

Guidelines: Ethical Supplier Threshold 2024

Queensland Government Procurement



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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

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 Guidelines replaces the Guidelines: Ethical Supplier Threshold 2021 and takes effect from 1 February 2024.

1 Introduction

The Ethical Supplier Mandate (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 applying the Threshold as set out in **Clause 19** of the *Queensland Procurement Policy* (QPP).

The Threshold and the Mandate are complementary policies under the *Buy Queensland* approach, as set out in the QPP.

This document should be read in conjunction with:

- the *Queensland Procurement Policy* (QPP)
- *Ethical Supplier Mandate 2024 and*
- *Guidelines: Ethical Supplier Mandate.*

The documents are available online at:

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

2 Application of the Threshold

The Threshold, as set out in **Clause 19** of the QPP, applies to all procurement undertaken by budget sector agencies, statutory bodies, government owned corporations and special purpose vehicles from 1 August 2019.

Clause 19 of the QPP states that: "The Queensland Government's policy is to only deal with suppliers that have not:

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

Suppliers doing business with government must comply with the Threshold.

Breaches of the Threshold may be taken into account by government when considering whether to contract with a supplier; however, a finding of a breach of the Threshold is separate from and does not preclude a finding and action by a relevant regulator.

The state may take compelling evidence (see **Section 3.7.1**) into account to assess the conduct of a supplier, in some cases even without a regulator decision.

2.1 Management of Threshold breaches

Table 2.1 below outlines how breaches of the Threshold are managed, depending on when the breach occurred and what procurement category applies.

Table 2.1 – Application of the Threshold

Application of the Threshold
For contracts entered into between 1 August 2019 to 30 August 2021
<ul style="list-style-type: none"> • compelling evidence may be taken into account when considering supplier conduct, and • consequences for breaches are to be in accordance with those processes set out in the <i>Guidelines: Ethical Supplier Threshold 2019</i> (Threshold 2019). <ul style="list-style-type: none"> - For entities to which the Mandate applied since 1 August 2019, refer to the below process.
Other
<ul style="list-style-type: none"> • <u>between 1 August 2019 to 31 August 2021, for budget sector agencies for the procurement categories of Building Construction and Maintenance (BCM) and Transport and Infrastructure Services (TIS) or</u> • <u>on or after 1 September 2021 for all procuring agencies and procurement categories are managed using the following processes:</u> <ul style="list-style-type: none"> ○ compelling evidence may be taken into account when considering supplier conduct; and ○ consequences for breaches are to be in accordance with those processes set out in the Mandate 2024 including: <ul style="list-style-type: none"> - application of the policy of aggravated non-compliance - new categories of non-compliance set out in Section 4.1 of the <i>Ethical Supplier Mandate 2024</i> - application of the compliance processes, and penalties including referral to the Tripartite Procurement Advisory Panel (the Panel), and penalties set out in Section 4.1 of the <i>Ethical Supplier Mandate 2024</i> to ensure there is equitable consideration and penalty applied to conduct which offends either the Threshold or the Mandate. • This means that any Threshold breaches (on or after 1 September 2021) relating to any Queensland Government contract under the QPP will be referred to the Panel.

Refer to **Section 4.2** for further information.

2.2 Procuring agencies

Agencies will ensure tendering documents and contracts address the Threshold requirements.

The Threshold applies to all suppliers engaged by any procuring agency governed by the QPP and their subcontractors. It applies to any related conduct of an entity or business who seeks to be a supplier to government, where the conduct occurred relevant to a contract on or after 1 August 2019.

Managing investigations

From 1 October 2023 for an initial period of 18 months it is the responsibility of the Queensland Government Procurement (QGP) Compliance Branch to manage investigations into potential breaches of the Threshold and to refer regulatory matters to regulators or law enforcement agencies.

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 (refer **Appendix 1 – Definitions**).

2.2.1 Non-compliant Threshold declarations

Procuring agencies undertaking tender and contract processes will receive non-compliant Threshold declarations.

It is the responsibility of the procuring agency to undertake initial enquiries with the supplier through standard tender and contract management processes (refer to **Section 3.3** and the *Ethical Supplier Threshold – Standard Operating Procedure*).

2.3 Suppliers and subcontractors

For the purposes of the Threshold, a '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 a breach by their subcontractors; except where the supplier has taken reasonable action to prevent the breach by their subcontractors.

Suppliers are responsible for ensuring that the conduct of subcontractors on government projects is compliant and does not breach the Threshold requirements.

Principal contractors must use their best endeavours to not engage suppliers that have been sanctioned under the Mandate or the Threshold to do 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 or the Threshold and subject to penalty.

Examples of actions that might constitute best endeavours by the principal contractor include:

- checking with procuring agencies to ensure the subcontractors engaged on the project are not currently sanctioned
- ensuring contracts with subcontractors:
 - specify a requirement for compliance with the Threshold,
 - acknowledge that penalties can apply for non-compliance under the Mandate,
 - provide principal contractors the ability to terminate the contract where non-compliance occurs, and
 - require the subcontractor to provide information or any relevant documents to demonstrate compliance to the principal contractor or the QGP Compliance Branch as requested
- taking appropriate action if the principal contractor becomes aware the subcontractor has breached the Threshold or a contract, including advising the procuring agency.

3 During the procurement cycle

3.1 Commencing the tender process

Queensland Government expects suppliers tendering for procurement to be compliant with the Threshold. A supplier must complete a declaration outlining whether they comply with the requirements of the Threshold to be considered further.

Procuring agencies must ensure that invitation to tender (e.g., ITO) documents include a Threshold declaration, completion of which is mandatory if the tender is to be considered further.

Tender documents must include:

- a supplier declaration of compliance to or having breached of the Threshold criteria

- 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)
 - Australian Taxation Office (ATO).

3.2 Ethical Supplier Threshold declaration

Suppliers are required to declare in their tender response whether they comply with each aspect of the Threshold by completing a Threshold declaration (see **Appendix 3**).

A supplier answers 'no' to declare that they are not in breach of the Threshold, or 'yes' to declare they are in breach of any of the Threshold criteria.

3.3 Considering a declaration of breach in a tender

If a supplier answers 'yes' to any of the Threshold criteria (to declare that 'yes' they have breached an element of the Threshold); depending on the tender conditions, the offer may be considered non-conforming and must be treated by the evaluation panel in accordance with the tender conditions (e.g., Invitation to Offer (ITO) Conditions). Where an agency's standard practice does not include the consideration of non-conforming tender submissions, an alternative offer process may be used if permitted under the tender conditions.

The procuring agency should first clarify with the supplier if their 'yes' response (to declare a breach) was correct, as some suppliers may assess this incorrectly. If confirmed, the procuring agency should then make enquiries with the supplier about the circumstances of the breach.

This includes enquiring:

- when the breach occurred (i.e., after the date of Threshold implementation)
- what the breach was and how it occurred
- whether it has since been rectified and
- any regulator involvement or decision.

This information will assist the procuring agency to decide how it will treat the supplier's offer under the particular tender conditions (see **Section 4.1**).

3.3.1 Referring the outcome

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

- make a record of their decision; and
- refer the matter to the QGP Compliance Branch along with any supporting evidence obtained during the tender or contract enquiry.

The procuring agency should not proceed with the procurement or confirm an outcome until the QGP Compliance Branch has reviewed the matter.

