

# Ethical Supplier Mandate: Standard operating procedure '24

Queensland Government Procurement

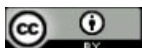


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## The State of Queensland (Department of Energy and Climate) 2024



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### Contact us

Queensland Government Procurement within the Department of Energy and Climate 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](mailto: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.

The Department of Energy and Climate 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.

### Administration

This version of the Procedure replaces the 'Ethical Supplier Mandate: Standard Operating Procedure' and takes effect from 24 May 2024.

## 1. Purpose

The *Ethical Supplier Mandate 2024* (the Mandate) and the *Ethical Supplier Threshold* (the Threshold) are complementary policies and 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.

The purpose of this *Ethical Supplier Mandate Standard Operating Procedure* (the Procedure) is to provide supplementary guidance to government buyers on the application of the Mandate throughout the procurement process, specifically in relation to identifying and referring alleged non-compliances under the Mandate to the Queensland Government Procurement (QGP) Compliance Branch.

This procedure does not preclude Queensland Government buyers from complying with the requirements of the QPP. In accordance with the QPP, buyers are required to establish and maintain robust processes to manage contracts, including performance and renewal.

### This document should be read in conjunction with:

- the *QPP 2023*
- *Ethical Supplier Mandate 2024*
- *Guidelines: Ethical Supplier Mandate 2024*
- *Guidelines: Ethical Supplier Threshold 2024 and*
- *Ethical Supplier Threshold – Standard Operating Procedures 2024.*

The documents are available online at:

<https://www.business.qld.gov.au/running-business/marketing-sales/tendering/supply-queensland-government/ethical-supplier-requirements>

## 2. Scope

This Procedure applies to all Queensland Government procuring agencies managing suppliers subject to the Mandate (refer to procuring agencies within **Appendix 1** – Definitions).

### 2.1 Application of the Mandate

The Mandate was implemented in a phased approach commencing in 2019. As of 1 February 2024, it has expanded to all remaining categories and any future categories as outlined below.

All new tenders and contracts from the dates outlined must apply the Mandate. For contracts signed prior, but varied after these dates, procuring agencies must ensure every effort is made to incorporate the Mandate.

Procuring agencies should identify whether the Mandate applies to the relevant procurement activity by assessing the implementation dates below against the date the alleged non-compliance occurred.

**Table 2.1 – Application of the Mandate**

<b>The Mandate applies to the following procurement categories</b>	
<ul style="list-style-type: none"> <li>• <b>Building, Construction and Maintenance (BCM) in relation to contracts entered on or after:</b></li> </ul>	<ul style="list-style-type: none"> <li>- for budget sector agencies – 1 August 2019</li> <li>- for statutory bodies – 1 February 2022</li> <li>- for Government-Owned Corporations (GOCs), commercial entities<sup>1</sup> and water entities<sup>2</sup> – 31 March 2023</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Transport Infrastructure Services (TIS) in relation to contracts entered on or after:</b></li> </ul>	<ul style="list-style-type: none"> <li>- for budget sector agencies – 1 October 2019</li> <li>- for statutory bodies – 1 February 2022</li> <li>- for GOCs, commercial entities and water entities – 31 March 2023</li> </ul>
<ul style="list-style-type: none"> <li>• <b>General Goods and Services (GGS) in relation to contracts entered on or after:</b></li> </ul>	<ul style="list-style-type: none"> <li>- for budget sector agencies, statutory bodies, GOCs, commercial entities and water entities – 1 February 2024</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Information and Communication Technology (ICT) in relation to contracts entered on or after:</b></li> </ul>	<ul style="list-style-type: none"> <li>- for budget sector agencies, statutory bodies, GOCs, commercial entities and water entities – 1 February 2024</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Medical Goods and Services (Medical) category in relation to contracts entered on or after:</b></li> </ul>	<ul style="list-style-type: none"> <li>- for budget sector agencies, statutory bodies, GOCs, commercial entities and water entities – 1 February 2024</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Social services in relation to contracts entered on or after:</b></li> </ul>	<ul style="list-style-type: none"> <li>- for budget sector agencies, statutory bodies, GOCs, commercial entities and water entities – 1 February 2024</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Any future procurement categories created that fall under the QPP in relation to contracts entered on or after:</b></li> </ul>	<ul style="list-style-type: none"> <li>- for budget sector agencies, statutory bodies, GOCs, commercial entities and water entities (or as otherwise determined) – 1 February 2024</li> </ul>

### 3. What is a non-compliance?

Non-compliance under the Mandate is where a supplier has been found to have breached a Queensland Government policy, legislative or contractual requirement (including a requirement not to breach regulatory laws). Refer to **Section 2.1** in the *Ethical Supplier Mandate 2024*.

<sup>1</sup> Seqwater and Queensland Rail

<sup>2</sup> Mount Isa Water Board and Gladstone Area Water Board

### 3.1 Primary test: establishing non-compliance

A supplier's conduct will be considered non-compliant if the decision maker, on advice from the Tripartite Procurement Advisory Panel (the Panel), considers that 'the supplier knew, or ought to have known', that the conduct was non-compliant.

To assess non-compliance, the Panel deliberates on available evidence to determine whether it is reasonable to expect the supplier should be aware of its contractual obligations, including but not limited to the following:

Evidence considering by Panel regarding supplier
<ul style="list-style-type: none"> <li>• <u>knowledge, awareness and experience in dealing with the Queensland Government's contractual terms and conditions</u> (inclusive of Mandate-related clauses)</li> </ul>
<ul style="list-style-type: none"> <li>• <u>tender documentation</u>, such as submission, letter of acceptance or Formal Instrument of Agreement and the contractual terms and conditions relating to the project.</li> </ul>
<ul style="list-style-type: none"> <li>• <u>ability to review and vary the contract's terms and requirements under the Mandate, where relevant (i.e., improved compliance management).</u></li> </ul>
<ul style="list-style-type: none"> <li>• <u>contract or performance management meetings</u> between the procuring agency and the supplier.</li> </ul>
<ul style="list-style-type: none"> <li>• <u>previous history</u> such as: <ul style="list-style-type: none"> <li>- the number of previously active contracts with the Queensland Government</li> <li>- the number of previous audits conducted by the QGP Compliance Branch.</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• <u>organisational structure and capability</u> supporting capability to meet Mandate/Threshold <ul style="list-style-type: none"> <li>- financial capability (such as supplier annual turnover)</li> <li>- number of employees the supplier engages</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• <u>response to the QGP Compliance Branch's requests for information</u>, including show cause and extenuating circumstances notices.</li> </ul>
<ul style="list-style-type: none"> <li>• <u>recordkeeping</u> (whether the organisation has adequate mechanisms to ensure compliance)</li> </ul>
<ul style="list-style-type: none"> <li>• <u>resources</u> such as whether the supplier has been provided the <i>Building and Construction Training Policy: Evidence Guide</i> by the procuring agency or the QGP Compliance Branch <ul style="list-style-type: none"> <li>- noting this is guide only to support application, not policy.</li> </ul> </li> </ul>

**For example:**

- Suppliers are commonly asked during an audit or investigation about providing evidence of meeting their contractual commitments to a policy.
  - Such as the Threshold, or *Queensland Government Building and Construction Training Policy* (Training Policy).
- Suppliers will often indicate they were not fully aware of what the policy meant or what their commitments to it were.

The Panel does not consider this response in any way alleviates a supplier of their responsibilities in meeting these commitments.

## 3.2 Secondary test: supplier conduct

The Panel and the decision maker may also consider whether the supplier's conduct was deliberate, negligent and/or repeated.

It is important to note that the secondary test is optional and not a requirement for a non-compliance to progress.

## 4. Pre-contract: embedding the Mandate

Procuring agencies must follow the below steps prior to executing a contract with a supplier.

