour Hire Licensing Act 2017*, or a supplier who is an unlicensed provider under the Act

Regulator outcomes may also be used as evidence in other related, non-essential, categories.

Refer to **Appendix 3** for a reference table illustrating the appropriate evidence types for each compliance category.

### Step 3: Conduct enquiries and research

The objective of an investigation is to establish sufficient evidence which can be used by the decision maker to substantiate a breach of the Threshold.

Procuring agencies will be responsible for taking actions to obtain sufficient evidence, and any other information necessary to paint a complete picture of the non-compliant conduct.

The following provides examples of resources a procuring agency may consider exploring when conducting investigatory activities. These resources provide suggested avenues for investigation; however, are not intended to offer an exhaustive list.

- Contract manager and/or site representative, to offer further details on the supplier's contract delivery, complaints history and/or notices issued by the regulator.
- Reports, including contract, project status, project closure and performance reporting.
- Threshold declaration, where a supplier may have provided information admitting they have been non-compliant with the Threshold criteria.
- Source, where the breach was identified by a third party who can offer further information on the conduct.
- Supplier, to gain further information on the breach conduct, and/or obtain evidence of a regulator outcome. Noting this is not an opportunity for the supplier to show cause or explain the activity.
  - Where a breach by a subcontractor is identified, the agency must ensure the appropriate channels of communication are used. In a circumstance where a Deed Poll has been agreed to by the subcontractor, the agency can approach the subcontractor directly, as necessary to seek compliance related information. For all other subcontractor engagements, the procuring agency should approach the subcontractor via the principal supplier (see Section 5.8).
- Regulatory body, to obtain evidence of a legislative breach (or other). See **Appendix 3** for applicable regulatory contact information.
- General research, where further information may be available online or through local resources.
- Public records, such as court findings or other publicly available reports.

## Step 4: Outcome to the investigation

It is the responsibility of the procuring agency to determine an outcome to the investigation. Each investigation may conclude with one of the following results:

- Not capable of being progressed,
- Capable of being progressed.

### Not capable of being progressed

Non-compliant conduct may be considered not capable of being progressed under the Threshold where the investigation identifies insufficient evidence is available, or the matter is determined out of scope of the policy. In this circumstance where a breach is not advanced, the procuring agency can close the matter.

Where a supplier was notified a non-compliance matter was being pursued by the procuring agency under the Threshold (either during the investigation process, or pre-investigation), and the breach process is concluded without referral to the QGP Compliance Branch, it is the responsibility of the agency to issue an *Outcome Notice* to the supplier.

Procuring agencies should advise the QGP Compliance Branch of all investigations where the matter was deemed not to be a breach under the Threshold.

The DDG – Procurement may review a concluded investigation deemed not capable of being progressed, where a related complaint is raised (see Section 8).

### Capable of being progressed

In order to submit a case under the Threshold, procuring agencies are responsible for establishing sufficient evidence to progress a breach. Sufficient evidence should be considered on a case-by-case basis; however, the resulting standard of evidence should provide clear and tangible proof of the breach having occurred by the supplier. This may be in the form of compelling evidence, or a regulator outcome.

As the breach advances through the Threshold process, both the Panel and decision maker will form an opinion on whether a suitable standard of evidence has been provided. If either of these reviews deem the evidence insufficient, the case will be returned to the procuring agency for further investigation or closure.

## 7 Show cause process

If the investigation by the procuring agency determines there is sufficient evidence to progress a breach of the Threshold, the agency will issue a *Show Cause Notice* to the supplier.

The procuring agency who conducted the investigation is responsible for issuing a *Show Cause Notice* to the supplier. The procuring agency will also issue *Show Cause Notices* to subcontractors, where required.

The *Show Cause Notice* will:

- state that it is a notice under the Mandate
- specify the alleged breach in adequate detail
- list and attach any relevant evidence obtained that supports the breach
- invite the supplier to show cause in relation to the breach
- state that the supplier must show cause within ten (10) business days, if they choose to respond.

*Show Cause Notices* should be distributed by both post and email, where available.

The supplier will have ten (10) business days from the date of issue (see **Appendix 2** – Definitions) to respond to the *Show Cause Notice*. The supplier may request an extension beyond the standard 10-day timeframe if required. Sound reasons must be provided for the extension.

If the supplier does not show reasonable cause or respond by the time specified in the notice, the procuring agency may escalate the alleged breach to the QPP Compliance Branch without further notice to the supplier.

The procuring agency should also update their records (i.e., breach register) to ensure the date the *Show Cause Notice* was issued, and the response details, are accurately documented.

## 7.1 Assessment of show cause response

Procuring agencies will be responsible for making a determination on whether any show cause details provided alter the matter, causing it to no longer be in scope of the Threshold (e.g., where an honest mistake may have been found and corrected).

The procuring agency will assess the response received from the supplier (if any) and apply discretion in referring a breach of the Threshold to the Panel. This assessment will determine whether the alleged breach is capable of being progressed, or not.

### 7.1.1 Not capable of being progressed

A procuring agency may consider a supplier's alleged non-compliant activity not capable of being progressed under the Threshold, if evidence is offered demonstrating the non-compliant activity occurred as a result of an honest mistake or oversight which has been corrected.

If the show cause process determines the alleged breach is not capable of being progressed, the procuring agency should issue an *Outcome Notice* advising the matter has been closed.

### 7.1.2 Capable of being progressed

If the procuring agency determines the supplier has failed to provide a reasonable explanation for the breach under the Threshold, the agency will consider the alleged breach capable of being progressed and will refer the case to the QGP Compliance Branch. Reporting templates will be made available to agencies to ensure all necessary breach details are included with this submission.

## 8 Internal review

The Deputy Director General – Procurement of the Department of Energy and Public Works may review an investigation by an agency into a breach allegation. This review will only occur once:

- the procuring agency investigation has been finalised, and
- the procuring agency has determined not to make a referral to the Panel (i.e., alleged breach not progressed under the Threshold).

On these occasions, the DDG – Procurement may review the investigation as the result of enquiry, complaint or audit. As a result of the review, the DDG – Procurement may decide, on the basis of evidence available, to recommend that the procuring agency refer the matter to the Panel for recommendation of an appropriate penalty.

## 9 Referral to the QGP Compliance Branch

Once the procuring agency has received a response to the *Show Cause Notice* from the supplier (or the ten [10] business day timeframe on the notice has lapsed), and in its discretion determines the breach is capable of being progressed, the agency has five (5) business days to submit the matter to the QGP Compliance Branch.

The procuring agency may request an extension of the standard timeframe from the Compliance Branch, if necessary. Sound reasons must be provided for the extension.

## 9.1 Submission to the QGP Compliance Branch

When submitting a case of non-compliance, the procuring agency is required to complete the appropriate reporting template. This document sets out:

- particulars of the breach (i.e., date received, method of receipt and specific details)
- type of related non-compliance criteria
- all information and evidence obtained during the investigation (by either the procuring agency, principal supplier or the regulator/law enforcement agency)
- a copy of all correspondence received from the supplier during the show cause proceedings and throughout the investigation process.

Upon receipt of the breach details from the procuring agency, the EO will acknowledge receipt of the matter.

The EO will review the investigation conducted by the procuring agency using a quality assurance (QA) checklist to ensure compliance with the investigation process. If the EO identifies any deficiencies in the process, the matter will be referred back to the procuring agency for remedial action(s).

## 9.2 Extenuating circumstances

After successfully completing the QA process, the EO will contact the supplier via an *Extenuating Circumstances Notice*. This provides the supplier ten (10) business days to respond to the issues outlined in the notice.