This enables the QGP Compliance Branch to then:

- review the matter and provide advice;
- record the outcome and provide a reference number for the procuring agency and the supplier to use for future procurement (ensuring the same matter is not re-persecuted);

- where relevant update the Procurement Compliance Portal (the Portal) to record outcomes; and
- refer to the Procurement Investigation Unit (PIU) for further investigation if required.

3.3.2 Confirmed legislative breaches

When assessing any regulator-determined breach of the Threshold, which comes to the attention of the state by either a Threshold declaration, when undertaking investigations of contracts, or through a notice of a regulator decision, procuring agencies must refer breaches deemed capable¹ of being progressed to the Panel. **Table 3.3.2** below outlines how to manage confirmed legislative breaches.

Table 3.3.2 – Managing confirmed legislative breaches

Managing confirmed legislative breaches	
Confirmed legislative breaches that relate to wage theft	
✓	<p>the matter will be progressed to the Panel for consideration of penalty regardless of whether an appeal has been filed in the relevant jurisdiction.</p> <ul style="list-style-type: none"> ○ for example, matters related to underpayments of wages and/or superannuation or sham contracting.
Confirmed legislative breaches that <u>do not</u> relate to wage theft	
×	<p>the matter will not be progressed to the Panel for consideration of penalty when a known appeal has been filed until such time as the appeal is finalised.</p> <ul style="list-style-type: none"> ○ for example, Fair Work Act breaches such as unfair dismissal. <ul style="list-style-type: none"> - If the procuring agency becomes aware that an appeal has been filed, at that point the QGP Compliance Branch must be notified by the procuring agency. - If the appeal by the supplier is unsuccessful, the matter must be referred to the Panel for consideration of penalty.
Supplier confirms no appeal has been filed or that it does not intend doing so	
	<ul style="list-style-type: none"> • For contracts entered into: <ul style="list-style-type: none"> ○ <u>between 1 August 2019 to 31 August 2021, for budget sector agencies for the procurement categories of BCM and TIS:</u> <ul style="list-style-type: none"> - the breach must be referred to the Panel. ○ <u>between 1 August 2019 to 30 August 2021 for all other procuring agencies and procurement categories:</u> <ul style="list-style-type: none"> - procuring agencies will have the option to refer the breach to the Panel for advice to inform decision makers. The Panel's advice may assist the procuring agency decision maker with their decision on appropriate action under the contract. ○ <u>on or after 1 September 2021 for all procuring agencies and procurement categories:</u> <ul style="list-style-type: none"> - the breach must be referred to the Panel. • For entities to which the Mandate applied since 1 August 2019, the breach must be referred to the Panel. <ul style="list-style-type: none"> ○ This Panel referral is separate to whether a procuring agency chooses to proceed with a non-compliant supplier as per the <i>Ethical Supplier Threshold: Standard Operating Procedures</i>.

3.3.3 Exceptional circumstances

The intent of the Threshold is to ensure that government engages with ethical suppliers. There may be occasions where procuring agencies decide to progress with suppliers who provide non-compliant

¹ A current Queensland Government supplier.

Threshold declarations if the invitation to tender conditions allow (for example, in exceptional circumstances such as urgent demand).

In these circumstances, the agency has the option of both proceeding with the tender and progressing the non-compliant Threshold declaration (once managed as per contract and tender evaluation processes) to the QGP Compliance Branch for further consideration (e.g., potential investigation or referral to the Panel). Evidence of acknowledgement from the supplier, rectification of the issue and systems improvement, if available, must be provided to the QGP Compliance Branch.

The procuring agency may refer the decision about how to respond to the non-compliant Threshold declaration and whether to exclude or continue with the supplier's tender to the relevant Chief Procurement Officer (or equivalent) within the agency. The Chief Procurement Officer may provide advice to the evaluation panel to consider during the assessment of the tender regarding the breach.

3.3.4 Inclusion on the Procurement Compliance Portal

The procuring agency (or relevant nominated officer) must advise the QGP Compliance Branch of the supplier's declaration of a breach of the Threshold criteria, for advice, potential further action (e.g., referring to the QGP Compliance Branch for investigation) and record-keeping purposes.

Where a breach is progressed through the Panel and penalised by the decision maker, the breach will be recorded on the Procurement Compliance Portal (the Portal), a secure tool available online for government agencies <https://www.forgov.qld.gov.au/complete-supplier-check> (see **Section 4.3**).

The Portal will also include relevant whole-of-government information such as current contentious or ongoing investigations and/or temporary suspensions relevant to specific suppliers in line with probity and risk management mechanisms. For further information on the Panel and the decision maker refer to **Sections 5 and 7**.

3.4 Before contracting with a supplier

Government buyers are required to complete a supplier check prior to procurement, in order to ensure suppliers are not the subject of a sanction, unless engaging a prequalified supplier, or completing a low-value procurement (see **Appendix 1 – Definitions**).

A pre-qualified supplier (see **Appendix 1 – Definitions**) means a supplier registered with:

- 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 Climate and
- QBuild as a prequalified supplier.

Government buyers can complete an online check using the Portal at <https://www.forgov.qld.gov.au/complete-supplier-check>.

The online search will provide information about:

- any current penalty to which a supplier is subject, including under the Threshold;
- current contentious or ongoing investigations;
- temporary suspensions; and
- suppliers for whom the outcomes of Threshold-related matters have been investigated and deemed capable of being engaged.

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

The evaluation panel may contact the QGP Compliance Branch, or the relevant regulator, for information regarding a supplier's previous compliance history with the Threshold where authority has been given by the supplier (e.g., via the Threshold declaration form – see **Appendix 3**).

If these enquiries reveal that the supplier does not comply with the Threshold, then the offer may be non-conforming and will be treated by the evaluation panel in accordance with the tender conditions.

3.5 Contracts

From 1 August 2019, all contracts are required to include an obligation on suppliers to comply with the Threshold during the contract term.

Category lead agencies are responsible for reviewing and updating contract documentation to include clauses reflecting the Threshold requirements to be used by government agencies. This includes standard terms and conditions and standard contract suites.

From 1 October 2023 for a period of 18 months, the QGP Compliance Branch will undertake all investigations into breaches of the Threshold on behalf of procuring agencies.

Contracts should include the right for the QGP Compliance Branch to issue a *Show Cause Notice* where they reasonably suspect that a supplier is not complying with the Threshold and to terminate the contract where reasonable cause is not shown.

Subject to the contract requirements, the QGP Compliance Branch will consider the supplier's response, including any extenuating circumstances, when determining whether the matter can be progressed to the Panel.

It is important when procuring agencies refer matters to the QGP Compliance Branch that a single point of contact (SPoC) is identified, as this will assist procuring agencies when determining whether to enact further contractual remedies for failure to comply with the Threshold.

If a supplier was non-compliant with the Threshold when tendering but permitted to tender as set out in **Section 3.3** above, then the standard clauses may need adjustment to allow for the past breach of the Threshold.

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 incorporating the Threshold).

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.

3.5.1 Contract variations

For tenders and contracts entered into after 1 August 2019, the Threshold must be incorporated. For contracts signed prior to 1 August 2019, but varied after this date, agencies should apply best endeavours to incorporate the Threshold.

The policy intent is that the Threshold applies to the conduct of any supplier engaged after 1 August 2019; however, a variation is not a new contract, it is a variation of an existing contract that must be agreed to by both parties.

