

Guidelines: Ethical Supplier Mandate 2021

Queensland Government Procurement

SUPERSEDED



Queensland
Government

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Queensland Government Procurement within the Department of Energy and Public Works is committed to continuous improvement. If you have any suggestions about how we can improve this guide, or if you have any questions, contact us at ethicalsupply@epw.qld.gov.au.

Disclaimer

This document is intended as a guide only for the internal use and benefit of government agencies. It may not be relied on by any other party. It should be read in conjunction with the Queensland Procurement Policy, your agency's procurement policies and procedures, and any other relevant documents.

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Administration

This version of the Guidelines replaces the Guidelines: Ethical Supplier Mandate 2019 and takes effect from 1 September 2021.

1 Introduction

The *Ethical Supplier Mandate 2021* (the Mandate) and the Ethical Supplier Threshold (the Threshold) 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 Mandate and the Threshold support the overarching Queensland Procurement Policy (QPP) and keeping Queenslanders in quality, secure and safe local jobs.

This guidance is provided to assist Queensland Government buyers and suppliers in the application of the Mandate as set out in **Clause 2.2** of the QPP.

This document should be read in conjunction with:

- the *Queensland Procurement Policy* (QPP)
- *Ethical Supplier Mandate 2021*
- *Guidelines: Ethical Supplier Threshold*.

These documents are available online at:

www.hpw.qld.gov.au/about/strategy/buy-qld/about/ethical-suppliers

2 Application of the Mandate

Under the Mandate, penalties including demerits and sanctions can be imposed on suppliers for breaches of relevant policies, contracts and laws. Breaches may also be penalised using contractual remedies such as agreed liquidated damages, where available

2.1 Suppliers and subcontractors

The Mandate's definition of 'supplier' includes subcontractors within the supply chain (see **Appendix 1 - Definitions**). 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.

As outlined in the Mandate, suppliers are responsible for ensuring that the conduct of subcontractors on government projects is compliant with the Mandate and the Threshold requirements.

Principal contractors must use their best endeavours not to engage suppliers that have been sanctioned under the Mandate or Threshold to do business with government. Principal contractors who are found to have knowingly engaged sanctioned suppliers may be found in breach of the Mandate and subject to penalty.

Examples of reasonable actions by the principal contractor to ensure this may include:

- conducting reasonable due diligence to ensure the subcontractor is compliant with the Mandate and Threshold before commencing the contract;
- ensuring contracts with subcontractors specify a requirement for compliance with the Mandate and Threshold;
 - providing principal contractors the ability to terminate the contract where a breach occurs,
 - requiring the subcontractor to correct errors/make reparation payments, or
 - requiring the subcontractor to provide information or any relevant documents to demonstrate compliance to the Principal or the Queensland Government Procurement (QGP) Compliance Branch as requested;

- taking appropriate action if the principal becomes aware the subcontractor has breached the Threshold or Mandate during a contract;
 - including advising the procuring agency;
- responding to a *Show Cause Notice* and/or *Extenuating Circumstances Notice* (or other request for information) that may be issued by the procuring agency or QGP Compliance Branch if the subcontractor has breached the Mandate or Threshold.

Penalties can only be applied to a supplier if the contract during which the breach occurred was executed after the relevant Mandate commencement date. Commencement dates for the Mandate are based on the relevant procurement category.

See the table in **Section 2.2** for further information.

2.2 Phased implementation of the Mandate

Procuring agency	When the Mandate applies
Budget sector agencies	<ul style="list-style-type: none"> • Building, Construction and Maintenance category (BCM) <ul style="list-style-type: none"> – <i>contracts entered on or after 1 August 2019</i> • Transport, Infrastructure and Services category (TIS) <ul style="list-style-type: none"> – <i>contracts entered on or after 1 October 2019</i> • Other procurement categories to be determined 2021.
Government-Owned corporations	<ul style="list-style-type: none"> • To be considered in 2021.
Statutory bodies	<ul style="list-style-type: none"> • To be considered in 2021.
Special purpose vehicles	<ul style="list-style-type: none"> • To be considered in 2021.

3 During the procurement cycle

3.1 Before contracting with a supplier

All procuring agencies must check an online supplier check tool, which is maintained by the QGP Compliance Branch, to determine that a potential supplier is not the subject of a current sanction. The online supplier check tool is available here: <https://www.forgov.qld.gov.au/complete-supplier-check>.

When tendering, this check must occur before inviting suppliers to tender. Procuring agencies must also check the online register when asked by a principal contractor to approve the engagement of a subcontractor.

The online supplier check tool will provide information about any current penalty that a supplier is subject to. Sanctioned suppliers will be removed from pre-qualified supplier lists and will appear as a sanctioned supplier on the online supplier check tool.

Procuring agencies can contact the QGP Compliance Branch for information about a supplier's history of non-compliance, including as authorised by any information access contract clauses in the tender documents. In addition, compliance with the Mandate and Threshold should be a requirement in tender documents.

3.2 When forming a contract with a supplier

Category lead agencies are responsible for reviewing and updating standard terms and conditions/standard contract suites to include clauses reflecting the Mandate and its associated definitions.

Some example clauses are outlined at **Appendix 2**. Additional sample clauses will be issued as the Mandate progressively expands to cover more procurement categories.

Contracts should include a clause providing supplier consent to information collection and use by the procuring agency during the contract including for the purpose of monitoring compliance with the Threshold (see **Appendix 2 – Example Clauses**).

The contract should require a supplier to:

- declare the supplier's compliance with the Threshold requirements
- provide information as requested by the procuring agency or QGP Compliance Branch relating to compliance with the Threshold
- give permission to obtain relevant compliance information from any relevant regulators and/or law enforcement agencies and
- require their subcontractors to meet these same requirements.

Category lead agencies are responsible for adding these clauses into category terms and conditions and standard contract suites. Procuring agencies are responsible for using the relevant clauses in contract and tender documents.

3.3 During and after the contract – possible breaches

Successful contract management is a key component in the implementation of the Mandate. The breach process may be performed at any point in the life of the contract (e.g. on foot or concluded), as appropriate, and will commonly occur as an outcome to a contract management process.

Procuring agencies are responsible for investigating alleged breaches that are identified either during or after a contract. The procuring agency should first undertake its usual contract management processes, as a delay in exercising contractual rights can lead to a loss of the rights.

It is the responsibility of the procuring agency to ensure the Mandate is embedded at the contract management planning phase (i.e. contract set up). This allows for proper management of potential breaches during and after the contract finishes.

For further guidance on this process, refer to the *Contract Management Framework* available here <https://www.forgov.qld.gov.au/manage-contract>.