The *Extenuating Circumstances Notice* must:

- state it is a notice under the Threshold
- specify the breach in adequate detail
- outline the possible types of penalties issued under the Threshold
- invite the supplier to provide extenuating circumstances that it would like to have considered in relation to the breach
- state the supplier has ten (10) business days to respond.

If the supplier does not respond to the *Extenuating Circumstances Notice* within ten (10) business days from the date of issue (see **Appendix 2** – Definitions), the matter will automatically be referred to the Panel without further notice to the supplier.

## 9.3 Referral to the Panel

Once the QA process has been completed and the supplier has had an opportunity to respond to the *Extenuating Circumstances Notice*, the EO will convene a meeting with the Panel.

The role of the Panel<sup>1</sup> is to consider case details including any procedural fairness responses from the supplier and all associated evidence as referred by the procuring agency. The Panel will form a recommendation on the alleged breach and appropriate penalty, if any, for consideration by the decision maker. Further information on the function of the Panel is available in *The Tripartite Procurement Advisory Panel - Terms of Reference*.

The EO will package all associated documentation and facilitate distribution to the Panel in a manner consistent with the terms of reference.

As required, the Panel may request the EO gain further information from involved parties on a particular case. This may include the supplier, the subcontractor, the procuring agency and/or the source of the alleged breach. The

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<sup>1</sup> Until the Panel is officially formed and inducted, the existing decision-making body the Procurement Penalties and Sanctions Committee (PPSC) comprised of all Deputy Directors-General (DDGs) from budget sector agencies will remain operational. For more information on the PPSC refer to the Ethical Supplier Mandate 2019.

Panel may also engage industry specialists and other experts where required to assist in forming accurate recommendations on the non-compliant activity.

The Panel may determine to wait for a regulator finding before proceeding. The EO will inform the supplier in this circumstance.

When the Panel have reconciled their recommendations on a case they will capture this advice fully in the appropriate report. The EO will be responsible for the provision of this confidential document to the appropriate decision maker.

## 9.4 Referral to the decision maker

A decision maker is responsible for both/either a demerit or sanction consideration, on contracts falling in their jurisdiction. If a supplier is eligible for a sanction as a result of accumulated demerits (i.e., multiple non-compliance matters), the decision maker who appoints the set of demerits causing that supplier to meet twenty (20) points is responsible for considering the application of a sanction.

The decision maker for an agency is the Director-General responsible for the contract in which the breach occurred. Where a breach does not relate to a contract, the Director-General of the category lead agency will be responsible for decision making.

The decision maker for government-owned corporations (GOCs), statutory bodies and special purpose vehicles (SPVs) when they are the procuring agency will be the organisation itself. All cases raised by a GOC, statutory body or SPV will be referred to the Chief Executive responsible for the contract in which the breach occurred.

The EO will be responsible for packaging all associated documentation, inclusive of the Panel's formal recommendations, and submitting it to the appropriate decision maker. As the consideration of a Threshold breach will cause a supplier to be eligible for a sanction, the EO will also provide the decision maker with a risk assessment outlining the impacts a sanction decision could have on other procuring agencies (See Section 9.5)

It will be the responsibility of the decision maker to consider:

- is the case a substantiated breach of the Threshold
- procedural fairness
- objectivity and probity
- any perceived conflicts of interest
- was due process followed
- has a precedent been established
- recommendations provided by the Panel
- should demerits be applied
- should a system improvement recommendation apply
- any contract management actions taken by the procuring agency (or principal contractor in the case of a subcontractor) in relation to the non-compliance
- should a sanction be applied, which sanction is appropriate, and what risk does this expose for other procuring agencies
- should the outcome of this case be published publicly, where contract terms allow.

Where a decision maker intends to issue a penalty different to that recommended by the Panel, the decision maker is encouraged to coordinate a discussion with the Chair of the Panel. Consultation of this nature should further explore the reasoning for the Panel's recommendation.

## 9.5 *Proposed Sanction Notice*

If a decision maker determines the supplier is in breach of the Threshold, and the corresponding application of demerits causes the supplier to exceed 20 (twenty) in a 12-month period, it will be the responsibility of the decision maker to consider the appropriateness of a sanction.

Where a sanction is considered, the decision maker will issue the supplier with a *Proposed Sanction Notice*.

The decision maker will consider any response to the *Proposed Sanction Notice* when making a final sanction decision. If the supplier does not respond to the *Proposed Sanction Notice* within the required timeframe, a decision may be made without further input from the supplier.

The *Proposed Sanction Notice* must:

- state that it is a notice under the Threshold;
- detail the outcome in relation to the most recent alleged breach, including the corresponding demerits issued;
- list of all past breaches by the supplier relevant to the sanction being considered;
- specify the sanction penalty being considered by the decision maker, including the parameters of that sanction;
- invite the supplier to respond to the proposed sanction, and provide any reasons why the supplier believes this penalty should not be imposed; and
- state the supplier must reply within ten (10) business days from date of issue (see **Appendix 2 – Definitions**) or request an extension where reasonable.

When issuing a *Proposed Sanction Notice* to a supplier, a copy of this Notice should also be provided to the QGP Compliance Branch via [ethicalsupply@epw.qld.gov.au](mailto:ethicalsupply@epw.qld.gov.au). During the ten (10) day Notice period the Executive Officer may write to relevant members of the Queensland Government Procurement Committee (QGPC) to conduct a risk assessment on impacts to other procuring agencies from the potential sanction. This risk assessment will inform the decision maker of whole-of-government risk considerations when making sanction decisions.

A final sanction determination will not be made by the decision maker until:

- the supplier has had an opportunity to respond to the *Proposed Sanction Notice*, and
- the QGP Compliance Branch has provided a sanction risk assessment to the decision maker.

## 9.6 *Outcome Notice*

Once a final determination has been reached, it will be the responsibility of the decision maker to issue the appropriate *Outcome Notice* to the supplier.

The *Outcome Notice* must:

- state that it is a notice under the Threshold;
- outline the breach(es) considered in the decision, in adequate detail;
- specify the penalty determined by the decision maker, including all parameters of the penalty; and
- provide a summary of the reason for the decision; and
- inform the supplier that they have ten (10) business days from date of issue (see **Appendix 1 – Definitions**) to lodge an appeal.

*Outcome Notices* should be distributed by both post and email, where available.

The decision maker will also inform the internal agency officer managing the breach, and the QGP Compliance Branch.

## 10 Breach outcome process

After receiving the outcome from the decision maker, the officer responsible for managing the breach may also facilitate any remaining requirements of the breach outcome process for the procuring agency, including the consideration of any contract management actions.

The QGP Compliance Branch will coordinate notification to appropriate systems administrators in a circumstance where a supplier has been sanctioned.

Third parties who have made a complaint which has resulted in an investigation and consideration by the Panel are not entitled to receive a copy of the *Outcome Notice* or a decision outcome. Procuring agencies will be responsible for resolving the complaint in a manner that does not contradict confidentiality requirements. An exception applies when the public disclosure mechanism of the contract is enacted, allowing complainants to be advised of any information relating to the decision that has been made public.

### 10.1 Issuing of demerits

On the recommendation of the Panel, the decision maker has discretion to determine if any demerits will be issued to the supplier. The decision maker will consider any extenuating circumstances provided by the supplier when determining the severity of the non-compliance.

Where demerits have been issued to a supplier, which subsequently ceases to trade, then the decision maker may decide to issue the demerits to an entity related to the supplier where it determines that entity:

- is a company continuing the business of the supplier; or
- is a related body corporate of the supplier.

The decision maker will determine whether zero (0) or twenty (20) demerits will be issued when an instance of non-compliance with the Threshold occurs.

The decision maker does not have discretion to issue any other number of demerits for a single instance of non-compliance.

Demerits will expire twelve (12) months from the date they are issued, unless applied to a sanction.