There may be occasions, for organisational reasons, that a procuring agency may be unable to do so. Discretion remains with procuring agencies to proceed with documented and defensible procurement.

3.6 What constitutes a breach of the Threshold

A breach of the Threshold is where a supplier has been considered by the state to have breached the requirements listed in the Threshold (see **Appendix 4** – Examples of breaches of the Threshold).

A supplier will be considered to have breached the Threshold if the decision maker, taking into account all relevant information and where applicable, on advice from the Panel, considers that the supplier knew, or ought to have known, that the conduct is a breach.

Industrial relations non-compliances in 4(a) of **Section 4.1** of the *Ethical Supplier Mandate 2024* only relate to matters that are not breaches of the Threshold, but breaches of the contract.

A supplier can only be in breach if the contract during which the breach occurred came into effect on or after the Threshold commenced 1 August 2019.

3.7 How a breach may be assessed

From 1 October 2023 for an initial period of 18 months, the QGP Compliance Branch are responsible for managing the consideration of breaches by a supplier under a relevant contract. The conduct may become known to the QGP Compliance Branch or the procuring agency during or after the contract term. **Table 3.1** below outlines how Threshold breaches should be assessed.

Table 3.1 – Assessing breaches of the Threshold

Assessing breaches of the Threshold
Scope
<p><u>The procuring agency and/or QGP Compliance Branch will first:</u></p> <ul style="list-style-type: none"> • determine whether the Threshold applies: <ul style="list-style-type: none"> ○ both the contract commenced and the breach occurred, after 1 August 2019.
Role of the procuring agency
<p><u>The procuring agency should:</u></p> <ul style="list-style-type: none"> • conduct its own initial enquiries where they reasonably suspect that a supplier is not complying with the Threshold; • undertake its usual contract management processes for a suspected breach of contract; • make a determination whether there is sufficient evidence to warrant referral to the QGP Compliance Branch for further investigation; and • where sufficient evidence exists, refer the matter to the QGP Compliance Branch for further action (it is strongly recommended a SPoC is included). <ul style="list-style-type: none"> ○ If the procuring agency identifies the conduct falls under the Threshold, they are required to refer the matter to the appropriate regulator or law enforcement agency to investigate; and <ul style="list-style-type: none"> - advise the QGP Compliance Branch of this referral.
Role of the QGP Compliance Branch
<ul style="list-style-type: none"> • assess matters received from procuring agencies, and provide advice as required; • investigate and manage matters received through audit or complaint; <ul style="list-style-type: none"> ○ If the QGP Compliance Branch identifies the conduct falls under the Threshold, they are required to refer the matter to the appropriate regulator or law enforcement agency to investigate. • Refer Threshold breaches to the Panel <p><u>In addition, for breaches on contracts:</u></p> <ul style="list-style-type: none"> • from 1 August 2019 to 31 August 2021 for budget sector agencies for the procurement categories of BCM and TIS, and • on or after 1 September 2021 for all procuring agencies and procurement categories, <p>the matter must also be referred to the Panel for consideration and recommendation of penalty using the processes and penalties provided in the Mandate where it has compelling evidence which indicates that certain types of breaches did occur – refer to Section 3.7.1 below and Sections 4.1 and 5.4 of the <i>Guidelines: Ethical Supplier Mandate</i>.</p>

3.7.1 Show Cause Notice

Where the QGP Compliance Branch considers there is sufficient evidence to support that an alleged breach of the Threshold has occurred, they will provide the supplier an opportunity to respond via a *Show Cause Notice*².

The *Show Cause Notice* affords the supplier procedural fairness and 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 QGP Compliance Branch 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 *Show Cause Notice* must:

- state that it is a Notice in relation to a breach of the Threshold
- specify the alleged non-compliance 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.

3.7.1.2 Capable of being progressed

For an alleged breach of the Threshold

- For conduct relating to contracts entered into from 1 August 2019 to 31 August 2021:
 - the procuring agency has the option to seek advice from the Panel about any action it proposes to take under the contract
 - this information should then be forwarded to the QGP Compliance Branch for inclusion on the register (Procurement Compliance Portal).

For entities to which the Mandate applied since 1 August 2019, refer to the below process.

- For conduct relating to contracts entered into:
 - between 1 August 2019 to 31 August 2021, for budget sector agencies for the procurement categories of BCM and TIS, or
 - on or after 1 September 2021 for all procuring agencies and procurement categories
 - Where the agency considers there is evidence of breach of the Threshold and/or the supplier does not respond within the time specified in a *Show Cause Notice* the matter **must** be referred to the Panel within five (5) business days.

3.7.1.3 Not capable of being progressed

Where a supplier does respond to a *Show Cause Notice*, the QGP Compliance Branch must determine whether, taking into account all relevant available information including all provided by the supplier in its show cause response, there is evidence of a breach of the Threshold (as per **Section 2** – Application of the Threshold and 8 of **Section 4.1** of the *Ethical Supplier Mandate 2024* or **Clause 19** of the QPP).

A matter will be considered not capable of being progressed under the Threshold when:

- the allegations are found to be unsupported by evidence; or
- the supplier provides reasonable evidence to satisfy that the alleged breach was the result of an honest mistake that has been adequately rectified; or
- the supplier did not know and was not expected to know that the conduct was a breach of a legislative requirement.

² Where the Threshold 2019 process applies as outlined in **Section 4.2**, the Show Cause Notice is issued by the procuring agency and managed under contractual mechanisms. This is separate from the Show Cause Notice and process outlined in this section and within the Mandate 2021 and Mandate 2024.

3.7.2 Compelling evidence

Where the QGP Compliance Branch has compelling evidence (see **Appendix 1 – Definitions**) indicating that the breach occurred (including regarding underpayment of wages and superannuation or some instances of sham contracting), in addition to referring the matter to any relevant regulator or a law enforcement agency (e.g., for investigation under wage theft criminal offences³ or to the Fair Work Ombudsman), the matter will be referred for a penalty to be considered, using the Mandate's processes and penalties.

The QGP Compliance Branch will refer the matter to the Panel for recommendation of an appropriate penalty, even though there has been no finding by a regulator or court. The Panel has discretion to determine whether to wait for a finding by a regulator before making a recommendation of a penalty where this is appropriate (e.g., particularly regarding complex regulatory matters, such as some instances of sham contracting).

3.7.2.1 Referring non-compliant Threshold declarations

When procuring agencies have compelling evidence that a breach has occurred, when conducting a non-compliant Threshold declaration enquiry under tender/contract processes, the matter should be:

- referred to the QGP Compliance Branch for investigation; and
- referred to any relevant regulator or law enforcement agency for appropriate action.

Refer to the **Section 4.3** of the *Ethical Supplier Mandate 2024* and **Section 5.4** of the *Guidelines: Ethical Supplier Mandate* for further details about this process.

3.7.3 Regulator decision

The QGP Compliance Branch conducting the investigation will follow up any regulator referrals with the regulator or law enforcement agency to determine when they have made their relevant findings.

Where the supplier's breach is confirmed by the regulator's findings, the breach will be referred to the Panel for recommendation of a penalty as per **Section 3.3.1**.