3.3.1 During and after the contract – managing possible breaches

The procuring agency must first determine whether the Mandate applies. If so, where the alleged breach is a non-regulatory matter the procuring agency must conduct an investigation to obtain evidence to assess the non-compliance allegation.

Procuring agencies can seek information from regulators or the QGP Compliance Branch regarding a supplier's compliance with the Mandate or Threshold requirements, as authorised by any information access contract clauses set out in the contract (see **Appendix 2 – Example clauses: Access to information**).

If the matter is an alleged breach of a regulation or law, the agency must refer the matter to the relevant regulator. In addition to referring to the regulator, the procuring agency must refer the non-compliance to the Tripartite Procurement Advisory Panel (see **Section 4.3**) for recommendation of a penalty under the Mandate when there is compelling evidence that indicates the non-compliance occurred.

See **Section 4.1** for further information on compelling evidence.

Where the allegation concerns a subcontractor, any investigation will also involve the principal contractor.

3.4 Contract variations

For tenders and contracts entered into after implementation date per relevant procurement category (see **Section 2.2**) the Mandate must be incorporated. For contracts signed prior, but varied after this date, agencies should make every effort to incorporate the Mandate.

4 Conducting investigations

Investigations under the Mandate are to be conducted by the procuring agency. Procuring agencies will ensure the scale of the investigation is commensurate with the complexity and significance of the alleged breach.

For further information, refer to the *Ethical Supplier Mandate – Standard Operating Procedure* and the *Ethical Supplier Threshold – Standard Operating Procedure*.

4.1 Investigate the alleged breach

It is the responsibility of the procuring agency to manage investigations into potential non-compliance under the Mandate (including during the contract management process). This includes determining whether evidence supports that the breach occurred. In some instances, the QGP Compliance Branch may offer assistance to agencies undertaking investigation into potential non-compliance.

If there is a suspicion that a supplier has not, or may not, have complied with a requirement under the Mandate, the procuring agency will first take steps to determine whether the Mandate applies to the alleged non-compliance.

The procuring agency may seek advice from the QGP Compliance Branch, within the office of the Deputy Director-General – Procurement (DDG – Procurement), Department of Energy and Public Works, on the investigation process.

For a high-level overview of the Mandate and the Threshold process, refer to **Figure 4** further below.

4.1.1 Subcontractors

Subcontractors are required to comply with the Mandate, including providing information to the QGP Compliance Branch regarding an investigation.

Any principal contractor or subcontractor that does not cooperate with a request by the procuring agency or the QGP Compliance Branch regarding an investigation may be penalised under the Mandate for not cooperating with a request (refer to **Table 4.1** of the *Ethical Supplier Mandate 2021*).

A procuring agency may need to rely on the contractual rights of the principal contractor to investigate the actions of the subcontractor. Likewise, any contractual remedies will have to be implemented by the principal contractor. Principal contractors are required to do this as part of their responsibility to ensure subcontractors are in compliance with the Mandate (see **Section 2**).

For non-regulatory matters (policy or contractual non-compliance)

Procuring agencies must investigate and determine whether there is compelling evidence (see **Appendix 1** – Definitions) to indicate that the non-compliance occurred.

For example:

- a non-compliance related to local benefits or a commitment to apprentices and trainees and indigenous trainee commitments.

For regulatory matters (legislative non-compliance)

Procuring agencies must refer potential regulatory breaches to an appropriate regulator or law enforcement agency:

- for investigation and determination of whether the non-compliance occurred; and
- for regulatory compliance action.

For example:

- WHS matters referred to Workplace Health and Safety Queensland (WHSQ)
- *Building Industry Fairness (Security of Payment) Act 2017*
- matters referred to the Queensland Building and Construction Commission (QBCC)
- Industrial relations matters referred to the Australian Fair Work Commission, and
- superannuation matters referred to the Australian Taxation Office.

For where compelling evidence exists

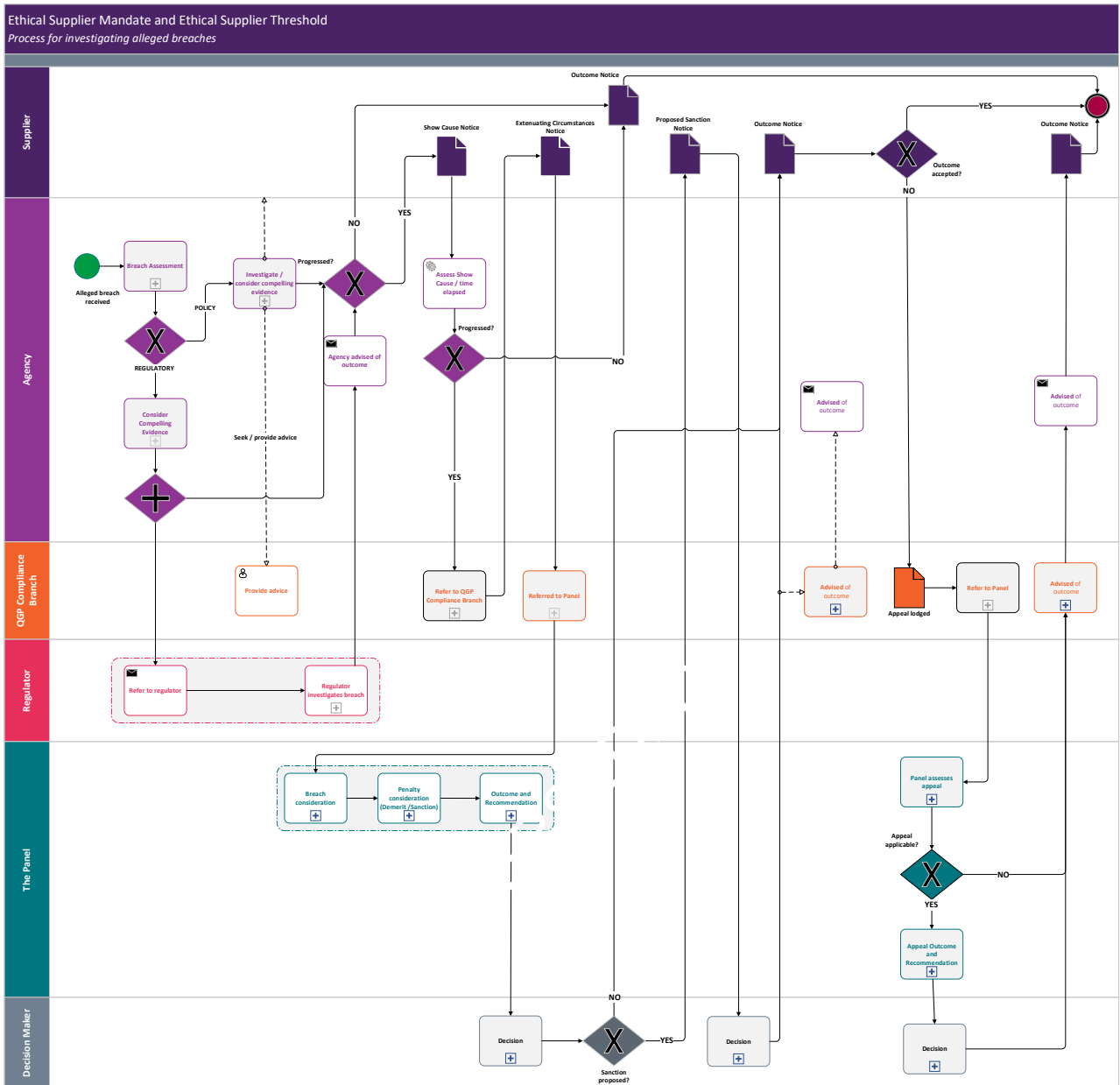
Procuring agencies must refer the matter to the Tripartite Procurement Advisory Panel (see **Section 5**) for consideration of a penalty under the Mandate:

- e.g. for the underpayment of wages and superannuation (including in relation to compliance with the Ethical Supplier Threshold)
 - this is in addition to referring the matter to the relevant regulatory bodies for regulatory compliance action, or
 - to law enforcement agencies for investigation of possible wage theft or other criminal offences.
- e.g. for the supplier having treated employees as independent contractors when they are not (i.e. some instances of sham contracting), the agency must refer the matter to the Tripartite Procurement Advisory Panel (see **Section 5**) for consideration of a penalty under the Mandate.
 - this is in addition to referring the matter to the relevant regulatory bodies for regulatory compliance action (e.g. Fair Work Ombudsman and Australian Building Construction Commission regarding possible offences under the *Fair Work Act 2009*.)

The above also applies to these types of non-compliance under the Ethical Supplier Threshold (see **Sections 3.7.1 and 3.7.2** of the *Guidelines: Ethical Supplier Threshold*).

Figure 4 – Ethical Supplier Mandate and Ethical Supplier Threshold overview

For an enlarged version of this process, refer to **Appendix 5**.



4.2 Show Cause Notice

Where the procuring agency deems there is sufficient evidence to support an alleged breach of the Mandate has occurred, the agency will provide the supplier with an opportunity to respond via a *Show Cause Notice*¹.

The show cause process under the Mandate is separate from any contractual show cause notice that may be issued. The *Show Cause Notice* is an opportunity for the supplier to provide further information about the non-compliance and any other details it would like the procuring agency to consider (e.g. rectification actions that may have occurred). The procuring agency will consider any response to the *Show Cause Notice* before determining whether to refer the matter to the Panel for consideration of possible penalty.

The supplier will be given the right to reply to the issues raised in the Notice.

The *Show Cause Notice* must:

- state that it is a notice under the Mandate
- specify the alleged breach in adequate detail
- outline any evidence that supports the alleged breach
- invite the supplier to respond to the *Show Cause Notice* and
- state that the supplier must reply and show cause within ten (10) business days from date of issue (see **Appendix 1** – Definitions) or request an extension where reasonable.

If the supplier does not respond within the time specified in a *Show Cause Notice*, the procuring agency may refer the matter to the Panel without further notice to the supplier.

Where a supplier does respond the agency must determine whether, taking into account the information provided by the supplier, there is evidence available to confirm there was a non-compliance as outlined in **Section 4.1** above.

The agency will take no further action:

- where the allegations are found to be unsupported by evidence; or
- where the supplier provides sufficient explanation or evidence that demonstrates the alleged breach was the result of an honest mistake, and/or the non-compliance has been adequately repaired.

Where the agency finds that the non-compliance is unsupported by evidence, the agency will advise the supplier there is no breach and that the matter has been closed.

Where the agency finds that there is evidence to demonstrate that the non-compliance occurred, the agency must refer the matter to the Tripartite Procurement Advisory Panel (via the QGP Compliance Branch) within five (5) business days.

4.3 Referral to the Tripartite Procurement Advisory Panel

Where the procuring agency finds evidence to support that a non-compliance occurred, the agency will refer the matter to the Panel within five (5) business days unless they choose to collate breaches (see **Section 4.3.1**).

The referral to the Panel occurs via the Executive Officer of the QGP Compliance Branch. The Executive Officer of the QGP Compliance Branch will complete an initial review of the referred case, including all corresponding documentation and evidence provided by the procuring agency. The QGP Compliance Branch will then either:

- refer back to the investigating agency for clarification; or

¹ Note, as this process is conducted under the Mandate and not the contract, it can be undertaken by an agency in relation to an alleged breach by a subcontractor and does not require the direct involvement of the principal contractor, although it is preferable to keep the principal informed to assist them to work with the subcontractor to correct any potential breaches.

issue an *Extenuating Circumstances Notice* to the supplier (see **Section 4.4**) and following this process, refer the matter to the Tripartite Procurement Advisory Panel (the Panel) for consideration of possible penalty.

4.3.1 Collating breaches

Procuring agencies may choose to collate breaches for referral to the QGP Compliance Branch. Agencies may allow up to twenty (20) business days to collate any further alleged breaches that may be identified on the same contract. This allows the identified non-compliance/s to be escalated as a single process. Any non-compliance/s identified outside of this twenty (20) day period is then treated as a new matter.

4.4 Extenuating Circumstances Notice

Following the *Show Cause Notice*, if a non-compliance matter is referred to the Panel (via the QGP Compliance Branch) suppliers will be issued with an *Extenuating Circumstances Notice* and given the right to reply to the issues raised in the notice.

The *Extenuating Circumstances Notice* process will be completed prior to the Panel's consideration of any penalties. The Panel must consider any response by the supplier to the Notice prior to making recommendations on penalties.

The *Extenuating Circumstances Notice* must:

- state that it is a notice under the Mandate
- specify the alleged breach in adequate detail
- specify that a penalty of a demerit or sanction may be applied under the Mandate
- invite the supplier to provide extenuating circumstances that it would like to have considered
- state that extenuating circumstances may not include whether the alleged breach occurred and
- state that the supplier must reply within ten (10) business days from date of issue or request an extension where reasonable.

If the supplier does not respond by the time specified in an *Extenuating Circumstances Notice*, the matter will progress to the Panel without further input from the supplier.

5 Tripartite Procurement Advisory Panel

5.1 Recommendation must be given objectively

The Tripartite Procurement Advisory Panel is a singular body that will be established by government to provide objective advice and recommendations to the decision makers regarding non-compliance with the Mandate and Threshold. All members and any future changes to the Panel will be determined by government.