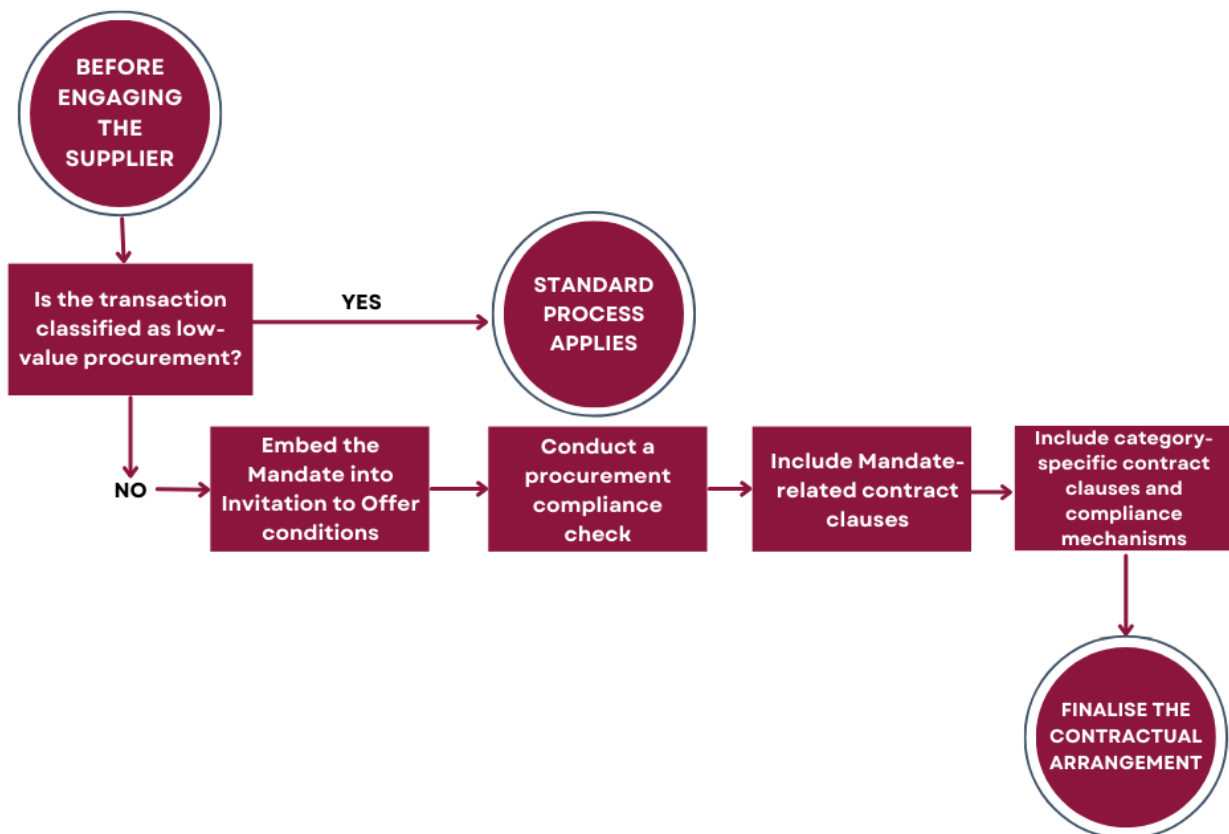


Diagram 4 - Embedding the Mandate

### 4.1 Update invitation to Offer (ITO) conditions

Suppliers tendering for government must be compliant with their contractual obligations under the Mandate.

Once procuring agencies proceed to tender, they must include clauses within the documentation ensuring compliance with the Mandate.

#### Tender documents must include:

- confirmation suppliers will be subject to the Mandate if successful in the tender process,
- confirmation the supplier will cooperate with the following, including providing any requested documents related to compliance with the Threshold to:
  - the QGP Compliance Branch



- procuring agency, and
- any relevant regulatory bodies for compliance and investigative purposes.
- information sharing mechanisms, enabling evaluation panels to contact regulatory bodies as required to verify compliance information about a supplier including but not limited to:
  - Work Health Safety Queensland (WHSQ)
  - Queensland Building and Construction Commission (QBCC)
  - Fair Work Commission (FWC)
  - Fair Work Ombudsman and
  - Australian Taxation Office (ATO).

## 4.2 Conduct a procurement compliance check

The QGP Compliance Branch maintains the Procurement Compliance Portal (the Portal), to record all instances of supplier non-compliance under the Mandate or breach of the Threshold. It is available here: <https://www.forgov.qld.gov.au/complete-supplier-check/>.

When evaluating tender submissions and intending to finalise an arrangement with a preferred supplier, procuring officers must conduct a procurement compliance check of the Portal to ensure that a potential supplier is not the subject of a current sanction.

The Portal will provide:

- current penalties a supplier is subject to, and
- a supplier's full history of non-compliance under the Mandate
  - including any information related to non-compliance under the Mandate where contractually enabled (such as information about liquidated damages).

When considering multiple suppliers, the Portal assists procuring agencies in considering the risk of a supplier approaching sanction.

Sanctioned suppliers will be removed from all pre-qualified supplier lists and will appear as a sanctioned supplier when searched on the Portal.

An overall list of sanctioned suppliers is not available from the Portal.

Rather, procuring officers conduct point in time searches, which includes breach of the Threshold, including any current sanctions.

At the time suppliers are sanctioned this information is distributed to both:

- The owners of pre-qualified registers, and
- The Heads of Procurement Network (HoPN).

All procurement is subject to a risk-based approach. If a preferred supplier has been issued a penalty previously or has active demerit points, the procuring agency must exercise due diligence when engaging the supplier (including subcontractors) proportionate to the risk. All such engagements must be documented and defensible.

Procuring officers must request access to the Portal by completing the access form and submitting that they are a Queensland Government procuring officer for the purposes of the check by using a valid email address.

The Portal keeps a record of all the search results procuring officers have undertaken within their Portal account. Procuring officers may also download and save all search results for recordkeeping purposes.

## 4.2.1 Exemptions

Procuring agencies engaging suppliers do not need to conduct a procurement compliance check prior to awarding a contract, in the following circumstances (see below table).

**Table 4.2.1** – Exemptions from conducting a compliance check

Exemptions from conducting a compliance check
Low-value procurement
<ul style="list-style-type: none"> <li>• If the purchasing threshold of the procuring agency for a procurement activity is below \$20,000 (per purchase or order),               <ul style="list-style-type: none"> <li>- The intent of the <i>Buy Queensland</i> policy and the overarching QPP (including the Mandate and Threshold) to engage with ethically, socially, and environmentally responsible suppliers still applies.</li> <li>- A Portal check is not required.</li> <li>- QGP Compliance Branch will notify Heads of Procurement Network (HoPN) and Chief Procurement Officers (CPOs) when a supplier is sanctioned.</li> <li>- Procuring agencies must refer to notifications from HoPN and CPOs to ensure they do not engage sanctioned suppliers.</li> <li>- Sanctioned suppliers will be removed from pre-registered arrangements e.g., Standing Offer Arrangements (SOAs), and (HoPN) and (CPOs) will be notified.</li> </ul> </li> </ul>
International suppliers
<ul style="list-style-type: none"> <li>• Where the supplier does not have an Australian business presence (e.g., no office established in Australia and no Australian Company Number) the procuring agency will be unable to conduct a procurement compliance check on the Portal.</li> <li>• The Portal is linked to the Australian Business Register (ABR), therefore if the supplier has an Australian Company Number (ACN) or Australian Business Number (ABN), the procuring agency will be able to conduct a procurement compliance check on the Portal.</li> </ul> <p><b>Alternatively:</b></p> <ul style="list-style-type: none"> <li>• Procuring agencies should perform due diligence searches on employment related records, verifying alignment with the intent of the Mandate. The same intent applies to the Threshold.               <ul style="list-style-type: none"> <li>- For example, proof of fair wage, industrial relations laws or policies.</li> </ul> </li> <li>• The results of these enquiries must be documented for recordkeeping and defensible for non-compliance assessment purposes.</li> <li>• When engaging with an international supplier the degree of due diligence should be commensurate with the procurement; for example, high risk or high value procurement would invite a higher degree of scrutiny for alignment with the Queensland Procurement Policy, including the Mandate and the Threshold.</li> </ul>
Suppliers pre-registered on the following arrangements
<ul style="list-style-type: none"> <li>• The Prequalification System of the Building Policy Framework,</li> <li>• The National Prequalification System for Civil (Road and Bridge) Construction Contracts,</li> <li>• Arrangements administrated by General Goods and Services, Department of Energy and Climate, and/or</li> <li>• QBuild as a prequalified supplier</li> </ul>

The QGP Compliance Branch will facilitate the removal of a supplier from the above channels if they have been excluded from doing business with the Queensland Government (suspended or sanctioned).

## 5. Include Mandate-related contract clauses

Once procuring agencies have evaluated tender submissions and selected a preferred supplier to engage, they must embed relevant Mandate clauses into the supplier's contract prior to finalising the engagement.

The Mandate is a contractual mechanism; if not embedded into the contract, it cannot be applied.