Where a decision regarding penalty is made on the basis of compelling evidence, this decision is separate to a regulator's decision regarding a breach of the law. The consideration of compelling evidence by the Panel proceeds regardless of the timing of the regulator's decision.

A regulator's subsequent finding that the legislative breach is not proven may not affect a decision regarding a penalty applied; however, an internal review will be conducted and legal advice will be sought by the procuring agency in those cases (see **Section 9** of *Guidelines: Ethical Supplier Mandate*).

The procuring agency decision maker will determine the appropriate response following the internal review and will advise the Deputy Director-General – Procurement of the outcome.

4 Consequences of a breach of the Threshold

4.1 Possible exclusion from tender process

If the procuring agency obtains evidence that the breach occurred (e.g., the procuring agency has obtained evidence from sources other than the supplier declaration), in addition to the matter being referred to a regulator, the supplier's offer may be considered non-conforming.

Depending on the tender conditions and the relevant circumstances, the procuring agency may decide to either exclude the offer from the evaluation process or continue with the application as a non-conforming offer in certain limited circumstances e.g., where the breach was unintentional, or self-reported, or rectified including by system improvements to ensure no repeated occurrence.

³ where a supplier may have committed a wage theft (stealing) offence under Section 391(6A) of the *Criminal Code Act 1899 (Qld)* the matter will be referred to law enforcement agencies as appropriate.

Where the procuring agency decides to proceed with a non-confirming offer the decision must be documented and defensible (see QPP **Clause 46**).

4.2 Processes and penalties for breaching the Threshold

The Threshold applies to all procuring agencies which are covered by the QPP as of 1 August 2019 (refer to **Section 2.1**).

Where a supplier has engaged in conduct on or after 1 August 2019 in connection with a contract with a procuring agency covered by the QPP and that conduct constitutes a breach of the Threshold, the supplier may be subject to penalties. **Table 4.2** below outlines the applicable processes and penalties for breaches of the Threshold.

Table 4.2 – Applicable processes for breach of the Threshold

Applicable processes for breach of the Threshold
Contracts entered into between 1 August 2019 to 31 August 2021
<ul style="list-style-type: none"> • <u>for budget sector agencies for the procurement categories of BCM and TIS:</u> <ul style="list-style-type: none"> ○ the state will use the processes outlined in the Ethical Supplier Mandate 2024 and the penalties outlined in 10(a) of Section 4.1 of the <i>Ethical Supplier Mandate 2021</i> to apply equitable consideration and penalty to any breach of the Threshold. <ul style="list-style-type: none"> - This means the <i>Show Cause Notice</i> (outlined in the Mandate processes) is issued in relation to a breach of the Threshold 2021. • for all other entities and procurement categories refer to the Threshold 2019 for the range of actions a procuring agency may take in respect of the breach including actions under the contract.
For conduct relating to contracts entered into from 1 September 2021 – 31 January 2024
<ul style="list-style-type: none"> • refer to the (Threshold 2021) and for the compliance process and penalties to the Mandate 2021. <ul style="list-style-type: none"> ○ the state will use the processes outlined in the Ethical Supplier Mandate 2024 and the penalties outlined in 10(a) of Section 4.1 of the <i>Ethical Supplier Mandate 2021</i> to apply equitable consideration and penalty to any breach of the Threshold. <ul style="list-style-type: none"> - This means the <i>Show Cause Notice</i> (outlined in the Mandate 2021 and Mandate processes) is issued in relation to a breach of the Threshold 2021.
For conduct relating to contracts entered into from 1 February 2024
<ul style="list-style-type: none"> • refer to the <i>Guidelines: Ethical Supplier Threshold</i> (Threshold 2024) and for the compliance process and penalties to the Mandate 2024. <ul style="list-style-type: none"> ○ the state will use the processes and penalties outlined in 10(a) of Section 4.1 of the <i>Ethical Supplier Mandate 2024</i> to apply equitable consideration and penalty to any breach of the Threshold. • This means the <i>Show Cause Notice</i> (outlined in the Mandate 2024 processes) is issued in relation to a breach of the Threshold 2024.

4.2.1 Demerits

Demerits can only be applied to a supplier if the contract during which the breach occurred came into effect (refer to **Section 2.1**). Demerit decisions will be made by the decision maker of the procuring agency (see **Appendix 1** – Definitions) following recommendation of the Panel.

Twenty (20) demerits can be applied as a penalty for a single breach of the Threshold which can result in a sanction (see 8 of **Section 4.1** of the *Ethical Supplier Mandate 2024*).

Procuring agencies will apply the sanction approved by the decision maker following consideration by the Panel.

For more information on demerits and the process of decision making refer to the *Ethical Supplier Mandate 2024* and *Guidelines: Ethical Supplier Mandate*.

4.2.2 Sanctions

A sanction is a penalty that prevents the supplier from doing business with Queensland Government for up to 12 months from the date of the decision. Sanctions will be issued by the decision maker of the procuring agency (see **Appendix 1** – Definitions) following recommendation of the Panel.

Sanctions can include:

- 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 the relevant panel or contracting framework for a defined period
- a suspended sanctions penalty, pending successful implementation of any recommended corrective actions.

Sanctions affect a supplier's access to future contracts with government for the period of the sanction (up to 12 months).

For the most serious or repeated breach, a sanction may be issued. Sanctions affect access to future contracts, not current contracts. However, where a supplier is sanctioned and has an existing contract with government, extension options under that contract will not be exercised.

Mandate non-compliances and Threshold breaches associated with established and current contracts will be dealt with using the procuring agency's contract management processes.

A supplier will be sanctioned where they receive twenty (20) demerits at any one time, or over a 12-month period, unless the decision maker determines otherwise.

For more information on sanctions and the decision-making process refer to the *Ethical Supplier Mandate 2021* and *Guidelines: Ethical Supplier Mandate*.

4.2.3 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 (e.g., 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 incorporating the Threshold*).

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

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* (Qld) and the *Human Rights Act 2019* (Qld).

4.3 The Procurement Compliance Portal

The QGP Compliance Branch maintains a register recording all instances of supplier non-compliance for breaches of the Threshold known as the Procurement Compliance Portal (the Portal).

If a supplier has been confirmed as not complying with the Threshold (e.g., has made a self-declaration of breach), the procuring agency will advise the QGP Compliance Branch for recordkeeping purposes.

Procuring agencies can request information about a supplier's compliance history, including as authorised by access to information contract clauses (see **Appendix 2** of the *Guidelines: Ethical Supplier Mandate*).

4.3.1 Check the Portal

The QGP Compliance Branch maintains the Portal which provides agencies a secure online platform confirming whether a supplier is subject to any current penalties for breaches of the Threshold (available here: <https://www.forgov.qld.gov.au/complete-supplier-check>).

Procuring agencies must check the Portal before procuring, unless engaging a prequalified supplier, or completing a low-value procurement (see **Appendix 1** – Definitions).

Where a supplier is sanctioned for a breach of the Threshold, the supplier will be removed from pre-qualified supplier lists and the sanction will be entered into the Portal.

A pre-qualified supplier (see **Appendix 1** – Definitions) means a supplier registered with:

- 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 Climate; or
- QBuild as a prequalified supplier.

5 Tripartite Procurement Advisory Panel

5.1 Recommendation must be given objectively

The Panel is a singular body established by government to provide objective advice and recommendations to the decision makers regarding a breach of the Threshold.