The Panel must act objectively at all times, and in alignment with their Terms of Reference. Panel members must not have unauthorised contact with any person regarding a matter referred to them. Any contact must be conducted within the formal processes of the Panel and with the knowledge of the Panel. The Panel has the discretion to engage independent expert advisors and request such witnesses and testimony as required to fulfil their duties.

Panel recommendations regarding penalties must be:

- supported by sufficient evidence
- unaffected by any conflict of interest and
- made only when the majority of members present are in agreement.

Information shared with the Panel must be maintained securely and confidentially and treated in accordance with relevant legislation such as the *Information Privacy Act 2009*.

5.2 Conflicts of interest

Declaration of conflicts of interest will be the first agenda item at Panel meetings.

If a conflict of interest is identified and disclosed, the relevant Panel member will stop any further involvement with assessing the alleged breach and be replaced by a suitable representative without a conflict.

5.3 Recommendation on penalties by majority of Panel

All three (3) Panel members (or approved proxies) must be present (in person or remotely) in order for a demerit or sanction recommendation to be made. Decisions to recommend demerits or sanctions will be made on a majority decision of the Panel.

Where an instance of non-compliance is a breach of both the Threshold and the Mandate, the Panel has the discretion to recommend an appropriate penalty under either policy or both policies according to the particular circumstances.

5.4 Compelling evidence

Where compelling evidence (see **Appendix 1** – Definitions) is obtained to indicate that the breach has occurred (including under the Threshold), the matter must be referred to the Panel to give recommendations on an appropriate penalty under the Mandate.

This referral to the Panel is in addition to any separate processes for referring the matter to law enforcement or a regulator. Panel recommendations on penalties under the Mandate can be made without a court or regulator decision about whether there has been a breach of the law.

The Mandate is a test of supplier behaviour, not a regulatory determination.

6 Procedural fairness

6.1 Procedural fairness requirements

Suppliers must be given procedural fairness in relation to investigations, Panel recommendations and decisions by the decision maker. This includes the right to respond to allegations of breaches.

Suppliers must be given notice of a proposed assessment, including adequate detail about the particulars of the alleged breach, the evidence that supports the alleged breach, and that there could be a penalty imposed of demerits or a sanction.

Suppliers must be allowed ten (10) business days to respond to a Notice. An extension of time may be granted on request by a supplier, where sound reasoning is provided.

The Panel has discretion regarding whether to recommend issuing demerits. The Panel must consider a supplier's submissions including any extenuating circumstances when making its recommendations to the decision maker.

7 Demerits

7.1 Recommendations by the Panel

Before the Panel considers recommending demerits be issued to the supplier for the non-compliance, the supplier will receive a written *Extenuating Circumstances Notice* (see **Section 4.4**) and given ten (10) business days from date of issue to detail any extenuating circumstances that it would like to have considered. Suppliers may request a further extension of time if sound reasoning for the

extension is provided. The Panel must factor those circumstances outlined by the supplier in response to an *Extenuating Circumstances Notice* into their recommendation.

After assessing the supplier's response, the Panel will either:

- recommend the decision maker issue either two (2), five (5), ten (10) or twenty (20) demerits per breach to the supplier (as appropriate), or
- recommend no further action, at their discretion.

The Panel will use its discretion to determine recommendations in cases of borderline breaches consistent with previous precedent recommendations.

7.2 Decision maker for issuing demerits

The relevant decision maker for applying demerits is the Director-General of the procuring agency.

When the decision maker intends to issue a penalty different to that recommended by the Panel, the decision maker should advise the Panel of their decision.

If the decision maker determines to take no action after considering the Panel's advice, the procuring agency managing the matter will advise the supplier in writing of the outcome.

If the decision maker issues demerits, the procuring agency will advise the supplier in writing that demerits have been issued, appeal options and that the demerit(s) will expire after 12 months from the date of the written notice (see **Section 7.1**).

7.3 Demerit advice

The procuring agency will notify the supplier in writing via an *Outcome Notice* if the decision maker issues them with demerits.

The *Outcome Notice* must:

- state that it is a notice under the Mandate
- specify the breach in adequate detail
- state the number of demerits issued by the decision maker
- state that the demerit(s) will expire after 12 months from the date of the decision
- state that cumulative demerits of twenty (20) points may result in an exclusion from government procurement for a defined period of up to 12 months
- state that the supplier's demerit record will be available to procuring agencies to assess the risk profile of a supplier and
- inform the supplier that they have ten (10) business days from date of issue to appeal to the QGP Compliance Branch at enicalsupply@epw.qld.gov.au as set out in **Section 9** of the Mandate.

8 Sanctions

8.1 Recommendations by the Panel

Where the Panel has recommended that the supplier receive a total of twenty (20) demerits or more, or where twenty (20) demerits have been accumulated by a supplier within a 12-month period, a sanction may be applied to the supplier under the Mandate (see **Appendix 1** – Definitions).

8.2 Decision maker for sanctions

The decision whether to apply a sanction under the Mandate is made by the Director-General of the procuring agency.

When the decision maker intends to issue a penalty different to that recommended by the Panel, the decision maker should advise the Panel of their decision.

The decision maker may sanction a supplier once the supplier has received twenty (20) demerits unless it determines otherwise. Sanctions only affect a supplier's access to future contracts. Breaches associated with established and current contracts will be dealt with using contract management processes.

Sanctions can include:

- suspending a supplier's prequalification (see **Appendix 1** – Definitions) for a defined period
- making a supplier ineligible for contract award for a defined period
- not exercising contract extension options
- suspending a supplier from the relevant panel or contracting framework for a defined period; and
- a suspended sanctions penalty, pending successful implementation of any recommended corrective actions.

In the case of subcontractors, a sanction may make a supplier ineligible to be approved as a subcontractor on future contracts.

Information that a sanction has been imposed on a supplier will be shared with procuring agencies and referred to the administrators of prequalification and registration systems, and Chief Procurement Officers (CPOs) for implementation.

If a sanction is issued, the decision maker will advise the supplier in writing of the sanction decision (see **Section 8.3**). This notice must also inform the supplier that they have ten (10) business days from date of issue to appeal (as defined in the Mandate), or as otherwise required by the National Prequalification System for Civil (Road and Bridge) Construction Contracts (NPS).

Suspensions may be revoked under exceptional circumstances (e.g. natural disasters) by the appropriate Director-General (or Directors-General) responsible for the whole-of-government management of any category of spend which has included the supplier within the last 12 months.

8.3 Sanction advice

The decision maker will notify the supplier in writing of a potential sanction via a *Proposed Sanction Notice* before applying a sanction.