If the number of demerits received by the supplier in a 12-month period accumulates to twenty (20) points, the decision maker will consider issuing a sanction, on the recommendation of the Panel. All demerits applied to a sanction determination will be retired and will not contribute to future non-compliance decisions under the policy.

### 10.2 Issuing a sanction

On the recommendation of the Panel, the decision maker will, unless it determines otherwise, sanction suppliers once the supplier has received twenty (20) demerits within a 12-month period. Therefore, the decision maker must consider if the application of demerits for a substantiated breach will result in the accumulation of twenty (20) demerits.

Sanctions are determined by the decision maker and include:

- suspending a supplier's prequalification for a defined period; and
- making a supplier ineligible for contract award for a defined period; and
- suspending a supplier from any Queensland Government panel or contracting framework for a defined period; and/or
- not exercising contract extension options; or
- a suspended sanctions penalty, pending successful implementation of any recommended corrective actions.

Where a sanction is considered, the decision maker will facilitate the *Proposed Sanction Notice* process. The supplier's response to this notice, if any, will be considered prior to a final decision being issued.

If a supplier receives a sanction, once informed of the decision the QGP Compliance Branch will advise the Heads of Procurement Network and administrators of any relevant prequalification and registration systems for immediate action to apply the appropriate penalties for the defined period.

Suppliers with an active sanction will be entered on the online supplier check register immediately.

Where a supplier is registered under the National Prequalification System for Civil (Road and Bridge) Construction Contracts (NPS), the decision will be referred to the Department of Transport and Main Roads to be actioned accordingly.

### **10.2.1 Contract extensions**

Where a supplier is subject to a sanction under the Threshold (or Mandate), it is the responsibility of the procuring agency to ensure extension options are not pursued on any contracts on foot.

The QGP Compliance Branch will notify procuring agencies when a supplier has received a sanction, and the terms of the penalty.

## **10.3 Termination of contracts**

The decision maker has discretion to terminate any active contracts that agency has on foot with the supplier, where the supplier has been shown to have breached the Threshold.

The Panel will not offer a recommendation on this course of action, and it will remain at the discretion of the procuring agency under standard contract management options.

## **10.4 Issuing a recommendation for systems improvement**

Where it is considered that a breach (or potential future breaches) could be avoided as a result of enhanced business practice or systems improvements, the appropriate decision maker may decide to recommend internal supplier remedial activities e.g., the use of suitable financial systems, implementation of an industrial relations management plan etc.

## **10.5 Publication of sanctions**

The decision maker has discretion to include the publication of sanctions as an outcome to a breach of the Threshold, where contract clauses allow.

Where public release of sanction information is contractually authorised and considered, the procuring agency is responsible for the following:

- seeking legal advice on the actions of publicising penalties, and
- notifying the supplier and asking them to provide any reasons as to why the contractual commitment should not be enforced.

Where the supplier is a natural person (a sole trader), then the agency must comply with the *Information Privacy Act 2009* and the *Human Rights Act 2019*.

# **11 Appeal**

A supplier can appeal against the application of penalties or a sanction if they believe the process outlined has not been followed, or the decision maker failed to take show cause and extenuating circumstances proceedings into account.

The appeal process is not an opportunity to revisit the matter that gave rise to the penalties or sanction.

The appeal may be made to the Panel via the Executive Officer within the QGP Compliance Branch at [ethicalsupply@epw.qld.gov.au](mailto:ethicalsupply@epw.qld.gov.au). This must occur within ten (10) business days from the date the *Outcome Notice* was issued.

In its consideration, the Panel will:

- ensure the appeal is an eligible submission based on the scope of the process;
- deliberate and consider the merits of the appeal; and
- make a recommendation to the decision maker regarding the appeal.

The decision related to an appeal under the Threshold will be made by the Director-General responsible for the contract in which the breach occurred. Where a breach does not relate to a contract, the Director-General of the category lead agency will be responsible for decision making.

The decision maker for GOCs, statutory bodies and SPVs will be the organisation itself. All appeals related to a GOC, statutory body or SPV will be referred to the Chief Executive responsible for the contract in which the breach occurred.

The EO will be responsible for packaging all associated documentation and submitting it to the appeal decision maker. As required, the decision maker may request the EO gain further information from involved parties on a particular case.

Where a decision maker intends to issue a penalty different to that recommended by the Panel, the decision maker is encouraged to coordinate a discussion with the Chair of the Panel. Consultation of this nature should further explore the reasoning for the Panel's recommendation

Once a final determination has been reached, the appropriate decision maker will inform the internal agency officer managing the breach, and the QGP Compliance Branch.

An appeal decision made by the appropriate decision maker will be considered final.

The EO will be responsible for coordinating the appeals outcome process in order to facilitate a decision, however it will be the responsibility of the decision maker to issue the appropriate *Outcome Notice* to the supplier.

*Outcome Notices* should be distributed by both post and email, where available.

## 12 Regulator outcome review

Decisions by regulators will be made in a different context and concerned with different factors than decisions under the Threshold. A later finding by a regulatory body on a non-compliance matter may not affect a decision regarding a penalty applied under the Threshold even if it seems to be contrary to the decision; however, due diligence will be conducted in the form of an internal review. All reviews of this nature are to be performed by the Director-General (or equivalent) responsible for the Threshold decision, in conjunction with appropriate legal advice.

The EO of the QGP Compliance Branch will facilitate this process with the relevant decision maker.

## 13 Request for records

Procuring agencies will be responsible for maintaining all records related to compliance with this process document. As outlined in Section 11, a supplier may appeal a Mandate decision where they feel the process was not adhered to.

The DDG – Procurement or QGP Compliance Branch may request access to these records in a circumstance where a complaint is received, a review is being conducted, or an appeal is lodged.

## Appendix 1: Example Threshold declaration

From 1 August 2019 Queensland Government contracts are required to include compliance with the Ethical Supplier Threshold. Most tenders will do so in the form of a declaration that asks the supplier to declare the following (note – this is an example only):

After 1 August 2019, has the Supplier:	(tick one)
a) contravened a civil remedy provision of Chapter 2 or Chapter 3 of the Fair Work Act 2009 (Cth), or committed an offence against the Fair Work Act?	<input type="checkbox"/> Yes <input type="checkbox"/> No
b) contravened a civil remedy provision of Chapter 2, 3, 4, 5, or 7 of the Industrial Relations Act 2016, or committed an offence against the Industrial Relations Act, or failed to pay employment related levies, or other payments, established under Queensland legislation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
c) failed to make superannuation contributions on behalf of employees in accordance with law?	<input type="checkbox"/> Yes <input type="checkbox"/> No
d) purported to treat employees as independent contractors, where they are not?	<input type="checkbox"/> Yes <input type="checkbox"/> No
e) required persons who would otherwise be employees to provide an Australian Business Number so that they could be treated as independent contractors?	<input type="checkbox"/> Yes <input type="checkbox"/> No
f) engaged persons on unpaid work trials or as unpaid interns, where they should be treated as employees?	<input type="checkbox"/> Yes <input type="checkbox"/> No
g) entered into an arrangement for the provision of labour hire services with a person who is not licensed under the Labour Hire Licensing Act 2017 (Qld), or a supplier who is an unlicensed provider under the Labour Hire Licensing Act?	<input type="checkbox"/> Yes <input type="checkbox"/> No
h) paid employees' wages below those provided for in an applicable modern award?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Where a previous 'yes' response to the above criteria has been submitted and considered compliant with the policy by a Queensland Government procuring agency, provide the corresponding reference number here:	*Reference number: _____
<p><b>Compliance information disclosure consent</b></p> <p>In making this declaration, the Supplier certifies that the responses in this form are complete, accurate, up to date and not misleading in any way. The Supplier agrees that the procuring agency or organisation may obtain information from the Supplier or about the Supplier to verify the above information.</p> <p>This information may be held by any governmental regulator, for example Work Health Safety Queensland, the Queensland Building and Construction Commission, the Office of Industrial Relations, the Fair Work Commission and the Australian Building and Construction Commission.</p> <p>The Supplier agrees that the evaluation panel and the procuring agency or organisation may take the information into account in assessing a tender or offer or awarding a Contract.</p>	