The Panel will consider all relevant submissions and associated evidence on the matter (as referred by procuring agencies via the QGP Compliance Branch) and prepare a recommendation to the decision maker:

- substantiating whether there is a breach of the Threshold, and
- what penalties might be appropriate, including remedial actions or sanction.

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 (Qld)*.

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 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.

6 Procedural fairness

If the investigation by the regulator or law enforcement agency determines there has been a breach of law that is also a Threshold requirement, or where the QGP Compliance Branch or procuring agency

has compelling evidence that the breach occurred, a *Show Cause Notice* will be issued to the supplier or consider contractual actions for contracts that pre-date 1 September 2021 (refer to **Section 2.1**).

The supplier will have ten (10) business days from date of issue (see **Appendix 1** – Definitions) to respond. This gives a supplier an opportunity to provide further information before the procuring agency decides whether there is sufficient evidence to refer the matter to the Panel.

Before the Panel makes a recommendation on penalty and before the relevant decision maker determines to apply demerits or a sanction, the supplier will be issued with an *Extenuating Circumstances Notice* (refer to **Section 4.5** of the *Guidelines: Ethical Supplier Mandate*). This Notice will give the supplier an opportunity to provide further information that will be taken into account by the relevant decision maker.

Before the decision maker issues a sanction, they will issue the supplier with a *Proposed Sanction Notice* (refer to **Section 8.3** of the *Guidelines: Ethical Supplier Mandate*). This Notice provides an opportunity for the supplier to respond and state why the proposed sanction should not be applied.

Refer to the *Ethical Supplier Mandate 2024* and *Guidelines: Ethical Supplier Mandate* for further information.

7 Decision maker

The decision maker for matters concerning breaches of the Threshold (see **Appendix 1** – Definitions) will be the head of the procuring agency or such suitably qualified and senior delegate.

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.

8 Appeal

A supplier may appeal a decision to apply a penalty for a breach of the Threshold (see **Section 4.2**). Contractual action taken by a procuring agency cannot be the subject of an appeal under the Threshold compliance process.

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 and Threshold 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.

The appeal may be made to the Panel via the Strategy Coordination Unit 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 excluded, 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:

- assesses the appeal of the decision against the above criteria
- deliberates and considers the merits of the appeal, and
- makes a recommendation to the decision maker regarding the appeal.

The appeal process 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 breach.

8.1 The decision maker for appeals

The decision-maker responsible for the appeal decision remains the head of the procuring agency or such suitably qualified and senior delegate. However, the decision maker must not be the same person as the original decision-maker.

Where the decision-maker makes a decision contrary to that recommended by the Panel, the decision-maker should provide a copy of reasons for decision to the Panel, the DDG – Procurement and in a written notification to the supplier.

See **Section 7** for further information on the decision-maker.

The decision of the decision-maker on appeal will be considered final.

Appendix 1 – Definitions

Term	Description
Breach	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.
Business day	A day that is not a Saturday, Sunday or a public holiday in Queensland.
Compelling evidence	<p>Compelling evidence of a breach (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"> – A breach can be dealt with based on compelling evidence, even where the 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 a breach of the Local Benefits Test or other contractual requirements where there is no regulator. – A decision regarding imposing a penalty can be made where compelling evidence exists for relevant breaches. Procedural fairness will still apply and suppliers will have a chance to respond to an allegation or rectify a breach.
Complainant	The person who has made a complaint regarding a non-compliance with the Threshold.
Date of issue	<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"> – Where same day delivery is not possible (i.e., post) the date of issue is five (5) business days after the Notice was posted.
Decision maker	The head of the procuring agency or such suitably qualified and senior delegate, to make decisions about breaches of the Ethical Supplier Threshold from the date the policy applies (following recommendation from the Tripartite Procurement Advisory Panel) including whether a penalty in the form of demerits and/ or a sanction should be applied.
Declared by the Minister	<p>Declared in writing by the Minister responsible for the category, in consultation with:</p> <ul style="list-style-type: none"> – the Minister for Energy, and Clean Economy Jobs, and – the Premier.
Deputy Director-General – Procurement	The Deputy Director-General – Procurement (DDG – Procurement) of Queensland Government Procurement within the Department of Energy and Climate.
Ethical Supplier Threshold	<p>The Ethical Supplier Threshold described in the Queensland Procurement Policy, that is, whether a supplier has on or after 1 August 2019:</p> <ol style="list-style-type: none"> a. contravened a civil remedy provision of Chapter 2 or Chapter 3 of the <i>Fair Work Act 2009</i> (Cth), or committed an offence against the <i>Fair Work Act</i> b. 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 c. failed to make superannuation contributions on behalf of employees in accordance with law

	<ul style="list-style-type: none"> d. purported to treat employees as independent contractors, where they are not e. required persons who would otherwise be employees to provide an Australian Business Number so that they could be treated as independent contractors f. engaged persons on unpaid work trials or as unpaid interns, where they should be treated as employees g. entered into an arrangement for the provision of labour hire services with a person who is not licensed under the <i>Labour Hire Licensing Act 2017</i>, or a supplier who is an unlicensed supplier under the Act 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)).
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
Investigation	<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"> – 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. – 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.
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.
Non-compliance	<p>Non-compliance is a failure to comply with one or more of the legislative, contractual or policy requirements as set out in the Threshold and to which there is a corresponding penalty or sanction in Section 4.1 of the <i>Ethical Supplier Mandate 2024</i>.</p>
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 the 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

	<ul style="list-style-type: none"> - the National Prequalification System for Civil (Road and Bridge) Construction Contracts - arrangements administered by General Goods and Services, Department of Energy and Climate; or - QBuild as a prequalified 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 Capital Works Management Framework is the 'procuring agency' for the purposes of the Mandate. - For the purposes of the 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 but is not limited to the definition within the QPP. - 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

	<p>involved in the original consideration, with the exception of the chair.</p> <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 a breach.</p>
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Appendix 2 – Example clauses incorporating the Threshold

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 Threshold:

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

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

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

Amend clause 1.6 of the ITO as follows:

The following criteria are mandatory:

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

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

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

2 Ethical Supplier Threshold

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

After 1 August 2019, has the supplier:

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

- h. paid 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)?

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

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

The example definitions and clauses below are generic and provided as a starting point to incorporate obligations under the Threshold.

Add these new definitions into the Definitions and Interpretation document:

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 and the Australian Taxation Office.

Add this new clause to the contract about monitoring compliance information:

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

Add this new clause to the contract about publication of information about sanctions

The Contractor acknowledges and agrees that the State may publish information about sanctions imposed on the Contractor under the Ethical Supplier Mandate for the breaches of the Ethical Supplier Threshold. 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 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.

Add this new clause to the contract about access to information:

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.

Appendix 3 – Example threshold declaration

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

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

Appendix 4 – Examples of breaches of the Ethical Supplier Threshold

Note: This table outlines possible examples and is intended to be used as a guide only⁴. Refer to **Appendix 1** for the definition of compelling evidence.