Procuring agencies must therefore ensure the contract requires a supplier to:

- declare compliance with the Mandate or Threshold requirements;
- provide information as requested, by the procuring agency or QGP Compliance Branch, relating to compliance with the Mandate or Threshold (to allow for evidence gathering);
- give permission to obtain relevant compliance information from any relevant regulators and/or law enforcement agencies; and
- require its subcontractors to meet these same requirements (refer to **Section 5.1.1**).

For significant projects, (e.g., high value and high risk such as Best Practice Principles (BPP)), procuring agencies should also consider contractually enabling the publication of a sanction under the Mandate outside the Portal (see **Appendix 2** – example clauses for a draft clause on publication of sanctions).

### 5.1 Category-specific clauses

Category lead agencies must have reviewed and updated their standard terms and conditions and standard contract suites or should look at doing so immediately to ensure the whole-of-government penalty framework and any category-specific penalties (see **Section 4.1** within the *Ethical Supplier Mandate 2024*) are reflected within contracts from 1 February 2024. Refer to **Appendix 2** for example clauses.

#### For example:

- ICT category: Procuring officers must embed clauses relating to engaging Small to Medium Enterprises (SMEs). Including these clauses ensures active engagement and procurement opportunities for SMEs.
- BCM & TIS categories: Procuring officers must embed clauses relating to apprentices and trainees under the Training Policy. This ensures the adequate employment of apprentices and trainees, staff training and commitments to Best Practice Principles (BPPs).

The above ensures that Queensland Government's key commitments (such as industry training and commitment to engaging with ethically, environmentally and socially responsible suppliers) is reflected in contracts and actioned under the Mandate should suppliers be found non-compliant.

Procuring agencies must consider more specialised clauses custom to the procurement, as application of Mandate contract clauses may vary depending on the contract, category and need.

#### 5.1.1 Including subcontractors

Principal contractors must use their best endeavours to not engage suppliers that have been sanctioned under the Mandate or the Threshold when doing business with government. Principal contractors who are found to have failed to use best endeavours in their subcontracting practices including engaging sanctioned suppliers may be found non-compliant under the Mandate and subject to penalty.

Procuring agencies should ensure principal contractors include necessary provisions in all subcontractor arrangements applying the Mandate (and Threshold), specifically committing the subcontractor to:

- access to information and
- cooperation with investigating a potential non-compliance.

Refer to **Appendix 2** for these and other example subcontractor clauses.

**Table 5.1.1** – Principal contractors: examples for applying the Mandate to subcontractors outlines examples of what actions a principal contractor might take to ensure subcontractors are covered by the Mandate.

<b>Principal contractors – examples for applying the Mandate to subcontractors</b>	
✓	<u>checking with procuring agencies to ensure the subcontractors engaged on the project are not currently sanctioned.</u> <ul style="list-style-type: none"> <li>- by providing procuring agencies the ABN / ACN's of subcontractors to enable a point in time Portal compliance check.</li> </ul>
✓	<u>ensuring contracts with subcontractors include relevant Mandate-related clauses that:</u> <ul style="list-style-type: none"> <li>- specify a requirement for compliance with the Mandate,</li> <li>- acknowledge that penalties can apply for non-compliance under the Mandate,</li> <li>- provide principal contractors the ability to terminate the contract where non-compliance occurs, and</li> <li>- require the subcontractor to provide information or any relevant documents to demonstrate compliance to the principal contractor or the QGP Compliance Branch as requested.</li> </ul>
✓	<u>requesting and obtaining relevant Mandate (or Threshold) related information:</u> <ul style="list-style-type: none"> <li>- where contractually enabled, the QGP Compliance Branch will request and obtain information relevant to the investigation.</li> <li>- for matters not contractually enabled, it will be the responsibility of the procuring agency and principal contractor to request and obtain relevant information.               <ul style="list-style-type: none"> <li>○ suppliers, including subcontractors, who fail to provide relevant information as requested can be penalised under the Mandate.</li> </ul> </li> </ul>
✓	<u>taking appropriate action if the principal contractor becomes aware that the subcontractor has been non-compliant under the Mandate.</u> <ul style="list-style-type: none"> <li>- advising the contract manager / procuring agency; and</li> <li>- taking any action as per the contract as required.</li> </ul>

Refer to **Appendix 5** for further information on the investigation process.

### 5.1.2 Include compliance mechanisms

In addition to considering the requirements of the QPP when establishing contractual terms, procuring agencies may also include relevant compliance tools as required. This is particularly important when considering risk management in significant and high-risk procurement.

For example:

- Liquidated damages – inclusion of these clauses should be considered where monetary compensation is an appropriate deterrent against suppliers avoiding specific contractual costs (e.g., wages, superannuation, employment of apprentices etc).

- These clauses are intended for use in BPP projects and significant procurement as defined in the QPP. See **Appendix 2** for example clauses.
- Publication of information about sanctions – inclusion of these clauses should be considered where the potential reputational or brand risk is an appropriate deterrent against supplier non-compliance (e.g., international suppliers).

Combined with standard contract management such as regular tracking and reporting, such compliance mechanisms will support buyers in managing unethical behaviour and spot early indicators of non-compliance. It is recommended that procuring agencies seek their own legal advice before applying these specific clauses.

## 5.2 Finalise the contract

The procuring agency must ensure all Mandate commitments are:

- embedded prior to finalising an arrangement,
- clearly stipulated and detailed in nature, and
- measurable.

For commitments which have measurable outcomes e.g., local benefits, these should be specified and included, so audits and investigations can easily occur.

This enables the supplier to have a complete and comprehensive understanding of its obligations and ensures proper contract management of potential non-compliance during and after the contract finalises.

Procuring agencies should also ensure that principal contractors understand their responsibility to enforce the Mandate throughout the supply chain, especially when subcontractors are involved in the project. Some practical examples are provided at **Appendix 6** to assist buyers.

## 6. During the contract: monitoring compliance

Once the preferred supplier has been engaged, conduct the following steps to ensure compliance with contractual terms and the Mandate.

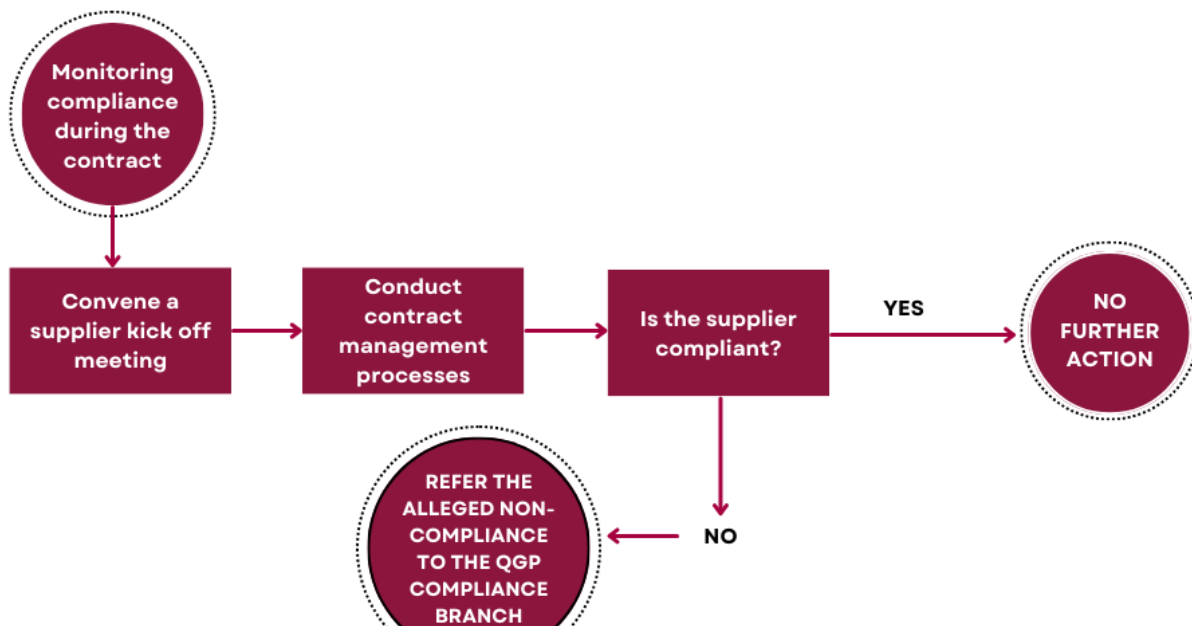


Diagram 6 - Monitoring compliance during the contract

## 6.1 Convene a supplier ‘kick-off’ meeting

Procuring officers should hold a ‘kick-off’ meeting, between all parties subject to the contract at the earliest practical time after execution. Purpose for this meeting is to clearly outline strategies for successfully fulfilling the contract requirements and implementing the Contract Management Plan (CMP) (as per the *Queensland Government Contract Management Framework* and best practice procurement).