## Appendix 2: Definitions

Term	Description
<b>Breach</b>	<p>A breach of the Ethical Supplier Mandate, or Ethical Supplier Threshold, is where a supplier has been determined to be non-compliant with the requirements of the policy.</p> <ul style="list-style-type: none"> <li>– For the purpose of this policy and all corresponding documentation, a breach will remain alleged until the final decision maker considers it confirmed.</li> </ul>
<b>Business day</b>	A day that is not a Saturday, Sunday or a public holiday in Queensland.
<b>Compelling evidence</b>	<p>Compelling evidence of a breach having occurred (e.g., pay slips indicating underpayment of wages or superannuation, or ATO records, bank statements) regardless of whether the evidence has or has not been considered by any regulator or court, or whether or not there is any relevant regulator.</p> <ul style="list-style-type: none"> <li>– A non-compliance can be dealt with under the Mandate based on compelling evidence, even where the non-compliance standard is breach of a law that has not been established by a court or regulator (including as set out in the Threshold). The same applies in the case of breaches of the Local Benefits Test or other contractual requirements where there is no regulator.</li> <li>– A decision regarding imposing a penalty under the Mandate can be made where compelling evidence exists for relevant breaches. Procedural fairness will still apply and suppliers will have a chance to challenge an allegation or rectify a breach.</li> </ul>
<b>Complainant</b>	The person who has made a complaint regarding an alleged breach of the Mandate.
<b>Date of issue</b>	<p>The date of issue means the day the notice was provided to the supplier where the method of issue results in immediate receipt (for example, in person, email).</p> <ul style="list-style-type: none"> <li>– Where same day delivery is not possible (i.e. post), the date of issue is the date that is five (5) business days after the notice was posted.</li> </ul>
<b>Declared by the Minister</b>	<p>Declared in writing by the Minister responsible for the category, in consultation with:</p> <ul style="list-style-type: none"> <li>– the Minister for Energy, Renewables and Hydrogen and Minister for Public Works and Procurement, and</li> <li>– the Premier and Minister for Trade.</li> </ul>
<b>Deputy Director-General – Procurement</b>	The Deputy Director-General – Procurement (DDG – Procurement) of Queensland Government Procurement within the Department of Energy and Public Works.
<b>Director-General of the procuring agency</b>	The Director-General, responsible for the contract during which the supplier engaged in the non-compliant conduct.

<b>Ethical Supplier Threshold</b>	<p>The Ethical Supplier Threshold described in the Queensland Procurement Policy, that is, whether a supplier has:</p> <ul style="list-style-type: none"> <li>(a) contravened a civil remedy provision of Chapter 2 or Chapter 3 of the Fair Work Act 2009 (Cth), or committed an offence against the Fair Work Act</li> <li>(b) contravened a civil remedy provision of Chapter 2, 3, 4, 5, or 7 of the Industrial Relations Act 2016, or committed an offence against the Industrial Relations Act, or failed to pay employment related levies, or other payments, established under Queensland legislation</li> <li>(c) failed to make superannuation contributions on behalf of employees in accordance with law</li> <li>(d) purported to treat employees as independent contractors, where they are not</li> <li>(e) required persons who would otherwise be employees to provide an Australian Business Number so that they could be treated as independent contractors</li> <li>(f) engaged persons on unpaid work trials or as unpaid interns, where they should be treated as employees</li> <li>(g) entered into an arrangement for the provision of labour hire services with a person who is not licensed under the Labour Hire Licensing Act 2017, or a supplier who is an unlicensed supplier under the Act</li> <li>(h) paid employee wages below those provided for in an applicable modern award.</li> </ul>
<b>Guidelines</b>	<p>A document detailing information and guidance that assists a user to fulfil a policy requirement or understand concepts about a related process.</p> <ul style="list-style-type: none"> <li>– Guides may include specific steps that should be followed to complete a given process in support of a policy requirement</li> </ul>
<b>Low value procurement</b>	<p>Low value procurement is defined by an agency's existing purchasing threshold, where this value is less than \$20,000 (per purchase or order).</p> <ul style="list-style-type: none"> <li>– Where an agency's low value procurement threshold exceeds \$20,000, that agency's definition of low value spend will be capped at \$20,000 for the purpose of the Mandate and the Threshold.</li> </ul>
<b>Policy requirement</b>	<p>A requirement of:</p> <ul style="list-style-type: none"> <li>– the Queensland Procurement Policy (QPP)</li> <li>– the Queensland Government Procurement Strategy</li> <li>– procurement-related policies and instruments as listed in Schedule 3 to the QPP</li> <li>– procurement-related guidance and codes approved by the DDG – Procurement Queensland Government Procurement or a contractual term, designed to effect a policy requirement, in a Queensland Government contract, a subcontract to a Queensland Government contract, or a contract in a supply chain supporting a Queensland Government contract or a requirement of a law or regulation specified in this Mandate.</li> </ul>
<b>Procurement Penalties and Sanctions Committee (PPSC)</b>	<p>The Procurement Penalties and Sanctions Committee (PPSC) is a Deputy Director-General level body consisting of cross-agency membership representing the procurement categories of highest spend, as well as other volunteer departments.</p> <p>The role of the PPSC is to make demerit and sanction determinations under the Ethical Supplier Mandate 2019.</p> <p>The PPSC will continue to operate in its function of delivering demerit and sanction decisions under the Mandate and Threshold, until a time that the Panel is formed and inducted. While the PPSC is operational the Executive Officer of the QGP Compliance Branch will coordinate the breach outcome process. Procuring agencies will remain responsible for conducting the investigation process and escalating all alleged breaches to the QGP Compliance Branch.</p>

<b>Procuring agency</b>	<p>An agency subject to the QPP, including a budget sector agency, a statutory body, special purpose vehicle or government owned corporation.</p> <ul style="list-style-type: none"> <li>– The ‘department sponsoring the project’ for the purposes of the Capital Works Management Framework is the ‘procuring agency’ for the purposes of this Mandate.</li> <li>– For the purposes of this Mandate, the procuring agency is the agency responsible for the contract during which the supplier’s non-compliance occurred</li> </ul>
<b>Queensland Government contract</b>	<p>A contract between any person and the Crown in the right of the State of Queensland or a related entity, including deeds for common-use supply arrangements and other arrangements as declared by the DDG – Procurement.</p> <ul style="list-style-type: none"> <li>– Also includes any contractual term in a contract that is designed to give effect to a policy requirement in a Queensland Government contract, a subcontract to a Queensland Government contract, or a contract in a supply chain supporting a Queensland Government contract.</li> </ul>
<b>Sanction</b>	<p>A sanction is a penalty that prevents the supplier from doing business with Queensland Government for a set period of time of up to 12 months. Sanctions will be determined by the decision maker on advice from the Panel.</p> <p>Sanctions include:</p> <ul style="list-style-type: none"> <li>– suspending a supplier’s prequalification for a defined period; and</li> <li>– making a supplier ineligible for contract award for a defined period; and</li> <li>– suspending a supplier from any Queensland Government panel or contracting framework for a defined period; and/or</li> <li>– not exercising contract extension options; or</li> <li>– a suspended sanctions penalty, pending successful implementation of any recommended corrective actions.</li> </ul>
<b>Supplier</b>	<p>A contractor or consultant or other party to a Queensland Government contract, other than the Crown and its related entities, or a subcontractor to a supplier.</p> <ul style="list-style-type: none"> <li>– The definition of ‘supplier’ includes subcontractors within the supply chain.</li> <li>– The principal supplier under contract to the procuring agency is responsible for conduct of suppliers within their supply chain.</li> <li>– Suppliers may be penalised for breaches by their subcontractors, except where the supplier has taken reasonable action to prevent the breach by their subcontractors, in addition to any penalties applied to the subcontractor.</li> </ul>
<b>Tripartite Procurement Advisory Panel (the Panel)</b>	<p>An expert panel of knowledgeable nominees, with equal representation from employers and unions, that is chaired by an independent government appointee having substantial experience in relevant fields.</p> <ul style="list-style-type: none"> <li>– Initial breaches are considered by three (3) standing members reflecting equal industry representation and the independent chair. Appeals will be considered by five (5) members of the Panel not involved in the original consideration, with the exception of the chair.</li> </ul> <p>The Panel may seek information from independent subject matter experts in relevant areas (e.g., WHS, industrial relations) as needed, to inform their recommendations on appropriate penalties for an alleged breach.</p>