Conduct of this kind can be a breach of the Ethical Supplier Threshold:	
Contravened a civil remedy provision of Chapter 2 or Chapter 3 of the <i>Fair Work Act 2009 (Cth)</i> , or committed an offence against the <i>Fair Work Act</i>	
Policy intent	<p>Where a supplier is considered proven (including by compelling evidence⁵ in certain circumstances) to have done any one of the following:</p> <ul style="list-style-type: none"> • contravened a civil remedy provision of Chapter 2 (Terms and conditions of employment) of the <i>Fair Work Act 2009 (Cth)</i> • contravened a civil remedy provision of Chapter 3 (Rights and responsibilities of employees, employers, organisations etc.) of the <i>Fair Work Act 2009 (Cth)</i> • committed an offence against the <i>Fair Work Act 2009 (Cth)</i>.
Further breakdown	<p>Where a supplier is considered proven to have done any of the following:</p> <ul style="list-style-type: none"> • contravened the National Employment Standards (Chapter 2) • contravened a modern award (Chapter 2) • contravened an enterprise agreement (Chapter 2) • contravened a workplace determination (Chapter 2) • contravened a national minimum wage order (Chapter 2) • contravened an equal remuneration order (Chapter 2) • contravened other terms and conditions of employment (Chapter 2) • contravened a general protections requirement (Chapter 3), including: <ul style="list-style-type: none"> ○ exercising workplace rights ○ discrimination ○ sham arrangements ○ contravening costs orders • contravened an order related to unfair dismissal (Chapter 3) • contravened requirements related to industrial action (Chapter 3) • contravened a protected action ballot order (Chapter 3) • contravened a right of entry requirement (Chapter 3) • contravened an order related to dealing with a dispute (Chapter 3) • contravened an order related to misuse of rights (Chapter 3) • contravened other employment rights and responsibilities (Chapter 3) • committed an offence against the <i>Fair Work Act 2009 (Cth)</i>, including: <ul style="list-style-type: none"> ○ insulting or disturbing an Fair Work Commission (FWC) Member ○ contravening an FWC order ○ intimidating or threatening behaviour towards individuals proposing to share information or documents with FWC

⁴ These examples will not determine any actual demerit decision that will be made taking into account the relevant circumstances of a particular supplier. It may not be relied upon by any other party. 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.

⁵ See the definition of compelling evidence in **Appendix 1 - Definitions**.

	<ul style="list-style-type: none"> ○ non-attendance at the request of FWC ○ refusal to take an oath or make an affirmation at the request of FWC ○ provision of false or misleading evidence to FWC <p>The above provides categorised examples of non-compliant activity. This list is not exhaustive. A table of civil remedy provisions of the <i>Fair Work Act 2009</i> can be found in Part 4-1 of the Act at section 539.</p>
Examples	<ul style="list-style-type: none"> ● A supplier pays staff wages less than the minimum pay standards outlined in the applicable modern award. ● A supplier violates a term of an enterprise agreement. ● A supplier fails to uphold an employee’s return to work guarantee after receiving unpaid parental leave. ● A supplier does not pay a previous employee redundancy pay, where it is entitled. ● A supplier owes employees in excess of 4 weeks wages. ● A supplier imposes undue influence, pressure or coercion on an employee to accept terms of an employment agreement. ● A supplier discriminates against an employee based on their industrial activities. ● A supplier unfairly dismisses an employee. ● A supplier directs an employee not to provide requested information to Fair Work Australia.
<p>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</p>	
Policy intent	<p>Where a supplier is considered proven (including by compelling evidence in certain circumstances⁶) to have done any of the following:</p> <ul style="list-style-type: none"> ● contravened a civil remedy provision of Chapter 2 (Modern employment conditions) of the <i>Industrial Relations Act 2016</i> ● contravened a civil remedy provision of Chapter 3 (Modern awards) of the <i>Industrial Relations Act 2016</i> ● contravened a civil remedy provision of Chapter 4 (Collective bargaining) of the <i>Industrial Relations Act 2016</i> ● contravened a civil remedy provision of Chapter 5 (Equal remuneration) of the <i>Industrial Relations Act 2016</i> ● contravened a civil remedy provision of Chapter 7 (Employees bullied in the workplace) of the <i>Industrial Relations Act 2016</i> ● committed an offence against the <i>Industrial Relations Act 2016</i> ● failed to pay employment related entitlements, or other payments, established under Queensland legislation.
Further breakdown	<p>Where a supplier is considered proven to have done any of the following:</p> <ul style="list-style-type: none"> ● contravened a modern award (Chapter 3) ● contravened a conciliation attendance notice issued by the Queensland Industrial Relations Commission (Chapter 4) ● contravened a bargaining instrument (Chapter 4) ● contravened the requirements of a proposed bargaining instrument by engaging in industrial action (Chapter 4) ● contravened requirements of protected industrial action by showing prejudice to employees proposing to pursue such engagement (Chapter 4) ● contravened rights related to a proposed bargaining instrument by coercion and influence associated with seeking industrial action (Chapter 4) ● contravened a request for wage-related information issued by the Queensland Industrial Relations Commission (Chapter 5)

⁶ See the definition of compelling evidence in **Appendix 1 – Definitions**.

	<ul style="list-style-type: none"> • contravened an industrial dispute attendance notice issued by the Queensland Industrial Relations Commission (Chapter 6) • contravened an order to stop bullying as issued by the Queensland Industrial Relations Commission (Chapter 7) • contravened other employment rights and responsibilities (Chapter 8) • committed an offence against the Industrial Relations Act, including <ul style="list-style-type: none"> ○ disobeying penalty orders ○ improper conduct towards member, magistrate or registrar ○ contempt by witness ○ false or misleading statements or documents ○ misleading employment arrangements ○ non-payment of wages ○ contravention of industrial instruments • failed to pay employment related entitlements, or other payments, as required under the <i>Industrial Relations Act</i>, including the modern employment conditions in Chapter 2, for example: <ul style="list-style-type: none"> ○ failed to re-engage a long-term casual employee only because the employee has taken carers leave under Section 44 of the <i>Industrial Relations Act 2016</i> ○ failed to re-engage a long-term casual employee only because the employee has taken bereavement leave under Section 48 of the <i>Industrial Relations Act 2016</i>. <p>The above provides categorised examples of non-compliant activity. This list is not exhaustive. A table of civil remedy provisions of the <i>Industrial Relations Act 2016</i> can be found in Schedule 3 of the Act.</p>
Examples	<ul style="list-style-type: none"> • A supplier, who is declared not to be a national systems employer, pays staff wages less than the minimum pay standards outlined in the applicable modern award. • A supplier, who is a local government organisation, provides false documents to the Queensland Industrial Relations Commission. • A supplier, who is a Queensland Government statutory body, disobeys an attendance notice issued by the Queensland Industrial Relations Commission.
Failed to make superannuation contributions on behalf of employees in accordance with law	
Policy intent	Where a supplier is considered proven (including by compelling evidence in certain circumstances ⁷) to have failed to make any, or a portion of, legislated superannuation contribution sums on behalf of any employee. And where a supplier may have committed a wage theft (stealing) offence under section 391(6A) of the <i>Criminal Code Act 1899 (Qld)</i> .
Further breakdown	<p>Businesses which operate with an employee model are required to adhere to the nationally mandated Superannuation Guarantee (SG). This guarantee outlines the minimum rates in which superannuation contributions should be made by an employer. This is generally calculated by:</p> <p>If an employee is paid \$450 or more before tax in a calendar month, the employer will be required to pay super on top of their wages.</p> <ul style="list-style-type: none"> • the SG is currently 11% “of an employee’s ordinary time earnings⁸” • the employer must pay the SG at least four times a year, by the quarterly due dates • the employer must pay and report superannuation electronically in a standard format, ensuring they meet SuperStream requirements • the superannuation payments must go to a complying super fund – most employees can choose their own fund
Examples	<ul style="list-style-type: none"> • A supplier fails to make superannuation contributions on behalf of an employee, where eligible. • A supplier underpays a superannuation contribution on behalf of an employee, where eligible.