### 6.1.1 Establish reporting requirements

It is important that both the procuring agency and the supplier agree to regular reporting and tracking mechanisms, particularly regarding managing non-compliance with Mandate commitments.

Regular reporting is likely to indicate to both parties, potential inability to meet contractual commitments that may be avoided through thorough contract management processes or potential and timely contract variation.

## 6.2 Contract variations

All parties should promptly consider any potential variations to the contract when relevant to ensure the best outcome when delivering for Queensland and to maintain the integrity of the arrangement. Contract variations help to accurately reflect the current market and uphold the best interests of both parties - the supplier and the buyer.

The terms of a contract variation will be considered when establishing non-compliance.

For example:

- If a supplier has committed to engaging apprentices and trainees during the contract, but advises that they are unable to meet this target (e.g., supplier failed to deliver part of the commitment to apprentice and trainee engagement hours) due for example to inability to source apprentices in regional/remote area, and
- can demonstrate they have made all reasonable efforts to do so, this should be communicated to the contract manager as soon as possible.
- Contract variations are considered on a case-by-case scenario. Where not approved, other contract management mechanisms may be considered.

Under the Mandate, if no contract variation has been applied, the supplier in the above scenario will be found in breach of the contract; and therefore, in breach of the Mandate and referred to the Panel for consideration of penalty.

## 6.3 Conduct contract management processes

Successful contract management is critical in the implementation of the Mandate, resulting in more compliant outcomes and highlighting avoidable non-compliance.

Once key performance indicators (KPIs) and regular reporting is established at the beginning of the contract, contract managers can use these to track key measurable outcomes (such as a commitment to apprentices and trainees).

The non-compliance process may be performed at any point in the life cycle of the contract (i.e., on foot or concluded), as appropriate and will commonly occur as an outcome to a contract management process.

While this can occur at any time, it is important to note that specific areas of non-compliance can only be progressed once a project has reached practical completion (i.e., contract end). For example, commitments with targeted, measurable outcomes (such as the Training Policy or local benefits).

In particular, procuring agencies must ensure suppliers are not subject to infringements and resulting penalties from relevant regulators (such as WHS, FairWork Ombudsman and QBCC) during the contract.

For example, evidence of legislative infringements could be obtained:

- from the supplier (i.e., self-reporting);
- Principal Contractor;
- regulator websites (e.g., FairWork outcomes) or
- directly from regulators (where contractually enabled through inclusion of relevant clauses).

If the supplier is subject to a breach of law under the contract, procuring agencies should ensure rectification details are obtained and recorded, or standard contract management processes are exercised, including termination of the contract, should these breaches be significant in nature.

For additional information, refer to the *Queensland Government Contract Management Framework* at <https://www.forgov.qld.gov.au/finance-and-procurement/procurement/procurement-resources/search-for-procurement-policies-resources-tools-and-templates/contract-management-framework>.

## 7. Identifying an alleged non-compliance

Procuring agencies must first ensure the Mandate applies to the contract under which the alleged non-compliance is identified, by referring to **Section 2.1** of this Procedure.

Procuring agencies may identify and refer alleged non-compliances under the Mandate using some of the sources identified in below table.

**Table 7** – How to identify alleged non-compliances

How to identify alleged non-compliances	
Standard contract management	<ul style="list-style-type: none"> <li>• <u>Contract management processes:</u> <ul style="list-style-type: none"> <li>- enable procuring officers to establish performance standards and regularly monitor performance.</li> </ul> </li> <li>• <u>Regular project reporting:</u> <ul style="list-style-type: none"> <li>- reviewing the supplier's performance against contracted commitments can help identify non-compliances.</li> <li>- offers insights into supplier performance and adherence to contractual obligations.</li> <li>- detecting discrepancies or anomalies in performance reports may indicate potential breaches or non-compliances with contractual terms.</li> <li>- performance report findings act as early warnings, prompting follow up, further investigation and corrective action with the supplier as needed.</li> </ul> </li> </ul>
Project manager	<ul style="list-style-type: none"> <li>• <u>Project managers may identify early signs of non-compliance with:</u> <ul style="list-style-type: none"> <li>- local benefits,</li> <li>- Aboriginal peoples and Torres Strait Islander peoples' business engagement clauses or</li> <li>- lack of provision of training etc.</li> </ul> </li> </ul>

<p><b>Outcome of QGP Compliance Branch Audit</b></p>	<ul style="list-style-type: none"> <li>• <u>Non-compliances are identified by outcomes of a QGP Compliance Branch audit.</u> <ul style="list-style-type: none"> <li>- The Buy Queensland Audit Unit (BQAU) audits all Best Practice Principle (BPP) projects and Training Policy projects.</li> </ul> </li> <li>• <u>Non-compliant audits are progressed to the Procurement and Investigation Unit (PIU).</u> <ul style="list-style-type: none"> <li>- The Procurement and Investigation Unit (PIU) are responsible for leading and managing all investigations into allegations of non-compliance under the Mandate (including alleged breaches of the Threshold) and referring regulatory matters to regulators or law enforcement agencies.</li> <li>- Alleged non-compliances are progressed to the Panel for consideration and recommendation of penalty, if any.</li> </ul> </li> <li>• These audits are proactive measures to ensure adherence to standards and regulations governing procurement processes.</li> </ul>
<p><b>Complaints</b></p>	<ul style="list-style-type: none"> <li>• <u>Stakeholders can refer complaints to the Procurement Investigation Unit (PIU) regarding potential non-compliances;</u> <ul style="list-style-type: none"> <li>- including suppliers, current/former employees, unions, competitive suppliers, government agencies or concerned individuals.</li> </ul> </li> <li>• Complaints can trigger investigations by PIU within the QGP Compliance Branch to assess validity and severity of alleged non-compliances. <ul style="list-style-type: none"> <li>- A complaint may be referred directly to the QGP Compliance Branch by forwarding it to <a href="mailto:QPPCompliance@epw.qld.gov.au">QPPCompliance@epw.qld.gov.au</a>, which can prompt an investigation.</li> </ul> </li> <li>• Complaints raised as an alleged non-compliance under 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 agency's existing complaint management processes.</li> </ul>
<p><b>Regulator outcome</b></p>	<ul style="list-style-type: none"> <li>• <u>Regulatory bodies may conduct independent investigations</u> at an industry level to ensure compliance with legal and regulatory requirements governing procurement processes.</li> <li>• Media articles reporting regulator outcomes can also prompt the QGP Compliance Branch to initiate an investigation.</li> </ul>

## 8. Assessment of non-compliance

Non-compliance is assessed on a case-by-case basis by the decision maker, on advice from the Panel, allowing for assessment and taking into account mitigating factors.

### Exception:

- A supplier will not be penalised for failing to comply with a requirement in a contract where it can be established that the procuring agency agreed to vary the contract to remove that requirement.



- However, this does not apply where a supplier is required at law to comply with a requirement, irrespective of the contract terms (for example, an obligation under the WHS Act).

If supplier activity is identified as a possible non-compliance under the Mandate, the procuring agency is responsible for referring it to the QGP Compliance Branch. This process is captured below in **Section 11**.

## 9. Types of non-compliances

For supplier conduct to be considered non-compliant under the Mandate, the conduct must apply to one of the Mandate categories.

The non-compliance categories under the *Ethical Supplier Mandate 2024* are captured in below table.