The *Proposed Sanction Notice* must:

- state that it is a notice under the Mandate
- specify the breach in adequate detail
- specify the proposed sanction determined by the decision maker
- state the proposed duration of the sanction (including the expiry of the demerits used to apply the sanction) and
- inform the supplier that they have ten (10) business days from date of issue to respond to the decision maker.

Following the *Proposed Sanction Notice*, the decision maker will notify the supplier of the outcome in writing via an *Outcome Notice*.

The *Outcome Notice* must:

- state that it is a notice under the Mandate
- specify the breach in adequate detail
- specify the sanction determined by the decision maker
- specify remedial or corrective actions to be undertaken (if any)
- state the duration of the sanction (including the expiry of the demerits used to apply the sanction) and
- inform the supplier that they have ten (10) business days from date of issue to appeal to the QGP Compliance Branch via ethialsupply@epw.qld.gov.au.

-
- as set out in **Section 9** of the Mandate or
 - as otherwise required by the National Prequalification System (NPS).

8.4 Imposition of penalties – publication of information about sanctions

Where a sanction is imposed on a supplier and the procuring agency has authority to publish information about the imposition of the penalty (for example through a contractual term – see **Appendix 2**), the agency may decide to publish information disclosing the sanction that has been imposed on the supplier (see **Appendix 2 – Example clauses**).

Agencies should seek specific legal advice before publishing any information about penalties.

The supplier will be given an opportunity to be heard before the proposed publication. 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*.

9 Internal Review

The DDG – Procurement (Deputy Director-General 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 Mandate).

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.

For Government-Owned Corporations (GOCs) and statutory bodies, the matter will be referred to the entity for consideration.

Decisions regarding penalties under the Mandate are separate to any subsequent decisions made by regulators regarding the same non-compliance under the relevant legislation. This includes where a decision regarding a penalty under the Mandate is made on the basis of compelling evidence (including breaches of the Threshold).

A regulator's finding that the legislative non-compliance is not proven may not affect a decision regarding a penalty applied under the Mandate, however an internal review will be conducted, and legal advice will be sought by the procuring agency. The procuring agency Director-General² will determine the appropriate response following the internal review and will advise the DDG – Procurement of the outcome.

10 Appeals

A supplier (see **Appendix 1 – Definitions**) can appeal a decision to apply demerits or a sanction if they believe:

- the process outlined in the Mandate has not been followed;
- show cause details, extenuating circumstances or specific supporting evidence were not taken into account in the original decision; and / or
- the decision was not in line with the penalty guidelines.

² The procuring agency Director General (or appropriate delegate) or in the case of Government-Owned Corporations and statutory bodies, appropriate nominated representative of the corporate entity.

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

To ensure an impartial assessment, members involved in the original consideration will be secluded, with the exception of the chair. To increase the level of independent scrutiny and expertise for the appeals process, the appeals process incorporates two additional Panel members.

The Panel:

- assess the appeal of the decision against the above criteria
- deliberate and consider the merits of the appeal and
- make a recommendation to the decision maker regarding the appeal.

The appeal process is a review of the process and outcome. It is not an opportunity to revisit the facts of the breach that gave rise to the demerits or sanction. It is not a re-investigation of the non-compliance.

10.1 The decision maker for appeals

The decision maker responsible for the appeal decision remains the Director-General of the procuring agency subject to the contract under which the breach occurred. For Government-Owned Corporations (GOCs) and statutory bodies, the decision-maker will be the GOC or statutory body itself. All cases raised by a GOC or statutory body will be referred to the Chief Executive responsible for the contract in which the breach occurred.

See **Sections 7.2** and **8.2** for further information on the decision-maker.

Following consideration of the Panel's advice and recommendation regarding the appeal, the decision of the Director-General (or appropriate delegated representative) will be considered final.

Appendix 1 – Definitions

Term	Description
Breach	A breach of the Ethical Supplier Mandate or Ethical Supplier Threshold, where a supplier has been determined to be non-compliant with the requirements of the policy. <ul style="list-style-type: none"> For the purposes of this policy and all corresponding documentation, a breach will remain alleged until the final decision maker considers it confirmed.
Business day	A day that is not a Saturday, Sunday or a public holiday in Queensland.
Compelling evidence	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. <ul style="list-style-type: none"> 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. 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.
Complainant	The person who has made a complaint regarding an alleged breach of the Mandate.
Date of issue	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). <ul style="list-style-type: none"> Where same day delivery is not possible (i.e. post) the date of issue is five (5) business days after the Notice was posted.
Declared by the Minister	Declared in writing by the Minister responsible for the category, in consultation with: <ul style="list-style-type: none"> the Minister for Energy, Renewables and Hydrogen and Minister for Public Works and Procurement, and the Premier and Minister for Trade.
Deputy Director-General – Procurement	The Deputy Director-General – Procurement (DDG – Procurement) of Queensland Government Procurement within the Department of Energy and Public Works.
Director-General of the procuring agency	The Director-General, responsible for the contract during which the supplier engaged in the non-compliant conduct.
Ethical Supplier Threshold	The Ethical Supplier Threshold described in the Queensland Procurement Policy, that is, whether a supplier has: <ol style="list-style-type: none"> 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> 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 failed to make superannuation contributions on behalf of employees in accordance with law purported to treat employees as independent contractors, where they are not required persons who would otherwise be employees to provide an Australian Business Number so that they could be treated as independent contractors

	<p>(f) engaged persons on unpaid work trials or as unpaid interns, where they should be treated as employees</p> <p>(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 supplier under the Act</p> <p>(h) paid employee wages below those provided for in an applicable modern award.</p>
Guidelines	<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"> – Guides may include specific steps that should be followed to complete a given process in support of a policy requirement
Low value procurement	<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"> – 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.
Policy requirement	<p>A requirement of:</p> <ul style="list-style-type: none"> – the <i>Queensland Procurement Policy (QPP)</i> – the <i>Queensland Government Procurement Strategy</i> – procurement-related policies and instruments as listed in Schedule 3 to the QPP – 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.
Pre-qualified supplier	<p>A pre-qualified supplier means a supplier registered with:</p> <ul style="list-style-type: none"> • 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; or • QBuild as a pre-qualified supplier.
Procuring agency	<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"> – The 'department sponsoring the project' for the purposes of the <i>Capital Works Management Framework</i> is the 'procuring agency' for the purposes of this Mandate. – For the purposes of this Mandate, the procuring agency is the agency responsible for the contract during which the supplier's non-compliance occurred
Queensland Government contract	<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"> – 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.
Sanction	<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 can include:</p>

	<ul style="list-style-type: none"> - suspending a supplier's prequalification for a defined period - making a supplier ineligible for contract award for a defined period - not exercising contract extension options - suspending a supplier from any Queensland Government panel or contracting framework for a defined period and - a suspended sanctions penalty, pending successful implementation of any recommended corrective actions.
Supplier	<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"> - The definition of 'supplier' includes subcontractors within the supply chain. - The principal supplier under contract to the procuring agency is responsible for conduct of suppliers within their supply chain. - 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.
Tripartite Procurement Advisory Panel (the Panel)	<p>An expert panel of knowledgeable nominees, with equal representation from employers, unions and chaired by an independent government appointee having substantial experience in relevant fields.</p> <ul style="list-style-type: none"> - 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. <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 2 – Example Clauses

Note: agencies should seek their own legal advice before using these example clauses.