⁷ See definition of compelling evidence in **Appendix 1 - Definitions**.

⁸ Source: <https://www.ato.gov.au/Business/Super-for-employers/Paying-super-contributions/How-much-super-to-pay/>

<p>Purported to treat employees as independent contractors, where they are not, or;</p> <ul style="list-style-type: none"> required persons who would otherwise be employees to provide an Australian Business Number so that they could be treated as independent contractors 							
Policy intent	<p>Where a supplier is considered proven (including by compelling evidence in certain circumstances⁹) to have engaged an individual, for any period of time, as an independent contractor, where their employment relationship was clearly identified as an employee.</p> <p>Information on the ATO website provides guidance on which factors indicate whether a person should be treated as an employee or an independent contractor: https://www.ato.gov.au/Business/Employee-or-contractor/How-to-work-it-out--employee-or-contractor/.</p> <p>See further guidance in this table, as identified by the Fair Work Ombudsman:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2" style="text-align: center;"> <p>There are a number of factors that can help distinguish the difference between an employee and a contractor. A number of variables need to be considered, there isn't one characteristic that makes a difference on its own.</p> </td> </tr> <tr> <td style="background-color: #d9534f; color: white; text-align: center;">Employees</td> <td style="background-color: #d9534f; color: white; text-align: center;">Independent contractors</td> </tr> <tr> <td style="vertical-align: top;"> <p>The factors that are indicative of an employee are that they:</p> <ul style="list-style-type: none"> have their work directed and controlled by their employer work set or standard hours (casual employee hours can vary from week to week) usually have an ongoing expectation of work bear no financial risk – it's covered by their employer's insurance are provided by their employer with tools or a tool allowance is provided have income tax deducted by their employer are paid wages or a salary regularly are entitled to paid leave. </td> <td style="vertical-align: top;"> <p>The factors that are indicative of independent contractors are that they:</p> <ul style="list-style-type: none"> have a high level of control over how the work is done, including the choice to hire others to assist agree to the hours required to complete the job usually engaged for a specific task or time bear the risk of making a profit or a loss and usually bears responsibility and liability for poor work or injury and usually have their own insurance use their own tools and equipment pay their own tax and GST have an ABN and submits invoices don't receive paid leave. </td> </tr> </table>	<p>There are a number of factors that can help distinguish the difference between an employee and a contractor. A number of variables need to be considered, there isn't one characteristic that makes a difference on its own.</p>		Employees	Independent contractors	<p>The factors that are indicative of an employee are that they:</p> <ul style="list-style-type: none"> have their work directed and controlled by their employer work set or standard hours (casual employee hours can vary from week to week) usually have an ongoing expectation of work bear no financial risk – it's covered by their employer's insurance are provided by their employer with tools or a tool allowance is provided have income tax deducted by their employer are paid wages or a salary regularly are entitled to paid leave. 	<p>The factors that are indicative of independent contractors are that they:</p> <ul style="list-style-type: none"> have a high level of control over how the work is done, including the choice to hire others to assist agree to the hours required to complete the job usually engaged for a specific task or time bear the risk of making a profit or a loss and usually bears responsibility and liability for poor work or injury and usually have their own insurance use their own tools and equipment pay their own tax and GST have an ABN and submits invoices don't receive paid leave.
<p>There are a number of factors that can help distinguish the difference between an employee and a contractor. A number of variables need to be considered, there isn't one characteristic that makes a difference on its own.</p>							
Employees	Independent contractors						
<p>The factors that are indicative of an employee are that they:</p> <ul style="list-style-type: none"> have their work directed and controlled by their employer work set or standard hours (casual employee hours can vary from week to week) usually have an ongoing expectation of work bear no financial risk – it's covered by their employer's insurance are provided by their employer with tools or a tool allowance is provided have income tax deducted by their employer are paid wages or a salary regularly are entitled to paid leave. 	<p>The factors that are indicative of independent contractors are that they:</p> <ul style="list-style-type: none"> have a high level of control over how the work is done, including the choice to hire others to assist agree to the hours required to complete the job usually engaged for a specific task or time bear the risk of making a profit or a loss and usually bears responsibility and liability for poor work or injury and usually have their own insurance use their own tools and equipment pay their own tax and GST have an ABN and submits invoices don't receive paid leave. 						
Examples	<ul style="list-style-type: none"> A supplier directs an employee to provide an invoice for their hours worked, despite having conducted a recruitment interview and placed that employee onto a probationary period. A supplier directs an employee to provide an invoice for the portion of their hours worked that would have been considered overtime. A supplier operates under a model where all employees are considered independent contractors, despite their contributions falling in line with the definition of an employee. 						
<p>Engaged persons on unpaid work trials or as unpaid interns, where they should be treated as employees</p>							
Policy intent	<p>Where a supplier is considered proven (including by compelling evidence in certain circumstances⁹) to have engaged an individual, for any period of time, under an unfair arrangement of unpaid work trials or unpaid intern, where the individual should have been treated as an employee.</p>						
Further breakdown	<p>Unpaid work trials may be unlawful where:</p> <ul style="list-style-type: none"> it isn't necessary to demonstrate the skills required for the job or has continued for longer than is actually needed. This will be dependent on the nature and complexity of the work, but could range from an hour to one shift it involves more than only a demonstration of the person's skills, where they are directly relevant to a vacant position, or the person is not under direct supervision for the trial. 						

⁹ See definition of compelling evidence in **Appendix 1 - Definitions**.

	<p>Work experience and internships are types of on-the-job training. They can span different lengths of time and can lead to ongoing employment. People doing this kind of training don't need to be paid if there's no employment relationship in place. But if there is, then the person doing the training is an employee.</p>
Examples	<ul style="list-style-type: none"> • A supplier requires a potential employee to perform an unpaid work trial, where there isn't a necessity to demonstrate a particular skill set for the role. • A supplier requires a potential employee to perform an unpaid work trial, however does not supervise the trial activities. • A supplier engages an individual for an internship however requires that individual to perform the duties of an employee.
Entered into an arrangement for the provision of labour hire services with a person who is not licensed under the <i>Labour Hire Licensing Act 2017</i> , or a supplier who is an unlicensed provider under the Act	
Policy intent	Where a supplier has been proven to have engaged an individual or business for the provision of labour hire services without performing due diligence in ensuring all relevant licenses required under the <i>Labour Hire Licensing Act 2017</i> have been obtained or are current at the time of engagement.
Examples	<ul style="list-style-type: none"> • A supplier entered into an arrangement with an employment agency for the engagement of temporary administration staff and the agency was not licensed as required under the <i>Labour Hire Licensing Act</i>.
Paid employees wages below those provided for in an applicable modern award	
Policy intent	<p>Where a supplier is considered proven (including by compelling evidence in certain circumstances¹⁰) to have paid employee wages below that of a modern award.</p> <p>The Queensland Government is committed to doing business with suppliers who deliver genuine, quality, secure ongoing jobs with fair pay. This will benefit the broader Queensland community by ensuring that Queensland taxpayers' money is used to build the local economy and support quality Queensland jobs. Fair rates of pay can attract and retain high quality employees and ensure that those doing work for Government are remunerated at an appropriate level, as measured against the rates set under modern awards.</p>
Further breakdown	<p>A modern award is a document which sets out the minimum terms and conditions of employment on top of the National Employment Standards (NES). Modern awards came into effect on 1 January 2010.</p> <p>Modern awards provide entitlements such as:</p> <ul style="list-style-type: none"> • pay • hours of work • rosters • breaks • allowances • penalty rates • overtime. <p>If an existing contractor's wage and entitlement arrangements fall below the applicable modern award due to being set out in an agreement made prior to 2010¹¹, the managing agency should take a risk-based approach of addressing the issue and seek legal advice. This can include a contract management action plan to align the contractor arrangement with the <i>Fair Work Act 2009 (Cth)</i> safety net of minimum entitlements, enabling flexible working arrangements and fairness at work and prevent discrimination against employees.</p>
Examples	<ul style="list-style-type: none"> • A supplier pays employees a wage lesser than the minimum rate outlined in the applicable modern award.