**Table 9** – Ethical Supplier Mandate 2024 non-compliance categories

Ethical Supplier Mandate 2024 non-compliance categories	
Whole-of-government	
<b>1. Local benefits</b>	
	a) Commitment to employment of local workers b) Other commitments
<b>2. Apprentices and trainees – Queensland Government Building and Construction Training Policy and BPP commitments</b>	
	a) Commitment to engagement hours b) Other commitments
<b>3. Aboriginal and Torres Strait Islander peoples’ business and engagement</b>	
	a) Commitment to Indigenous business engagement b) Indigenous business ownership status – at time of contract signing
<b>4. Workplace Health and Safety (WHS) – including BPP commitments (excluding ICT category)</b>	
	a) Commitment to standards
<b>5. Industrial relations (IR) – including BPP commitments</b>	
	a) Commitment to Best Practice Principles (BPP) b) Commitment to standards
<b>6. Security of payment</b>	
	a) Adjudication of standards b) Breaches of the Building Industry Fairness (BIF) Act
<b>7. Payment standards</b>	
	a) Payments not covered by the BIF Act
<b>8. [other] Contractual and policy</b>	
	a) Other commitments
<b>9. Communication and Co-ordination</b>	
	a) Co-operation with requests

<b>10. Ethical Supplier Threshold</b>
a) Demerits under the Threshold
<b>Category-specific penalty framework</b>
<b>Building and Maintenance and Transport Infrastructure Services</b>
<b>11. Apprentices and Trainees – Queensland Government Building and Construction Training Policy and BPP Commitments</b>
a) Commitment to engagement hours b) Other commitments
<b>12. Security of payment</b>
a) Adjudication standards
<b>13. Aboriginal peoples and Torres Strait Islander peoples' business and engagement</b>
a) Commitment to indigenous business engagement b) Indigenous business ownership status – at time of contract signing
<b>GGS, Medical &amp; Social Services</b>
<b>14. Industry training</b>
a) Commitment to building industry capability and capacity ( <i>including a commitment to regional and rural development</i> )
<b>ICT</b>
<b>15. Online and digital resources</b>
a) Commitment to online standards, policies and legislation
<b>16. Engagement to Small to Medium Enterprises (SMEs)</b>
a) Commitment to engagement of small to medium enterprises (SMEs)
<b>Social Services</b>
<b>17. Compliance with licensing</b>
a) Commitment to engaging suppliers with appropriate qualification / licenses b) Compliance with quality standards for human services including Human Services Quality Framework (HSQF)
<b>18. Compliance with funding arrangements</b>
a) Commitment to contractual funding agreement, including misuse or unacquitted funds

Refer to the *Ethical Supplier Mandate 2024* for the category descriptions. Where contracts were entered into between 1 August 2019 and 1 September 2021 the categories as outlined in **Section 2.2** of the *Ethical Supplier Mandate 2019* should be applied. Refer to the *Ethical Supplier Mandate 2019* for the category descriptions.

## 10. Penalty framework under the Mandate

Procuring agencies must identify whether there is an alleged non-compliance by referring to *Ethical Supplier Mandate 2024*, **Section 4.1 Categories of non-compliance and applicable demerits**.

Procuring agencies must use this framework to identify whether a supplier is fulfilling their contractual obligations as agreed, and if not, the extent to which those obligations are not being fulfilled.

Penalties can be identified as minor (2 demerits), moderate (5 demerits), major (10 demerits) and aggravated (20 demerits). A supplier accumulating 20 demerits, within a 12-month timeframe, may be applicable to a sanction, excluding the supplier from tendering with Queensland Government for a set period, as determined by the decision maker upon recommendation from the Panel.

Aggravated penalties and updated categories of non-compliance can only be applied to contracts entered on or after the date the *Ethical Supplier Mandate 2021* policy came into effect on 1 September 2021.

For contracts entered into before these dates, refer to the types of non-compliance as outlined under the *Ethical Supplier Mandate 2019*.

For further information on commitments for compliance, including applicable evidence types, example evidence and sources of commitment, refer to *Guidelines: Ethical Supplier Mandate*, **Appendix 3 – Categories of non-compliance: reference table**.

## 10.1 Category-specific penalties

New category-specific penalties can only be applied to contracts in the respective categories entered on or after the date the *Ethical Supplier Mandate 2024* policy came into effect for those categories, on 1 February 2024:

- [General Good and Services \(GGS\)](#)
- [Medical](#)
- [Information and Communication Technology \(ICT\)](#)
- [Social Services](#)

## 11. Referring alleged non-compliance to the QGP Compliance Branch

For 18 months from 1 October 2023, the QGP Compliance Branch is responsible for managing investigations into potential non-compliance under the Mandate (i.e., alleged non-compliance) including referring regulatory matters to regulators or law enforcement agencies, where necessary.

### 11.1 Collating information

Where a procuring agency has sufficient information and/or evidence indicating that the supplier is non-compliant, they must:

- record their allegation; and
- refer the matter to the QGP Compliance Branch within five (5) business days of identification, along with any supporting evidence obtained during the tender or contract enquiry.

The below (or **Appendix 4**) can be used as a guide on what information can be provided when referring non-compliances to the QGP Compliance Branch.

**Table 11.1** – Information to consider when referring an allegation

Information to consider when referring an allegation	
<b>Scope</b>	<ul style="list-style-type: none"> <li>• When did the alleged non-compliance occur (e.g., date range of when the conduct occurred)?</li> </ul>
<b>Project</b>	<ul style="list-style-type: none"> <li>• What Queensland Government project (or contract / service agreement) is/was the supplier/s working on when the conduct occurred?</li> </ul>

	<ul style="list-style-type: none"> <li>- Who is/was the procuring agency managing the contract?</li> <li>- What is/was the project?</li> <li>- Contract reference number (if known).</li> </ul>
<b>Type</b>	<ul style="list-style-type: none"> <li>• What kind of alleged non-compliance is it (e.g., failure to comply with the <i>Training Policy</i>)?</li> </ul>
<b>Contract</b>	<ul style="list-style-type: none"> <li>• A copy of the contract relating to the project/activity on which the alleged non-compliance occurred or is related to.</li> </ul>
<b>Source</b>	<ul style="list-style-type: none"> <li>• How did you become aware of the allegation?</li> </ul>
<b>Impact</b>	<ul style="list-style-type: none"> <li>• What was the scope of the impact? For example, how many people are affected, scale of underpayments?</li> </ul>
<b>Evidence</b>	<ul style="list-style-type: none"> <li>• What evidence, if any, supports the allegation?</li> </ul>
<b>Rectification</b>	<ul style="list-style-type: none"> <li>• Is there any known rectification?</li> </ul>
<b>Media</b>	<ul style="list-style-type: none"> <li>• Is there any available media (e.g., Fair Work statements or news releases)</li> </ul>
<b>Single Point of Contact (SPoC)</b>	<ul style="list-style-type: none"> <li>• A preferred contact from: <ul style="list-style-type: none"> <li>- the referring agency and</li> <li>- the supplier</li> </ul> </li> </ul> <p>to enable the QGP Compliance Branch to seek further clarification if required.</p>

Procuring agencies may use either **Table 11.1** or **Appendix 4: Non-compliance assessment checklist** to collate necessary information regarding the alleged non-compliance prior to referring it to the QGP Compliance Branch.

These guidance materials are not mandatory and procuring officers may use them as a guide to ensure the alleged non-compliance is:

- in scope of the Mandate,
- refers to a specific category of non-compliance, and
- to consider the likely severity of the non-compliance.

## 11.2 Referring an alleged non-compliance

The procuring agency should refer all relevant information and/or evidence (as outlined in either **Table 11.1** or **Appendix 4: Non-compliance assessment checklist**, provided as guidance only) relating to the alleged non-compliance under the Mandate to PIU for investigation via:

- email: [QPPCompliance@epw.qld.gov.au](mailto:QPPCompliance@epw.qld.gov.au) or,
- phone: 1300 10 50 30 (Option 1).

The QGP Compliance Branch, specifically PIU, can discuss the suspected non-compliance and provide informal advice to procuring agencies on whether the allegation is in scope of the Mandate.

This enables the QGP Compliance Branch to then:

- review the matter and provide advice; and
- refer to the PIU for further investigation (if required).

The steps that procuring agencies need to undertake to fulfil their obligations under the Mandate conclude at **Section 11** of this procedure. Refer to **Appendix 5** for further information on the responsibilities of QGP Compliance Branch in investigating an alleged non-compliance.