## Appendix 3: Categories of non-compliance - Reference table

To assist both procuring agencies and suppliers in the understanding and application of the Threshold categories of non-compliance, the below table has been developed<sup>2</sup>. This reference table provides a break-down of the key areas related to the category and links users back to the source of the obligation<sup>3</sup>.

This reference table is intended as a general guide only for the benefit of government agencies and suppliers. It does not determine any actual demerit decision that will be made taking into the relevant circumstances of a particular supplier. It may not be relied upon by any other party.

### a. Contravened a civil remedy provision of Chapter 2 or Chapter 3 of the *Fair Work Act 2009 (Cth)*, or committed an offence against the *Fair Work Act*

Related non-compliance areas	Source of commitment	Related resources
<ul style="list-style-type: none"> <li>• National Employment Standards</li> <li>• Modern awards</li> <li>• Enterprise agreements</li> <li>• Workplace determinations</li> <li>• National minimum wage orders</li> <li>• Equal remuneration orders</li> <li>• Terms and conditions of employment</li> <li>• General protections requirements, including               <ul style="list-style-type: none"> <li>○ Workplace rights</li> <li>○ Discrimination</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>○ Sham arrangements</li> <li>○ Costs orders</li> <li>• Unfair dismissals</li> <li>• Industrial actions</li> <li>• Action ballot orders</li> <li>• Rights of entry</li> <li>• Disputes</li> <li>• Misuse of rights</li> <li>• Employment rights and responsibilities</li> <li>• Offences against the <i>Fair Work Act 2009 (Cth)</i></li> </ul>	<ul style="list-style-type: none"> <li>• Tender documents</li> <li>• Contract</li> <li>• <i>Fair Work Act 2009 (Cth)</i></li> </ul>
		<ul style="list-style-type: none"> <li><a href="#">Fair Work Act 2009</a></li> <li><a href="#">Queensland Procurement Policy 2021</a></li> <li><a href="#">Ethical Supplier Mandate 2021</a></li> <li><a href="#">Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020 (Qld)</a></li> </ul>

<sup>2</sup> The Department of Energy and Public Works disclaims all liability that may arise from the use of this document. This guide should not be used as a substitute for obtaining appropriate probity and legal advice as may be required. In preparing this document, reasonable efforts have been made to use accurate and current information. It should be noted that information may have changed since the publication of this document. Where errors or inaccuracies are brought to attention a reasonable effort will be made to correct them.

<sup>3</sup> Regulators as mentioned in the *Categories of non-compliance: Reference table* refer to the appropriate regulator or law enforcement agency.

Applicable evidence types		Example evidence	Regulator contact details
<ul style="list-style-type: none"> <li>✓ Compelling evidence</li> <li style="text-align: center;"><b>and/or</b></li> <li>✓ Regulator outcome</li> </ul>	<p>Compelling evidence and/or a regulator decision may be considered where the breach relates to these non-compliance areas:</p> <ul style="list-style-type: none"> <li>▪ Underpayment of wages</li> <li>▪ Underpayment of superannuation</li> <li>▪ Certain instances of sham contracting</li> </ul>	<ul style="list-style-type: none"> <li>▪ Pay slips</li> <li>▪ Bank statements</li> <li>▪ Superannuation records</li> <li>▪ Entry notice</li> </ul>	<p>Fair Work Ombudsman Ph: 13 13 94</p> <p>Australian Tax Office (ATO) Ph: 13 10 20</p> <p>Queensland Police Ph: 131 444</p> <p>Australian Building and Construction Commission (ABCC) Ph: 1800 003 338</p>
<ul style="list-style-type: none"> <li>✓ Regulator outcome</li> </ul>	<p>For all other matters falling under category (a.), a regulator outcome is required</p> <p>Investigating agencies may obtain further evidence to assist the Panel in its consideration</p>		

**b. Contravened a civil remedy provision of Chapter 2, 3, 4, 5, or 7 of the Industrial Relations Act 2016, or committed an offence against the Industrial Relations Act, or failed to pay employment related levies, or other payments, established under Queensland legislation**

Related non-compliance areas		Source of commitment	Related resources
<ul style="list-style-type: none"> <li>• Modern awards</li> <li>• Conciliation</li> <li>• Bargaining instruments</li> <li>• Industrial instruments</li> <li>• Industrial action</li> <li>• Attendance notices</li> <li>• Queensland Industrial Relations Commission requests</li> <li>• Bullying</li> </ul>		<ul style="list-style-type: none"> <li>• Employment rights</li> <li>• Employment arrangements</li> <li>• Penalty orders</li> <li>• Inappropriate conduct</li> <li>• Contempt</li> <li>• Wages</li> <li>• Employee entitlements</li> </ul>	<ul style="list-style-type: none"> <li>• Tender documents</li> <li>• Contract</li> <li>• <i>Industrial Relations Act 2016 (Qld)</i></li> </ul>
<p>Compelling evidence and/or a regulator decision may be considered where the breach relates to these non-compliance areas:</p> <ul style="list-style-type: none"> <li>▪ Underpayment of wages</li> <li>▪ Underpayment of superannuation</li> <li>▪ Certain instances of sham contracting</li> </ul>		<p>Example evidence</p> <ul style="list-style-type: none"> <li>▪ Pay slips</li> <li>▪ Bank statements</li> <li>▪ Superannuation records</li> </ul>	<p>Related resources</p> <ul style="list-style-type: none"> <li><a href="#">Industrial Relations Act 2016</a></li> <li><a href="#">Queensland Procurement Policy 2021</a></li> <li><a href="#">Ethical Supplier Mandate 2021</a></li> <li><a href="#">Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020 (Qld)</a></li> </ul>
Applicable evidence types		Example evidence	Regulator contact details
<ul style="list-style-type: none"> <li>✓ Compelling evidence</li> <li>and/or</li> <li>✓ Regulator outcome</li> </ul>	<p>For all other matters falling under category (b.), a regulator outcome is required</p> <p>Investigating agencies may obtain further evidence to assist the Panel in its consideration</p>		<p>Regulator contact details</p> <p>Queensland Industrial Relations Commission Ph: 1300 362 128</p> <p>Australian Tax Office (ATO) Ph: 13 10 20</p> <p>Queensland Police Ph: 131 444</p>