There are a range of existing resources to assist procuring agencies, including contract templates for:

- [Building and Construction Maintenance \(BCM\)](#)
- [Information and Communication Technology \(ICT\)](#) and
- [General Goods and Services \(GGS\)](#).

Building and construction related contracts

Example clause:

The supplier acknowledges that a failure to comply with the principal's policies that apply to the work under the contract or the supplier's obligations under the contract can result in the imposition of a demerit or sanction under the Ethical Supplier Mandate or Threshold, in addition to any other remedies available to the principal under this contract.

“Ethical Supplier Mandate” means the Queensland Government policy titled “Buy Queensland: Ethical Supplier Mandate” or any policy that replaces that policy.

Liquidated damages

Note: this is a complex legal issue and legal advice should be sought before using these example clauses.

These clauses are intended for use in BPP projects and significant procurement (as defined in the Queensland Procurement Policy).

Apprentices and trainees

Example clause:

1. *If the Contractor fails to provide the required number of apprentice and trainee hours in accordance with the Contractor's Tender, the Contractor is indebted to the Department for liquidated damages in the amount stated in the schedule.*
2. *The Department may deduct liquidated damages in assessing the amount due to the Contractor under clause [insert number of payment clause].*
3. *The Contractor acknowledges that the amount of the liquidated damages reflects an estimate of the amount paid to the Contractor for providing the apprentice and trainee hours on the project and is commensurate with the interests of the State that are being protected, or that it is not extravagant, unconscionable or out of all proportion to the interests of the State in accepting the Contractor's commitment to the engagement of apprentices or trainees.*

Schedule:

Liquidated damages amount for apprentices and trainees \$ (for example, apprentice hourly rate of pay x number of hours not delivered by the Contractor)³

Unpaid wages

Example clause:

³ Note: This suggested method of calculating the amount of the liquidated damages represents a genuine pre-estimate of the department's damage or is a proportionate amount to the State's interest in the engagement of apprentices if there is a failure to deliver apprentice hours because it seems likely that a contractor would price the delivery of the commitment in this way, and it represents something that the department paid for but did not receive. It is not the only way that the amount can be calculated. The amount should be the subject of contract negotiations with the contractor.

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1. *If the Contractor fails to pay terms and conditions of employment in accordance with the Contractor's Tender (or Contract), the Contractor is indebted to the Department for liquidated damages in the amount stated in the schedule.*
 2. *The Department may deduct liquidated damages in assessing the amount due to the Contractor under clause [insert number of payment clause].*
 3. *The Contractor acknowledges that the amount of the liquidated damages reflects an estimate of the amount paid to the Contractor for providing the terms and conditions of employment on the project and is commensurate with the interests of the State that are being protected, or that it is not extravagant, unconscionable or out of all proportion to the interests of the State in accepting the Contractor's commitment to provide the terms and conditions of employment.*

Schedule:

Liquidated damages amount for failure to pay terms and conditions of employment \$ (for example, difference between Best Practice Principle (BPP) hourly rates and usual hourly x number of hours of work that BPP rates are not paid for, or allowances or superannuation)⁴

Access to information

Example 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.

Definitions

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 Queensland Government Procurement Division of the Department of Energy and Public Works, and 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 information about sanctions

Example 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 the Contractor for the purposes of determining whether to impose demerits or sanctions on the Contractor's business under the Ethical Supplier Mandate. Personal information may be included in the Principal's referrals to the Tripartite 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.

⁴ Note: This suggested method of calculation represents a genuine pre-estimate of the department's damage or is a proportionate amount to the State's interest if there is a failure to pay the promised terms and conditions of employment because presumably that is how the contractor priced the delivery of the commitment, and it represents something that the department paid for but did not receive. It is not the only way that the amount can be calculated. The amount should be the subject of contract negotiations with the contractor.

Appendix 3 – Categories of non-compliance: reference table

To assist both procuring agencies and suppliers in the understanding and application of the *Ethical Supplier Mandate 2021* categories of non-compliance, the below table has been developed⁵. This reference table provides a break-down of the key areas related to the category and links users back to the source of the obligation⁶.

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.

1. Local Benefits				
Types of non-compliance	a) Commitment to employment of local workers	b) Other commitments		Related resources
<i>Examples of non-compliance areas</i>	<ul style="list-style-type: none"> Local workers 	<ul style="list-style-type: none"> Local commitments Local business engagement 		Queensland Procurement Policy (QPP) 2021 Ethical Supplier Mandate (the Mandate) 2021
Applicable evidence types		Example evidence	Source of commitment - examples	Regulator contact details
✓ Compelling evidence	Evidence obtained through investigation, where a regulator outcome is not in consideration (or scope)	<ul style="list-style-type: none"> Audit reports Contract management reports Project closure reports Charter for Local Content outcome reports 	<ul style="list-style-type: none"> Tender documents Contract Contract Management Plan Deed of variation 	<i>Not applicable</i>
✗ Regulator outcome	<i>Not applicable</i>			

⁵ 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.

⁶ Regulators as mentioned in the *Categories of non-compliance: Reference table* refer to the appropriate regulator or law enforcement agency.