## Appendix 1: Definitions

Term	Description
<b>Breach</b>	A failure by the supplier to comply with one or more requirements of the Ethical Supplier Threshold as determined by a regulator or the decision maker.
<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 non-compliance under the Mandate or breach of the Threshold 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 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 breach 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 non-compliance. Procedural fairness will still apply and suppliers will have a chance to challenge an allegation or rectify a non-compliance.</li> </ul>
<b>Complainant</b>	The person who has made a complaint regarding an alleged non-compliance under 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 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 and Clean Economy Jobs, and</li> <li>– the Premier.</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 Climate.
<b>Decision maker</b>	The head of the procuring agency or such suitably qualified and senior delegate, to make decisions regarding whether a non-compliance under the Ethical Supplier Mandate or a breach of the Ethical Supplier Threshold occurred from the dates the policies apply (following recommendation from the Tripartite Procurement Advisory Panel) and whether a penalty in the form of demerits and or a sanction should be applied.
<b>Ethical Supplier Threshold</b>	<p>The Ethical Supplier Threshold described in the <i>Queensland Procurement Policy</i>, that is, whether a supplier has on or after 1 August 2019:</p> <ul style="list-style-type: none"> <li>(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></li> <li>(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</i></li> </ul>

Term	Description
	<p><i>Relations Act</i>, or failed to pay employment related levies, or other payments, established under Queensland legislation</p> <ul style="list-style-type: none"> <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 <i>Labour Hire Licensing Act 2017</i>, 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 (including for people with disability, 'suppliers' must provide award-based wages (using the Supported Wage System where appropriate)).</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>Investigation</b>	<p>An investigation into alleged non-compliance under the Ethical Supplier Mandate and/or breach of the Ethical Supplier Threshold.</p> <ul style="list-style-type: none"> <li>– From 1 October 2023 for a period of 18 months, the QGP Compliance Branch is responsible for leading and managing all investigations and referring regulatory matters to regulators or law enforcement agencies, where necessary.</li> <li>– When the QGP Compliance Branch is conducting the investigation, it assumes the requisite authority, roles and function for the duration of the compliance process under the Mandate (e.g., issuing requests for information and show cause, and determining and referring alleged breaches to the Panel).</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>Non-compliance</b>	<p>A failure by the supplier to comply with a policy, legislative or contractual requirement as set out in <b>Section 4.1</b> '<i>Categories of non-compliance and applicable demerits</i>' (within the <i>Ethical Supplier Mandate 2024</i>) or <b>Section 2.2</b> '<i>Types of non-compliance</i>' (within the <i>Ethical Supplier Mandate 2019</i>) where the supplier knew or ought to have known the conduct was non-compliant as decided by the decision maker, on advice from the Panel. This may include, but is not limited to, where the decision maker considers that the supplier's conduct was deliberate, negligent, or repeated.</p>
<b>Policy requirement</b>	<p>A requirement of:</p> <ul style="list-style-type: none"> <li>– the <i>Queensland Procurement Policy</i> (QPP)</li> </ul>

Term	Description
	<ul style="list-style-type: none"> <li>– the <i>Queensland Government Procurement Strategy</i></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 affect 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>Pre-qualified supplier</b>	<p>A pre-qualified supplier means a supplier registered with:</p> <ul style="list-style-type: none"> <li>– the Prequalification System of the Building Policy Framework</li> <li>– the National Prequalification System for Civil (Road and Bridge) Construction Contracts</li> <li>– arrangements administered by General Goods and Services, Department of Energy and Climate; or</li> <li>– QBuild as a prequalified supplier.</li> </ul>
<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 <i>Building Policy Framework</i> 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 can include:</p> <ul style="list-style-type: none"> <li>– suspending a supplier’s prequalification for a defined period</li> <li>– making a supplier ineligible for contract award for a defined period</li> <li>– not exercising contract extension options</li> <li>– suspending a supplier from any Queensland Government panel or contracting framework for a defined period and</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>

Term	Description
	<ul style="list-style-type: none"> <li>– The definition of ‘supplier’ includes but is not limited to the definition within the QPP.</li> <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 non-compliance by their subcontractors, except where the supplier has taken reasonable action to prevent non-compliance 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, unions and chaired by an independent government appointee having substantial experience in relevant fields.</p> <ul style="list-style-type: none"> <li>– Initial non-compliance is 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 non-compliance.</p>



## Appendix 2: Example contract clauses incorporating the Mandate

**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.

The following categories have example contract templates available online that include clauses for the Mandate and Threshold:

- [Building and Construction Maintenance \(BCM\)](#); and
- [Transport Infrastructure Services \(TIS\)](#)

The following categories have example contract templates available online that at the time of publication, do not include the Mandate:

- [General Goods and Services \(GGS\)](#)
- [Information and Communication Technology \(ICT\)](#) and
- [Social Services](#).

The example clauses below are generic and provided as a starting point for the remaining categories of spend (and any future categories that may be established) following the expansion of the Mandate from 1 February 2024.

### Application of the Mandate

#### Contractor clause:

*The supplier acknowledges that a failure to comply with the policies that apply to 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 under this contract.*

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

#### Subcontractor clause:

*The supplier acknowledges that a failure to comply with the Principal's policies that apply to 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.*

### Definitions

Add these new definitions into the Definitions and Interpretation schedule or document within the contract:

**Ethical Supplier Threshold** means the Ethical Supplier Threshold described in Clause 19 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 Climate, 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.

## Industry training

### Example clause:

*The supplier acknowledges government's commitment to building industry capability and capacity, including the commitment to regional and rural development as captured under the Ethical Supplier Mandate. The failure to comply with the training requirements outlined in the supplier's contract with the Government Department or Instrumentality, can result in the imposition of a demerit or sanction under the Ethical Supplier Mandate, in addition to any other remedies available under this contract.*

## Investigating a potential non-compliance

### Example clause:

*The supplier acknowledges the procuring agency managing the contract and/or the Queensland Government Procurement Compliance Branch are responsible for managing investigations into potential non-compliance under the Ethical Supplier Mandate and/or breach of the Ethical Supplier Threshold and referring regulatory matters to regulators or law enforcement agencies, where necessary. The supplier acknowledges that the Queensland Government Procurement Compliance Branch, when conducting the investigation, assumes the requisite authority, roles and function of the procuring agency for the duration of the compliance process under the Ethical Supplier Mandate.*

## Access to information

### Contractor clause:

*The Contractor authorises the relevant Government Department or Instrumentality to obtain information 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.*

### Subcontractor 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.*

## Publication of information about sanctions

### Contractor 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 Government Department or Instrumentality 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 Government Department or Instrumentality's referrals to the Tripartite Procurement Advisory Panel for the making of a recommendation about non-compliance and penalty under the Ethical Supplier Mandate and to the decision maker, for the purposes of making a decision about non-compliance and penalty.*

### Subcontractor 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 Procurement Advisory Panel for the making of a recommendation about non-compliance and penalty under the Ethical*

Supplier Mandate and to the decision maker, for the purposes of making a decision about non-compliance and penalty.

## Liquidated damages: BPP projects and significant procurement

**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)<sup>1</sup>

### Unpaid wages

#### Example clause:

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)<sup>2</sup>

<sup>1</sup> 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.

<sup>2</sup> 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: Applying the Mandate to different types of contracts

### a) Standard Queensland Government contracts

Standard contracts in the context of the Mandate, 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. The procuring agency is responsible for ensuring all contracts within the scope of the Mandate include the appropriate Mandate clauses.

Where the Mandate applies, procuring agencies must refer matters to the QGP Compliance Branch who must investigate and determine whether there is compelling evidence to indicate that the non-compliance occurred.

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

All engagements established from a SOA, on each occasion, forms a new contract. The procuring agency is responsible for ensuring all tender documents and contracts within the scope of the Mandate include the appropriate related Mandate clauses.

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

The QGP Compliance Branch will facilitate the removal of suppliers sanctioned under the Mandate (or Threshold) from active panels. This process eliminates the need for procuring agencies to perform pre-contractaward 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 Mandate 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.

When engaging an international supplier, the degree of due diligence should be commensurate with the procurement; for example, high risk or high value procurement would invite a higher degree of scrutiny for alignment with the Queensland Procurement Policy, including the *Ethical Supplier Mandate* and *Ethical Supplier Threshold*.

### d) Joint ventures

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

Where a joint venture is identified as non-compliant, QGP Compliance Branch will be responsible for conducting the non-compliance process individually with each supplier. At the conclusion of the investigation, QGP Compliance Branch will consider the evidence and any responses to the Show Cause process to determine the likely responsible supplier. QGP Compliance Branch has discretion to escalate the non-compliant activity under the Mandate 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 Mandate are inserted into the supplier's contract. This requirement also applies to large organisations that have pre-defined contract terms.

## Appendix 4: Non-compliance assessment checklist

### *Is the non-compliance in scope of the Mandate?*

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

This checklist is guidance only. Procuring agencies are encouraged to use **Table 11.1** and/or this checklist to:

- assess whether a non-compliance may be considered a non-compliance under the Mandate, and
- assist in collating and referring relevant evidence and information to PIU.