### c. Failed to make superannuation contributions on behalf of employees in accordance with law

Related non-compliance areas		Source of commitment	Related resources
<ul style="list-style-type: none"> <li>• Superannuation</li> <li>• Employee entitlements</li> <li>• Superannuation Guarantee</li> </ul>		<ul style="list-style-type: none"> <li>• Tender documents</li> <li>• Contract</li> <li>• <i>Fair Work Act 2009</i> (Cth)</li> </ul>	<a href="#">Australian Taxation Office</a> <a href="#">Queensland Procurement Policy 2021</a> <a href="#">Ethical Supplier Mandate 2021</a> <a href="#">Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020 (Qld)</a>
Applicable evidence types		Example evidence	Regulator contact details
<ul style="list-style-type: none"> <li>✓ Compelling evidence</li> <li><b>and/or</b></li> <li>✓ Regulator outcome</li> </ul>	<p>Evidence obtained through investigation, where a regulator outcome is not in consideration, and/or</p> <p>A regulator outcome may be used to escalate a breach in this category, however it is not essential</p> <p>Where a regulator outcome is relied on, investigating agencies may obtain further evidence to assist the Panel in its consideration</p>	<ul style="list-style-type: none"> <li>▪ Pay slips</li> <li>▪ Superannuation records</li> </ul>	<p>Fair Work Ombudsman Ph: 13 13 94</p> <p>Australian Tax Office (ATO) Ph: 13 10 20</p> <p>Queensland Police Ph: 131 444</p> <p>Australian Building and Construction Commission (ABCC) Ph: 1800 003 338</p>

## d. Purported to treat employees as independent contractors, where they are not

Related non-compliance areas		Source of commitment	Related resources
<ul style="list-style-type: none"> <li>• Employment arrangements</li> <li>• Independent contractors</li> <li>• Sham contracting</li> </ul>		<ul style="list-style-type: none"> <li>• Tender documents</li> <li>• Contract</li> <li>• <i>Fair Work Act 2009</i> (Cth)</li> </ul>	<a href="#">Fair Work Ombudsman</a> <a href="#">Queensland Procurement Policy 2021</a> <a href="#">Ethical Supplier Mandate 2021</a>
Applicable evidence types		Example evidence	Regulator contact details
<ul style="list-style-type: none"> <li>✓ Compelling evidence</li> </ul> <p><b>and/or</b></p> <ul style="list-style-type: none"> <li>✓ Regulator outcome</li> </ul>	<p>Evidence obtained through investigation, where a regulator outcome is not in consideration, and/or</p> <p>A regulator outcome may be used to escalate a breach in this category, however it is not essential</p> <p>Where a regulator outcome is relied on, investigating agencies may obtain further evidence to assist the Panel in its consideration</p>	<ul style="list-style-type: none"> <li>▪ Supplier invoices</li> <li>▪ Rosters</li> <li>▪ Responses to employee status questions e.g., ATO</li> </ul>	<p>Fair Work Ombudsman Ph: 13 13 94</p> <p>Australian Tax Office (ATO) Ph: 13 10 20</p>

### e. Required persons who would otherwise be employees to provide an Australian Business Number so that they could be treated as independent contractors

Related non-compliance areas		Source of commitment	Related resources
<ul style="list-style-type: none"> <li>• Employment arrangements</li> <li>• Independent contractors</li> <li>• Sham contracting</li> </ul>		<ul style="list-style-type: none"> <li>• Tender documents</li> <li>• Contract</li> <li>• <i>Fair Work Act 2009</i> (Cth)</li> </ul>	<a href="#">Fair Work Ombudsman</a> <a href="#">Queensland Procurement Policy 2021</a> <a href="#">Ethical Supplier Mandate 2021</a>
Applicable evidence types		Example evidence	Regulator contact details
<ul style="list-style-type: none"> <li>✓ Compelling evidence</li> </ul> <p><b>and/or</b></p> <ul style="list-style-type: none"> <li>✓ Regulator outcome</li> </ul>	<p>Evidence obtained through investigation, where a regulator outcome is not in consideration, and/or</p> <p>A regulator outcome may be used to escalate a breach in this category, however it is not essential</p> <p>Where a regulator outcome is relied on, investigating agencies may obtain further evidence to assist the Panel in its consideration</p>	<ul style="list-style-type: none"> <li>▪ Supplier invoices</li> <li>▪ Rosters</li> <li>▪ Responses to employee status questions e.g., ATO</li> </ul>	<p>Fair Work Ombudsman Ph: 13 13 94</p> <p>Australian Tax Office (ATO) Ph: 13 10 20</p>

## f. Engaged persons on unpaid work trials or as unpaid interns, where they should be treated as employees

Related non-compliance areas		Source of commitment	Related resources
<ul style="list-style-type: none"> <li>• Employment arrangements</li> <li>• Interns</li> <li>• Work trials</li> </ul>		<ul style="list-style-type: none"> <li>• Tender documents</li> <li>• Contract</li> <li>• <i>Fair Work Act 2009</i> (Cth)</li> </ul>	<a href="#">Fair Work Ombudsman</a> <a href="#">Queensland Procurement Policy 2021</a> <a href="#">Ethical Supplier Mandate 2021</a>
Applicable evidence types		Example evidence	Regulator contact details
<ul style="list-style-type: none"> <li>✓ Compelling evidence</li> </ul> <p><b>and/or</b></p> <ul style="list-style-type: none"> <li>✓ Regulator outcome</li> </ul>	<p>Evidence obtained through investigation, where a regulator outcome is not in consideration, and/or</p> <p>A regulator outcome may be used to escalate a breach in this category, however it is not essential</p> <p>Where a regulator outcome is relied on, investigating agencies may obtain further evidence to assist the Panel in its consideration</p>	<ul style="list-style-type: none"> <li>▪ Agreement records</li> <li>▪ Rosters</li> <li>▪ Position description</li> </ul>	<p>Fair Work Ombudsman Ph: 13 13 94</p>

**g. Entered into an arrangement for the provision of labour hire services with a person who is not licensed under the *Labour Hire Licensing Act 2017*, or a supplier who is an unlicensed provider under the Act**

Related non-compliance areas		Source of commitment	Related resources
<ul style="list-style-type: none"> <li>Trade licenses</li> <li>Business licenses</li> </ul>		<ul style="list-style-type: none"> <li>Tender documents</li> <li>Contract</li> <li><i>Labour Hire Licensing Act 2017</i> (Qld)</li> </ul>	<a href="#">Labour Hire Licensing Act 2017</a> <a href="#">Queensland Procurement Policy 2021</a> <a href="#">Ethical Supplier Mandate 2021</a>
Applicable evidence types		Example evidence	Regulator contact details
<ul style="list-style-type: none"> <li>✗ Compelling evidence</li> </ul>	Not applicable	<ul style="list-style-type: none"> <li>Information notice</li> <li>License registration records</li> </ul>	Office of Industrial Relations Ph: 1300 576 088
<ul style="list-style-type: none"> <li>✓ Regulator outcome</li> </ul>	A breach in this category will require a regulator outcome. Investigating agencies may obtain further evidence to assist the Panel in its consideration		

### h. Paid employees wages below those provided for in an applicable modern award

Related non-compliance areas		Source of commitment	Related resources
<ul style="list-style-type: none"> <li>Modern awards</li> <li>Staff wages</li> </ul>		<ul style="list-style-type: none"> <li>Tender documents</li> <li>Contract</li> <li><i>Fair Work Act 2009</i> (Cth)</li> </ul>	<a href="#">Fair Work Act 2009</a> <a href="#">Queensland Procurement Policy 2021</a> <a href="#">Ethical Supplier Mandate 2021</a>
Applicable evidence types		Example evidence	Regulator contact details
<ul style="list-style-type: none"> <li>✓ Compelling evidence</li> </ul> <p><b>and/or</b></p> <ul style="list-style-type: none"> <li>✓ Regulator outcome</li> </ul>	<p>Evidence obtained through investigation, where a regulator outcome is not in consideration, and/or</p> <p>A regulator outcome may be used to escalate a breach in this category, however it is not essential</p> <p>Where a regulator outcome is relied on, investigating agencies may obtain further evidence to assist the Panel in its consideration</p>	<ul style="list-style-type: none"> <li>▪ Pay slips</li> </ul>	<p>Fair Work Ombudsman Ph: 13 13 94</p> <p>Australian Building and Construction Commission (ABCC) Ph: 1800 003 338</p>

## Appendix 4: Breach assessment checklist

### *Is a non-compliance in scope of the Threshold?*

This breach assessment checklist supports procuring agencies in determining whether non-compliant conduct by a supplier can be considered an alleged breach of the Ethical Supplier Threshold (the Threshold).