		<ul style="list-style-type: none"> ▪ Site personnel register ▪ Site personnel register summary report 	
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2. Apprentices and trainees – (Queensland Government Building and Construction Training Policy and BPP commitments)				
Types of non-compliance	a) Commitment to engagement hours	b) Other commitments	Related resources	
<i>Examples of non-compliance areas</i>	<ul style="list-style-type: none"> ▪ Employment of apprentices ▪ Employment of trainees 	<ul style="list-style-type: none"> ▪ Staff training 	Queensland Government Building and Construction Training Policy (Training Policy) Queensland Indigenous Procurement Policy (QIPP) Queensland Procurement Policy (QPP) 2021 Ethical Supplier Mandate (the Mandate) 2021	
Applicable evidence types		Example evidence	Source of commitment - examples	Regulator contact details
✓ Compelling evidence	Evidence obtained through investigation, where a regulator outcome is not in consideration (or scope)	<ul style="list-style-type: none"> ▪ Audit reports ▪ Contract management reports ▪ Project closure reports ▪ TPAS records ▪ Site personnel register ▪ Site personnel register summary report 	<ul style="list-style-type: none"> ▪ Tender documents ▪ Contract ▪ Contract Management Plan ▪ Deed of variation 	<i>Not applicable</i>
✗ Regulator outcome	<i>Not applicable</i>			

3. Aboriginals and Torres Strait Islander business and engagement

Types of non-compliance	a) Commitment to Indigenous business engagement	b) Indigenous business ownership status-at time of contract signing	Related resources	
<i>Examples of non-compliance areas</i>	<ul style="list-style-type: none"> ▪ Aboriginal or Torres Strait Islander business engagement ▪ Indigenous Economic Opportunities 	<ul style="list-style-type: none"> ▪ Indigenous business ownership 	Queensland Indigenous Procurement Policy (QIPP) Queensland Procurement Policy (QPP) 2021 Ethical Supplier Mandate (the Mandate) 2021	
Applicable evidence types		Example evidence	Source of commitment - examples	Regulator contact details
✓ Compelling evidence	Evidence obtained through investigation, where a regulator outcome is not in consideration (or scope)	<ul style="list-style-type: none"> ▪ Audit reports ▪ Contract management reports ▪ Project closure reports ▪ TPAS records 	<ul style="list-style-type: none"> ▪ Tender documents ▪ Contract ▪ Contract Management Plan ▪ Deed of variation ▪ Indigenous Economic Opportunities Plan (IEOP) 	<i>Not applicable</i>
✗ Regulator outcome	<i>Not applicable</i>			

4. Workplace Health and Safety (WHS) – including BPP commitments

Types of non-compliance	a) Commitment to standards			Related resources
<i>Examples of non-compliance areas</i>	<ul style="list-style-type: none"> ▪ Workplace health and safety ▪ Electrical safety 			Work Health and Safety Act 2011 Electrical Safety Act 2002 Queensland Procurement Policy (QPP) 2021 Ethical Supplier Mandate (the Mandate) 2021
Applicable evidence types		Example evidence	Source of commitment - examples	Regulator contact details
✘ Compelling evidence	<i>Not applicable</i>	<ul style="list-style-type: none"> ▪ F notices ▪ Prohibition notices 	<ul style="list-style-type: none"> ▪ Tender documents ▪ Contract 	WorkSafe Ph: 1300 362 128
✔ Regulator outcome	A breach in this category will require a regulator outcome. Investigating agencies may obtain further evidence to assist the Panel in its consideration	<ul style="list-style-type: none"> ▪ Infringement notices ▪ Stop work order ▪ Court orders ▪ Industrial manslaughter conviction ▪ Corrective action reports ▪ Charter for Local Content outcome reports ▪ Site personnel register ▪ Site personnel register summary report 	<ul style="list-style-type: none"> ▪ <i>Work Health and Safety Act 2011 (Cth)</i> ▪ <i>Electrical Safety Act 2002 (Qld)</i> 	

5. Industrial relations (IR) – including BPP commitments

Types of non-compliance	a) Commitment to Best Practice Principles (BPP)	b) Commitment to standards	Related resources	
<i>Examples of non-compliance areas</i>	<ul style="list-style-type: none"> ▪ Superannuation ▪ Wages ▪ Modern awards ▪ Enterprise agreements ▪ Enforceable undertakings ▪ Sham contracting 	<ul style="list-style-type: none"> ▪ Industrial relations ▪ Industrial relations management plans (IRMP) ▪ Employee entitlements ▪ Superannuation ▪ Wages ▪ Modern awards ▪ Enterprise agreements ▪ Enforceable undertakings ▪ Sham contracting 	<p>Fair Work Act 2009</p> <p>Queensland Procurement Policy (QPP) 2021</p> <p>Ethical Supplier Mandate (the Mandate) 2021</p> <p>Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020 (Qld)</p>	
Applicable evidence types	Example evidence	Source of commitment - examples	Regulator contact details	
<ul style="list-style-type: none"> ✓ Compelling evidence <p style="text-align: center;">and/or</p> <ul style="list-style-type: none"> ✓ Regulator outcome 	<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"> ▪ Underpayment of wages ▪ Underpayment of superannuation ▪ Certain instances of sham contracting 	<ul style="list-style-type: none"> ▪ Pay slips ▪ Bank statements ▪ Superannuation records ▪ Industrial relations management plan ▪ Contravention letter ▪ Letter of caution ▪ Infringement notice ▪ Compliance notice ▪ Court order ▪ FWO notice 	<ul style="list-style-type: none"> ▪ Tender documents ▪ Contract ▪ <i>Fair Work Act 2009</i> (Cth) 	<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"> ✓ Regulator outcome 	<p>For all other matters falling under category 5, a regulator outcome is required</p>			

	Investigating agencies may obtain further evidence to assist the Panel in its consideration	<ul style="list-style-type: none"> Site personnel register Site personnel register summary report 		
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6. Security of payment				
Types of non-compliance	a) Adjudication standards	b) Breaches of the Building Industry Fairness (BIF) Act	Related resources	
<i>Examples of non-compliance areas</i>	<ul style="list-style-type: none"> Supply chain payments Adjudication Payment disputes Judgement debts 	<ul style="list-style-type: none"> Supply chain payments Payment disputes QBCC notices Trade licenses 	The Building Industry Fairness (BIF) Act 2017 Queensland Procurement Policy (QPP) 2021 Ethical Supplier Mandate (the Mandate) 2021	
Applicable evidence types		Example evidence	Source of commitment - examples	Regulator contact details
✘ Compelling evidence	<i>Not applicable</i>	<ul style="list-style-type: none"> Contravention letter Letter of Caution 	<ul style="list-style-type: none"> Tender documents Contract 	Queensland Building and Construction Commission Ph: 139 333
✔ Regulator outcome	A breach in this category will require a regulator outcome. Investigating agencies may obtain further evidence to assist the Panel in its consideration	<ul style="list-style-type: none"> Infringement notice Compliance notice 	<ul style="list-style-type: none"> <i>Building Industry Fairness (BIF) Act 2017</i> (Qld) 	Australian Building and Construction Commission (ABCC) Ph: 1800 003 338