<b>Date completed:</b>	enter date
<b>Completed by:</b>	procuring officer name
<b>Supplier ABN/ACN:</b>	XXXX XXX XXX
<b>Supplier name:</b>	business/organisation
<b>Contract reference:</b>	contract name/number

Assessment item	Test
Did the non-compliance occur on a Queensland Government contract?	<input type="checkbox"/> <b>Yes</b> <span style="margin-left: 150px;"><input type="checkbox"/> <b>No</b></span> <i>Essential</i>
Does the Mandate apply to the procuring agency subject to the contract?	<input type="checkbox"/> <b>Yes</b> – Building Construction and Maintenance (BCM) <input type="checkbox"/> <b>Yes</b> – Transport Infrastructure and Services (TIS) <input type="checkbox"/> <b>Yes</b> – General Goods and Services (GGS) <input type="checkbox"/> <b>Yes</b> – Information and Communication Technology (TIS) <input type="checkbox"/> <b>Yes</b> – Medical Goods and Services (Medical) <input type="checkbox"/> <b>Yes</b> – Social Services
Did the contract commence after the Mandate came into effect?  <b>dd / mm / yyyy</b> [date contract was signed]	<input type="checkbox"/> <b>Yes</b> <span style="margin-left: 150px;"><input type="checkbox"/> <b>No</b></span> <i>Refer to <b>Section 2.2</b> in the <i>Ethical Supplier Mandate 2024</i> or <i>Guidelines: Ethical Supplier Mandate</i></i> <span style="margin-left: 100px;"><i>Other – n/a</i></span>
Does a variation apply to this contract?	<input type="checkbox"/> <b>Yes</b> <span style="margin-left: 150px;"><input type="checkbox"/> <b>No</b></span>

<p>Does the non-compliance relate to a varied contract clause?</p>	<p><input type="checkbox"/> <b>Yes</b> <span style="margin-left: 200px;"><input type="checkbox"/> <b>No</b></span></p>	
<p>Where the non-compliance relates to legislation, state the relevant section and Act that may apply:</p>	<p><i>[insert Act and section details]</i></p>	
<p>Identify a category the non-compliance may relate to:</p>	<p style="text-align: center;"><b><u>Whole-of-government non-compliance categories</u></b></p> <p><input type="checkbox"/> <b>1 a) Local Benefits –</b> commitment to employment of localworkers</p> <p><input type="checkbox"/> <b>1 b) Local Benefits –</b> other commitments</p> <p><input type="checkbox"/> <b>2 a) Aboriginal and Torres Strait Islander business and engagement –</b> commitment to Indigenous</p> <p><input type="checkbox"/> <b>2 b) Aboriginal and Torres Strait Islander business and engagement –</b> Indigenous business Ownership status – <i>at time of contract signing</i></p> <p><input type="checkbox"/> <b>3.) Workplace Health and Safety –</b> commitments to standards</p> <p><input type="checkbox"/> <b>4 a) Industrial relations –</b>commitment to Best Practice Principles (excluding ICT)</p> <p><input type="checkbox"/> <b>4 b) Industrial relations –</b> commitment to standards</p> <p><input type="checkbox"/> <b>5.) Security of payment –</b> Payment standards within the supply chain</p> <p><input type="checkbox"/> <b>6.) [other] Contractual and policy –</b> other commitments</p>	<p style="text-align: center;"><b><u>Category-specific non-compliance categories</u></b></p> <p><input type="checkbox"/> <b>BCM/TIS 10 a) Apprentices and Trainees –</b> commitment to engagement hours</p> <p><input type="checkbox"/> <b>BCM/TIS 10 b) Apprentices and Trainees –</b> other commitments</p> <p><input type="checkbox"/> <b>BCM/TIS 11 a) Security of payment –</b> Adjudication standards</p> <p><input type="checkbox"/> <b>BCM/TIS 11 b) Security of payment –</b> breaches of the Building Industry Fairness (BIF) Act</p> <p><input type="checkbox"/> <b>BCM/TIS 12 a) Aboriginal and Torres Strait Islander business and engagement –</b> Indigenous business ownership status – <i>at time of contract signing</i></p> <hr/> <p><input type="checkbox"/> <b>GGs/ Medical/ ICT/ SS 13) Industry training –</b> Commitment to building industry capability and capacity (including a commitment to regional and rural development)</p> <hr/> <p><input type="checkbox"/> <b>ICT 14 a) Online and digital resources –</b> Commitment to online standards, policies and legislation</p> <p><input type="checkbox"/> <b>ICT 15 a) Commitment to engagement of small to medium enterprises (SMEs)</b></p>

	<p><input type="checkbox"/> <b>7.) Communication and cooperation</b> – cooperation with requests</p> <p><input type="checkbox"/> <b>8.) Ethical Supplier Threshold (the Threshold)</b> – Demerits under the Threshold</p> <p><input type="checkbox"/> <b>9.) Queensland Government Supplier Code of Conduct</b></p> <p>– Commitment to engagement of small to medium enterprises</p> <hr/> <p><input type="checkbox"/> <b>Social Services 16 a) Compliance with licensing</b> – Commitment to engaging suppliers with appropriate qualification/licenses</p> <p><input type="checkbox"/> <b>Social Services 16 b) Compliance with licensing</b> – Compliance with quality standards for human services including HSQF</p> <p><input type="checkbox"/> <b>Social Services 17) Compliance with funding agreements</b> – Commitment to contractual funding agreement, including misuse or unacquitted funds</p>
<p>Identify the contract clause the non-compliance relates to:</p>	<p><i>[insert clause]</i></p>
<p>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?</p> <p><i>If yes, provide explanation and evidence:</i></p>	<p><input type="checkbox"/> <b>Yes</b> <span style="margin-left: 200px;"><input type="checkbox"/> <b>No</b></span></p> <p><i>[Insert reasoning]</i></p>
<p>Do you believe sufficient information(or evidence) is available to progress the matter under the Mandate?</p>	<p><input type="checkbox"/> <b>Yes</b> <span style="margin-left: 200px;"><input type="checkbox"/> <b>No</b></span></p>
<p><i>If referring the matter to the QGP Compliance Branch, refer to <b>Table 11.1</b> for information and/or evidence to be collated.</i></p> <p>Information and/or evidence collated?</p>	<p><input type="checkbox"/> <b>Yes</b> <span style="margin-left: 200px;"><input type="checkbox"/> <b>No</b></span></p>
<p><b>Is the non-compliance in scope of a non-compliance under the Mandate?</b></p>	
<p><input type="checkbox"/> Yes <span style="margin-left: 100px;"><input type="checkbox"/> No</span></p>	
<p><b>If yes, forward the non-compliance to the QGP Compliance Branch via <a href="mailto:QPPCompliance@epw.qld.gov.au">QPPCompliance@epw.qld.gov.au</a></b></p>	



## Appendix 5: Investigating an alleged non-compliance

### 1. Background

Executive Government approved an investigative solution to assist with the expansion of the Mandate for an initial 18-month period commencing from 1 October 2023.

As a result, the QGP Compliance Branch, specifically the PIU, is responsible for leading and managing all investigations into allegations of non-compliance under the Mandate (including alleged breaches of the Threshold) and referring regulatory matters to regulators or law enforcement agencies, where necessary.

The PIU evaluates whether there is evidence to establish the alleged non-compliance and will ensure the scale of the investigation is commensurate with the complexity and significance of the alleged non-compliance.

When the QGP Compliance Branch is conducting the investigation, it assumes the requisite authority, roles and function for the duration of the compliance process under the Mandate.

The below process map highlights the QGP Compliance Branch investigation and Ethical Supplier Mandate processes.