Where a non-compliance is identified, however the activity does not relate to a Queensland Government contract, the lead category of spend associated with the supplier will be responsible for managing the breach process.

<b>Date completed:</b>	date
<b>Completed by:</b>	officer
<b>Supplier ABN / ACN:</b>	e.g.,1234
<b>Supplier name:</b>	business / organisation
<b>Contract reference:</b>	contract name

This assessment table is appropriate for a single instance of non-compliance.

Assessment item	Test
<p>Did the non-compliance occur on a Queensland Government contract?</p> <p>If no, provide details of any relevant contracts at the time of the non-compliance.</p> <p>Noting this is not the appropriate process for international contracts.</p>	<p><input type="checkbox"/> <b>Yes</b> <span style="margin-left: 200px;"><input type="checkbox"/> <b>No</b></span></p> <p><i>Not essential</i></p> <p><i>[insert contract details]</i></p>
<p>Did the contract commence after the date the Threshold came into effect?</p> <p><b>dd / mm / yyyy</b></p> <p>[date contract was signed]</p>	<p><input type="checkbox"/> <b>Yes – from 1 August 2019</b> <span style="margin-left: 200px;"><input type="checkbox"/> <b>No</b></span></p>
<p>Did the supplier complete a Threshold declaration?</p> <p>Did the supplier indicate they were non-compliant with the criteria on their Threshold declaration?</p>	<p><input type="checkbox"/> <b>Yes</b> <span style="margin-left: 200px;"><input type="checkbox"/> <b>No</b></span></p> <p><input type="checkbox"/> <b>Yes</b> <span style="margin-left: 200px;"><input type="checkbox"/> <b>No</b></span></p>
<p>Identify a category the non-compliance may relate to:</p>	<p><input type="checkbox"/> <b>a) contravened a civil remedy provision of Chapter 2 or Chapter 3 of the <i>Fair Work Act 2009</i> (Cth), or committed an offence against the <i>Fair Work Act</i></b></p>

	<input type="checkbox"/> b) contravened a civil remedy provision of Chapter 2, 3, 4, 5, or 7 of the <i>Industrial Relations Act 2016</i> , or committed an offence against the <i>Industrial Relations Act</i> , or failed to pay employment related levies, or other payments, established under Queensland legislation <input type="checkbox"/> <b>c) failed to make superannuation contributions on behalf of employees in accordance with law</b> <input type="checkbox"/> d) purported to treat employees as independent contractors, where they are not <input type="checkbox"/> <b>e) required persons who would otherwise be employees to provide an Australian Business Number so that they could be treated as independent contractors</b> <input type="checkbox"/> f) engaged persons on unpaid work trials or as unpaid interns, where they should be treated as employees <input type="checkbox"/> <b>g) entered into an arrangement for the provision of labour hire services with a person who is not licensed under the <i>Labour Hire Licensing Act 2017</i>, or a supplier who is an unlicensed provider under the Act</b> <input type="checkbox"/> h) paid employee wages below those provided for in an applicable modern award
State the relevant section and Act that may relate to this non-compliance:	<i>[insert Act and section details]</i>
Based on the information (or evidence) available, do you believe the non-compliance was a result of an honest mistake or oversight, and has been corrected?  <i>If yes, provide explanation and evidence:</i>	<input type="checkbox"/> <b>Yes</b> <span style="margin-left: 200px;"><input type="checkbox"/> <b>No</b></span>  <i>[insert reasoning]</i>
Do you believe sufficient information (or evidence) is available to pursue the matter under the Threshold?	<input type="checkbox"/> <b>Yes</b> <span style="margin-left: 200px;"><input type="checkbox"/> <b>No</b></span>

Use the information broken down in this table to assess whether a non-compliance may be considered a breach of the Threshold.

### Is the non-compliance in scope of a breach of the Threshold?

**Yes**  **No**

## Appendix 5: Example contract clauses

### Invitation to offer clause

Note – this example is based on the general goods and services category.

*To be a conforming offer, the offer must satisfy all mandatory requirements, under clause 1.10. As compliance with the Threshold is made a mandatory criterion, an evaluation panel would have a discretion under clause 2.2 of the Invitation to Offer (ITO) conditions to accept an offer from a supplier who did not meet the Threshold, although compelling reasons would be required to accept a non-conforming offer that did not meet a mandatory criterion. The following amendments are required for this option:*

#### Amend clause 1.6 of the ITO as follows:

*The following criteria are mandatory:*

- a) *The supplier must complete a declaration declaring that it complies with the Ethical Supplier Threshold;*
- b) *[insert other mandatory criteria as required]*

#### Add a new paragraph [2] into schedule A (and re-number the following paragraphs) as follows:

[note: add this new paragraph at the beginning of the response schedules so that it is a simple matter to check if a supplier should be considered further]

### **2 Ethical Supplier Threshold**

*It is a mandatory criterion that the supplier must complete a declaration declaring that it complies with the Ethical Supplier Threshold. Please provide the following details about the supplier:*

*After 1 August 2019, has the supplier:*

- a. *contravened a civil remedy provision of Chapter 2 or Chapter 3 of the Fair Work Act 2009 (Cth), or committed an offence against the Fair Work Act?*
- b. *contravened a civil remedy provision of Chapter 2, 3, 4, 5, or 7 of the Industrial Relations Act 2016, or committed an offence against the Industrial Relations Act, or failed to pay employment related levies, or other payments, established under Queensland legislation?*
- c. *failed to make superannuation contributions on behalf of employees in accordance with law?*
- d. *purported to treat employees as independent contractors, where they are not,*
- e. *required persons who would otherwise be employees to provide an Australian Business Number so that they could be treated as independent contractors,*
- f. *engaged persons on unpaid work trials or as unpaid interns, where they should be treated as employees?*
- g. *entered into an arrangement for the provision of labour hire services with a person who is not licensed under the Labour Hire Licensing Act 2017, or a supplier who is an unlicensed provider under the Act?*
- h. *paid employees wages below those provided for in an applicable modern award?*

#### Add a new paragraph to clause 2.2 in the ITO Conditions, as follows, to enable the panel to be able to make investigations with regulators about a supplier's compliance:

- a) obtain information about the supplier relevant to the evaluation criteria that may be held by any Government Department or Instrumentality and take the information into account in assessing the offer.

#### Add these new definitions into the Definitions and Interpretation document:

**Ethical Supplier Threshold** means the Ethical Supplier Threshold described in paragraph 2.3 of the Queensland Procurement Policy.

**Government Department or Instrumentality** means the QGP Compliance Branch within the Department of Energy and Public Works, any governmental regulator, including but not limited to Work Health Safety Queensland,

the Queensland Building and Construction Commission, the Fair Work Commission, the Australian Taxation Office and the Australian Building and Construction Commission.