7. Payment standards				
Types of non-compliance	a) Payments not covered by the BIF Act			Related resources
<i>Examples of non-compliance areas</i>	<ul style="list-style-type: none"> Supply chain payments 			Queensland Procurement Policy (QPP) 2021 Ethical Supplier Mandate (the Mandate) 2021
Applicable evidence types		Example evidence	Source of commitment - examples	Regulator contact details
<ul style="list-style-type: none"> ✓ Compelling evidence <p>and/or</p> <ul style="list-style-type: none"> ✓ Regulator outcome 	<p>Evidence obtained through investigation, where a regulator outcome is not in consideration (or scope), 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"> Payment agreements/terms Supplier invoices Bank statements Adjudication records Court order 	<ul style="list-style-type: none"> Tender documents Contract Contract Management Plan Deed of variation 	<p>Queensland Building and Construction Commission</p> <p>Ph: 139 333</p> <p>Australian Building and Construction Commission (ABCC)</p> <p>Ph: 1800 003 338</p>

8. [other] Contractual and policy

Types of non-compliance	a) Other commitments (including not engaging sanctioned suppliers when doing business with government)			Related resources
<i>Examples of non-compliance areas</i>	<ul style="list-style-type: none"> ▪ Social commitments ▪ Environmental commitments ▪ Prioritising 'Buy Queensland first' ▪ Subcontractor non-compliances ▪ Engagement of a sanctioned subcontractor 			Queensland Procurement Policy (QPP) 2021 Ethical Supplier Mandate (the Mandate) 2021
Applicable evidence types		Example evidence	Source of commitment - examples	Regulator contact details
✓ Compelling evidence	Evidence obtained through investigation, where a regulator outcome is not in consideration (or scope)	<ul style="list-style-type: none"> ▪ Audit reports ▪ Contract management reports ▪ Project closure reports 	<ul style="list-style-type: none"> ▪ Tender documents ▪ Contract ▪ Contract Management Plan 	<i>Not applicable</i>
✗ Regulator outcome	<i>Not applicable</i>		<ul style="list-style-type: none"> ▪ Deed of variation ▪ Government policy ▪ Legislation 	

9. Communication and Co-ordination

Types of non-compliance	a) Co-operation with requests			Related resources
<i>Examples of non-compliance areas</i>	<ul style="list-style-type: none"> ▪ Procuring agency requests ▪ QGP Compliance Branch requests 			Queensland Procurement Policy (QPP) 2021 Ethical Supplier Mandate (the Mandate) 2021
Applicable evidence types		Example evidence	Source of commitment - examples	Regulator contact details
✓ Compelling evidence	Evidence obtained through investigation, where a regulator outcome is not in consideration (or scope)	<ul style="list-style-type: none"> ▪ Warning notices 	<ul style="list-style-type: none"> ▪ Tender documents ▪ Contract ▪ Contract Management Plan ▪ Deed of variation 	<i>Not applicable</i>
✗ Regulator outcome	<i>Not applicable</i>			

Appendix 4 – Supplier timelines for responding to breaches

The timeframes are standard best practice:

- where a matter is complex, the supplier can apply for an extension at any stage;
- extensions are granted only when sound reasoning is provided, at the discretion of the procuring agency or the Queensland Government Procurement (QGP) Compliance Branch.

Where possible, to ensure swift communication notifications should be sent to suppliers via email and a record retained.

Step in alleged breach process		Recommended timeframes <i>(from date of issue)</i>	Further comments / advice
Non – compliance in a tender			
Breach Assessment	Response to notice of non-compliance with the Ethical Supplier Mandate and/or Ethical Supplier Threshold.	<ul style="list-style-type: none"> ▪ Ten (10) business days 	<ul style="list-style-type: none"> ▪ The supplier provides further evidence regarding non-compliance and steps taken for rectification (separate from a Show Cause notification). <ul style="list-style-type: none"> – For example, the supplier may be notified via email, phone call, or site visit.
	Referral of non-compliance matter to the Tripartite Procurement Advisory Panel (the Panel)	<ul style="list-style-type: none"> ▪ Five (5) business days 	<ul style="list-style-type: none"> ▪ The procuring agency must refer the declared non-compliance to the Panel for consideration and advice after collecting sufficient evidence to support the breach.
	Notification of outcome	<ul style="list-style-type: none"> ▪ Five (5) – ten (10) business days 	<ul style="list-style-type: none"> ▪ The procuring agency to notify the supplier of the outcome, including (if relevant) the matter's inclusion in the centralised online non-compliance register.
Non – compliance during the term of an existing contract			
Breach Investigation	Notification that a matter has been referred to the appropriate regulator for further investigation	<ul style="list-style-type: none"> ▪ Five (5) business days 	<ul style="list-style-type: none"> ▪ The procuring agency advises the supplier that the matter has been referred to the appropriate regulator (regulatory processes apply).

Step in alleged breach process		Recommended timeframes <i>(from date of issue)</i>	Further comments / advice
	Notification that a matter has been referred to the Panel for further consideration and advice	<ul style="list-style-type: none"> Five (5) business days 	<ul style="list-style-type: none"> The procuring agency advises the supplier that the matter has been referred to the Panel.
Consequences of non-compliance – application of the Ethical Supplier Mandate and Ethical Supplier Threshold			
Notification of Outcome	Response to Show Cause Notice	<ul style="list-style-type: none"> Ten (10) business days 	<ul style="list-style-type: none"> This process is separate from the standard show cause process under Queensland Government contract management practices.
	Response to Extenuating Circumstances Notice	<ul style="list-style-type: none"> Ten (10) business days 	<ul style="list-style-type: none"> The Executive Officer - QGP Compliance Branch issues the Extenuating Circumstances Notice ahead of a referral to the Panel.
	Outcome Notice	<ul style="list-style-type: none"> Five (5) business days 	<ul style="list-style-type: none"> The supplier is notified of the investigation outcome in writing by the procuring agency.
	Lodgement of an Appeal	<ul style="list-style-type: none"> Ten (10) business days 	<ul style="list-style-type: none"> The supplier may appeal the decision maker's decision/s to apply penalties under the Mandate and or the Threshold.
Outcomes / Recommendation	Demerit points	<ul style="list-style-type: none"> Twelve (12) months 	<ul style="list-style-type: none"> Demerit points, once applied, are in place for a set time (up to 12 months). Demerit points ranging from 1-19 do not restrict the supplier from doing business with the Queensland Government.

Step in alleged breach process		Recommended timeframes <i>(from date of issue)</i>	Further comments / advice
	Sanctions	<ul style="list-style-type: none"> Up to - twelve (12) months 	<ul style="list-style-type: none"> Sanctions once applied are in place for a set time (up to 12 months). During this time, a supplier cannot do business with the Queensland Government.
	Publication of information about sanctions	<ul style="list-style-type: none"> Ten (10) business days 	<ul style="list-style-type: none"> Once the supplier has been sanctioned, the procuring agency may choose to enact existing contractual penalties (for example, publication of sanction outcomes). Procuring agencies are encouraged to seek legal advice before enacting these contractual clauses.

Appendix 5 – Ethical Supplier Mandate and Ethical Supplier Threshold overview