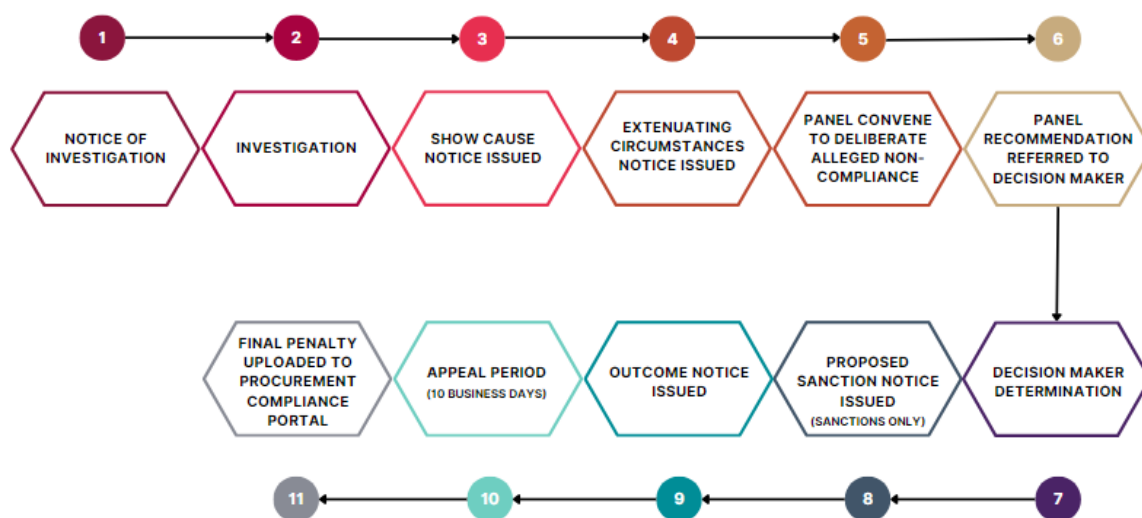


Diagram 1 - QGP Compliance Branch investigation process

### 2. Opportunities for procedural fairness

Suppliers will be provided procedural fairness opportunities at three stages throughout the investigation and decision process (four if a sanction is considered):

- Show Cause Notice
- Extenuating Circumstances Notice
- Proposed Sanction Notice (only issued when a sanction is proposed) and
- Appeal.

The supplier is encouraged to, and has the right to, respond to allegations of non-compliance at each stage and provide reasonings for same. The Mandate is intended to hold suppliers to their contractual

commitments and to drive behavioural change; it is not intended to penalise one-off honest mistakes or minor oversights which are promptly corrected.

## 2.1 Show Cause Notice

Where the PIU considers there is sufficient evidence to support an alleged non-compliance, it will provide the supplier with an opportunity to respond via a *Show Cause Notice* (SCN). The SCN is an opportunity for the supplier to provide further information about the non-compliance and any other details it would like the Panel to consider.

The PIU will consider the response to the SCN and progress the matter to the Strategy and Coordination Unit (SCU) for preparation of referral to the Panel where the evidence is assessed as non-compliance with the Mandate commitment. The supplier will be advised of the investigation outcome via an investigation outcome notice (issued via email where possible).

## 2.2 Extenuating Circumstances Notice

The SCU will issue the supplier with an *Extenuating Circumstances Notice* (ECN) (via email where possible).

The ECN provides the supplier with an opportunity to explain unforeseen or extraordinary circumstances that may have contributed to the non-compliance. These circumstances generally involve unforeseen events beyond the supplier's control. However, the ECN does not provide the supplier with an opportunity for the supplier to dispute the non-compliance or provide further evidence.

### 2.2.1 Referral to the Panel

After the procedural fairness process, the matter will be referred to the Panel for deliberation and recommendation.

In forming its recommendations to the decision maker, the Panel reviews all relevant facts of the investigation and circumstances surrounding the non-compliance. The Panel has the discretion to recommend a penalty consistent with the type of non-compliance. This may include demerits and/or a sanction.

Once a recommendation has been made, the matter is referred to the decision maker.

### 2.2.2 Decision maker

The decision maker for imposing penalties under the Mandate will be the head of the procuring agency or such suitably qualified and senior delegate, including delegation to the Director-General or Deputy Director-General within the Department of Energy and Climate.

The decision maker must formally issue the supplier an *Outcome Notice* (ON) whether or not penalties are issued.

## 2.3 Proposed Sanction Notice

If the decision maker makes a decision to sanction a supplier, the decision maker must issue the supplier with a *Proposed Sanction Notice* prior to the sanction being applied.

The *Proposed Sanction Notice* (PSN) formally informs the supplier about the exact terms of the potential sanction to be applied under the Mandate and provides the supplier with a chance to contest the proposed sanction. The PSN details the non-compliance, outlines the proposed sanctions and its duration, and sets a ten-business-day window for the supplier to respond.

### 2.3.1 Outcome Notice

The decision maker must issue the supplier with an ON after a decision has been made. The ON should include information about the penalty issued, appeal options and the expiration date for the demerits and/or sanction.

## 2.4 Appeal

Suppliers can appeal the decision if they believe that:

- the process outlined in the Mandate has not been followed,
- the show cause and extenuating circumstances response, or specific supporting evidence were not considered in the original decision, or
- the decision was not aligned with the penalty guidelines.

The appeal process is a review of the process and outcome, not an opportunity to revisit the facts of the non-compliance. If an appeal is received, a reconstituted Panel, comprising of five new Panel members is convened.

The decision maker must not be the same person as the original decision-maker. The decision maker responsible for the appeal decision is another head of the procuring agency or such suitably qualified and senior delegate, such as the Director-General or Deputy Director-General within the Department of Energy and Climate.

## 3. Penalty and the Procurement Compliance Portal

Once a penalty decision is finalised and issued, the decision maker must notify the QGP Compliance Branch to upload the penalty onto the Portal.

If a supplier has been sanctioned, the HoPN will also be notified via email.

## Appendix 6 – Examples of measure outcomes

The below table provides examples of measurable outcomes against contractual Mandate commitments. Refer also to **Appendix 3** within the *Guidelines: Ethical Supplier Mandate*.

Queensland Government contractual commitments in the Mandate	Measurable outcome
<p><b>Local benefits</b></p> <ul style="list-style-type: none"> <li>‘local benefits’ approach as outlined in the QPP.</li> <li>apply a weighting between 10 and 30 per cent.</li> </ul> <p><b>Aboriginal peoples and Torres Strait Islander peoples’ business and engagement</b></p> <ul style="list-style-type: none"> <li>increase government procurement with Aboriginal and/or Torres Strait Islander businesses to three per cent of ‘addressable spend’ as per the QPP and the Queensland Indigenous Procurement Policy (QIPP).</li> </ul>	<ul style="list-style-type: none"> <li><u>Assess supplier compliance against contractual commitment to local benefits in line with regular contract management reporting:</u> <ul style="list-style-type: none"> <li>For example, a three-year contract with a commitment to using XX local subcontractors and XX apprentices, yearly reporting would provide a compliance forecast.</li> <li>This also allows for communication of early concerns for appropriate management including potential contract variation (for example, usual subcontractors unavailable due to illness or market shortage).</li> </ul> </li> </ul>
<p><b>Aboriginal peoples and Torres Strait Islander peoples’ business and engagement</b></p> <ul style="list-style-type: none"> <li>Indigenous business ownership status – at time of contract signing.</li> </ul>	<ul style="list-style-type: none"> <li><u>To be eligible for QIPP, the Queensland Government defines an Indigenous owned business as:</u> <ul style="list-style-type: none"> <li>at least 50 per cent owned by Aboriginal and/or Torres Strait Islander person/s; and</li> <li>its main business location is based in Queensland.</li> </ul> </li> <li>Suppliers can provide proof of eligibility in the form of registration with the following QIPP recognised registers:           <ul style="list-style-type: none"> <li>Supply Nation,</li> <li>Black Business Finder or</li> <li>Office of the Registrar of Indigenous Corporations (ORIC) Corporations Register.</li> </ul> </li> </ul>
<p><b>Security of payment</b></p> <ul style="list-style-type: none"> <li>Payment standards within the supply chain</li> </ul>	<ul style="list-style-type: none"> <li><u>Assess supplier compliance against pre-agreed payment terms as contractually committed:</u> <ul style="list-style-type: none"> <li>Supplier failed to meet their pre-agreed payment obligations, as determined by audit or complaint finding. For example, invoices and/or receipts in dispute.</li> <li>Evidence of doctored payment information (for example, invoicing with altered dates).</li> <li>Evidence of adverse judgement related to payment related to the contract.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ Through a successful small claims action under the <i>Fair Work Act 2009</i>.</li> </ul>
<p><b>Industry training</b></p> <ul style="list-style-type: none"> <li>• Commitment to building industry and capability and capacity (including a commitment to regional and rural development)</li> </ul>	<ul style="list-style-type: none"> <li>• <u>Assess supplier compliance against contractual commitment to comply with training requirements:</u> <ul style="list-style-type: none"> <li>- Note that industry training will be defined differently by each category and applied uniquely depending on industry and any specialist skills or licenses required by the position.</li> <li>- For example, apprentices and trainees in construction will have very different training or licensing requirements than nursing practitioners.                             <ul style="list-style-type: none"> <li>- This may be a commitment such as training XX number of local workers to reach certification in hospitality, therefore building industry capability and also local jobs.</li> </ul> </li> </ul> </li> <li>• Contract managers should consider whether there is opportunity for industry training and development within the contract, particularly larger and longer-term procurement.</li> </ul>