### **Declaratory Threshold contract clause**

*The Supplier is required to comply with the Ethical Supplier Threshold and the Customer may monitor the Supplier's compliance with the Ethical Supplier Threshold during the term of the Contract. The Supplier agrees that the Customer may obtain any relevant information from the Supplier or about the Supplier for this purpose. This includes obtaining information about the Supplier relevant to compliance with the Threshold that may be held by any Government Department or Instrumentality. And the Supplier agrees to provide the Customer all information as requested during an audit or investigation, including the information of any subcontractors.*

#### **For inclusion in the Definitions and Interpretation document:**

**Ethical Supplier Threshold** means the Ethical Supplier Threshold described in paragraph 2.3 of the Queensland Procurement Policy.

**Government Department or Instrumentality** means the QGP Compliance Branch within the Department of Energy and Public Works, any governmental regulator, including but not limited to Work Health Safety Queensland, the Queensland Building and Construction Commission, the Fair Work Commission, the Australian Taxation Office and the Australian Building and Construction Commission.

### **Publication of sanctions contract clause**

*The Contractor acknowledges and agrees that the State may publish information about sanctions imposed under the Ethical Supplier Mandate on the Contractor. If the Contractor is a natural person, the Principal collects personal information about you for the purposes of determining whether to impose demerits or sanctions on your business under the Ethical Supplier Mandate. Personal information may be included in the Principal's referrals to the Tri-Partite Panel for the making of a recommendation about non-compliance and penalty under the Ethical Supplier Mandate and to the Director-General, for the purposes of making a decision about non-compliance and penalty.*

### **Subcontractor contract clause**

*The Contractor authorises the Principal to obtain information about the Contractor relevant to the Ethical Supplier Mandate and the Ethical Supplier Threshold that may be held by any Government Department or Instrumentality. The Contractor agrees to provide all information requested during an audit or investigation, including the information of any subcontractors.*

#### **For inclusion in the Definitions and Interpretation document:**

**Ethical Supplier Threshold** means the Ethical Supplier Threshold described in paragraph 2.3 of the Queensland Procurement Policy.

**Government Department or Instrumentality** means the QGP Compliance Branch within the Department of Energy and Public Works, any governmental regulator, including but not limited to Work Health Safety Queensland, the Queensland Building and Construction Commission, the Fair Work Commission, the Australian Taxation Office and the Australian Building and Construction Commission.

## Appendix 6: How the Threshold applies to different types of contracts

### a. Standard Queensland Government contracts

A standard contract in the context of the Threshold is one that applies Queensland Government terms and conditions. These contracts could be the result of a tender, request for quote (RFQ), invitation to offer (ITO), purchase order (PO) etc.

It is the responsibility of the procuring agency to ensure all contracts within scope of the Threshold include the appropriate declaratory clauses.

As with all contract types where the Threshold applies, where a breach is identified procuring agencies will be responsible for conducting the breach process for each non-compliant activity purported on that contract.

### b. Contracts formed from a Standing Offer Arrangement (SOA)

All engagements established from a SOA, on each occasion, forms a new contract. It is the responsibility of the procuring agency to ensure all tender documents and contracts within scope of the Threshold include the appropriate related declaratory clauses.

Where the panel was established prior to the introduction of the Threshold but a contract is formed using the arrangement after the introduction date, the contract will be considered in scope of the Threshold.

The procuring agency in ownership of the SOA is responsible for ensuring terms and conditions of the arrangement refer to the application of the Threshold, where appropriate.

The QGP Compliance Branch will facilitate the removal of suppliers sanctioned under the Threshold (or Mandate) from active panels. This process eliminates the need for procuring agencies to perform pre-contract award compliance checks when considering a supplier from a SOA.

### c. Contracts with international suppliers

There will be occasions where an international supplier is the preferred, or sole market provider. Where a company has an office located in Australia, the Threshold applies.

Where the supplier does not have an Australian business presence, procuring agencies should perform due diligence on employment and related records, verifying alignment with the intent of this policy.

### d. Joint ventures

Suppliers entering into joint ventures will be equally subject to the Threshold.

Where a breach is identified on a joint venture, procuring agencies will be responsible for conducting the breach process individually with each supplier. At the conclusion of the investigation agencies should consider the evidence and any responses to the show cause process to determine the likely responsible supplier. Procuring agencies have discretion to escalate the non-compliant activity under the Threshold for none or various contracted parties.

### e. Supplier contracts – accepting external terms and conditions

Where buyers plan to accept a supplier's contract terms for the purpose of the engagement, it remains the responsibility of the procuring agency to ensure contract clauses referencing the Threshold are inserted into the supplier's contract. This requirement also applies to large organisations that have pre-defined contract terms.

## Appendix 7: Deed Poll

### FORM OF DEED POLL

DEED POLL MADE AT \_\_\_\_\_ ON \_\_\_\_\_ 2021

BY [INSERT FULL SUBCONTRACTOR NAME] (ABN [Insert]) of [Insert Full Physical address including Suburb State Postcode] (the **Subcontractor**).

IN FAVOUR OF: [INSERT NAME AND DETAILS OF PROCURING AGENCY] ABN [INSERT] of [INSERT ADDRESS] (the **Principal**).

### RECITALS

- A. The Principal has entered into an agreement with [INSERT MANAGING CONTRACT NAME] ACN [INSERT ACN] (**Managing Contractor**) for the provision of design services, subcontract construction documentation management services and construction management services in relation to the [INSERT PROJECT NAME] (**Project**).
- B. The Subcontractor has or will have an agreement (the **Subcontract**) with the Managing Contractor or a subcontractor of the Managing Contractor for the execution and completion of the [insert description of the works or product to be provided by the Subcontractor] (the **Subcontract Works**) for the Project.
- C. It is or will be a condition of the Subcontract that the Subcontractor executes this Deed Poll.

This deed poll provides as follows:

2. The Subcontractor must:
- (i) make and keep accurate and complete records of:
    - (a) its tender, including without limitation the preparation and submission of that tender;
    - (b) tenders received by it from Subcontractor tenderers, whether accepted or not;
    - (c) the execution and completion of the work under the Subcontract;
    - (d) compliance with its commitments, including commitments made in its tender, relating to the Queensland Procurement Policy, the Best Practice Principles and the Best Practice Industry Conditions; and
    - (e) its compliance with the Ethical Supplier Threshold, including payroll records, management records and time recordings, that are in any format or stored on any medium, including without limitation photographs, electronic files, telecommunications or social media; and
  - (ii) subject to the Subcontractor's right to claim legal professional privilege in respect of any record, which is hereby maintained, permit the Principal and its agents to inspect and to copy at any time any records referred to in clause 2(i) and provide paper copies or electronic copies of such records in native format when requested by the Principal.
3. The Subcontractor consents to the Principal disclosing or providing copies of any records which the Principal obtains under clause 2 of this Deed Poll to the Managing Contractor or to the QGP Compliance Branch.
4. The Subcontractor authorises the Principal to obtain from any Government Department or Instrumentality, information about the Subcontractor relevant to the Ethical Supplier Mandate and the Ethical Supplier Threshold that may be held by the Government Department or Instrumentality.
5. This Deed Poll is governed by and construed in accordance with the laws of the Queensland.

6. The Subcontractor hereby submits to the non-exclusive jurisdiction of the courts of Queensland and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Deed Poll, and waives any right it might have to claim that those courts are an inconvenient forum.
7. This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Principal.

Definitions:

In this deed poll:

**Ethical Supplier Threshold** means the Ethical Supplier Threshold described in paragraph 2.3 of the Queensland Procurement Policy.

**Government Department or Instrumentality** means the QGP Compliance Branch within the Department of Energy and Public Works, any governmental regulator, including but not limited to Work Health Safety Queensland, the Queensland Building and Construction Commission, the Fair Work Commission, the Australian Taxation Office and the Australian Building and Construction Commission.

Executed as a DEED POLL

Executed by [INSERT NAME OF SUBCONTRACTOR] by or in the presence of:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Secretary/Director in full