¹⁰ See definition of compelling evidence in **Appendix 1** - Definitions.

¹¹ <https://www.fairwork.gov.au/awards-and-agreements/agreements/agreements-made-before-1-jan-2010>

Appendix 5 – Categories of breach: Reference table

To assist both procuring agencies and suppliers in the understanding and application of the Threshold categories of breach, the below table has been developed¹². This reference table provides a break-down of the key areas related to the category and links users back to the source of the obligation¹³.

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

a. Contravened a civil remedy provision of Chapter 2 or Chapter 3 of the <i>Fair Work Act 2009 (Cth)</i> , or committed an offence against the <i>Fair Work Act</i>		
Related breach areas	Source of commitment - examples	Related resources
<ul style="list-style-type: none"> • National Employment Standards • Modern awards • Enterprise agreements • Workplace determinations • National minimum wage orders • Equal remuneration orders • Terms and conditions of employment • General protections requirements, including <ul style="list-style-type: none"> ○ Workplace rights ○ Discrimination 	<ul style="list-style-type: none"> • Sham arrangements • Costs orders • Unfair dismissals • Industrial actions • Action ballot orders • Rights of entry • Disputes • Misuse of rights • Employment rights and responsibilities • Offences against the <i>Fair Work Act 2009 (Cth)</i> 	<ul style="list-style-type: none"> ➤ Tender documents ➤ Contract ➤ <i>Fair Work Act 2009 (Cth)</i>
		<ul style="list-style-type: none"> Fair Work Act 2009 (Cth) Queensland Procurement Policy (QPP) 2023 Ethical Supplier Mandate (the Mandate) 2024 Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020 (Qld)

¹² 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.

¹³ Regulators as mentioned in the *Categories of breach: Reference table* refer to the appropriate regulator or law enforcement agency.

Applicable evidence types		Example evidence	Regulator contact details
<ul style="list-style-type: none"> ✓ Compelling evidence <li style="text-align: center;"><u>and/or</u> ✓ Regulator outcome 	<p>Compelling evidence and/or a regulator decision may be considered where the breach relates to these 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"> ✓ Fair Work Ombudsman (FWO) compliance history (e.g. Contravention letter, Letter of Caution, Infringement Notice, Compliance Notice, Court Order, FWO Notice etc.) ✓ Industrial instrument (e.g., Enterprise Agreement, Modern Award, etc.) ✓ Employment contracts/ engagement letters ✓ Individual Flexibility Arrangements ✓ Time and wage records (e.g., pay slips, timesheets etc.) ✓ Bank statements ✓ Superannuation information and supporting records ✓ Industrial Relations Management Plan ✓ Site personnel register ✓ Site personnel register summary report 	<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>
<ul style="list-style-type: none"> ✓ Regulator outcome 	<ul style="list-style-type: none"> • For all other matters falling under category (a.) a regulator outcome is required. • Investigating agencies may obtain further evidence to assist the Panel in its consideration. 		

		<ul style="list-style-type: none"> ✓ Site personnel classification/ engagement register ✓ Induction records ✓ Audit reports ✓ Contract/ tender documentation (contractual obligations for industrial relations) 	
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b. Contravened a civil remedy provision of Chapter 2, 3, 4, 5, or 7 of the Industrial Relations Act 2016, or committed an offence against the Industrial Relations Act, or failed to pay employment related levies, or other payments, established under Queensland legislation

Related breach areas		Source of commitment - examples	Related resources
<ul style="list-style-type: none"> • Modern awards • Conciliation • Bargaining instruments • Industrial instruments • Industrial action • Attendance notices • Queensland Industrial Relations Commission requests • Bullying 	<ul style="list-style-type: none"> • Employment rights • Employment arrangements • Penalty orders • Inappropriate conduct • Contempt • Wages • Employee entitlements 	<ul style="list-style-type: none"> ➤ Tender documents ➤ Contract ➤ <i>Industrial Relations Act 2016 (Qld)</i> 	<p>Industrial Relations Act 2016 (Qld)</p> <p>Queensland Procurement Policy (QPP) 2023</p> <p>Ethical Supplier Mandate (the Mandate) 2024</p> <p>Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020 (Qld)</p>
Applicable evidence types		Example evidence	Regulator contact details

<p>✓ Compelling evidence</p> <p>and/or</p> <p>✓ Regulator outcome</p>	<p>Compelling evidence and/or a regulator decision may be considered where the breach relates to these areas:</p> <ul style="list-style-type: none"> ➤ Underpayment of wages ➤ Underpayment of superannuation ➤ Certain instances of sham contracting 	<p>✓ Fair Work Ombudsman (FWO) compliance history (e.g., Contravention Letter, Letter of Caution, Infringement Notice, Compliance Notice, Court order, FWO Notice etc.)</p>	<p>Queensland Industrial Relations Commission Ph: 1300 362 128</p> <p>Australian Tax Office (ATO) Ph: 13 10 20</p> <p>Queensland Police Ph: 131 444</p>
<p>✓ Regulator outcome</p>	<ul style="list-style-type: none"> • For all other matters falling under category (b.) a regulator outcome is required • Investigating agencies may obtain further evidence to assist the Panel in its consideration 	<p>✓ Industrial instrument (e.g., Enterprise Agreement, Modern Award, etc.)</p> <p>✓ Employment contracts/ engagement letters</p> <p>✓ Individual Flexibility Arrangements</p> <p>✓ Time and wage records (e.g., pay slips, timesheets etc.)</p> <p>✓ Bank statements</p> <p>✓ Superannuation information and supporting records</p> <p>✓ Industrial Relations Management Plan</p> <p>✓ Site personnel register</p> <p>✓ Site personnel register summary report</p> <p>✓ Site personnel classification/ engagement register</p> <p>✓ Induction records</p> <p>✓ Audit reports</p>	

		<ul style="list-style-type: none"> ✓ Complaints information and investigations ✓ Contract / tender documentation (contractual obligations for industrial relations) 	
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c. Failed to make superannuation contributions on behalf of employees in accordance with law

Related breach areas		Source of commitment - examples	Related resources
<ul style="list-style-type: none"> • Superannuation • Employee entitlements • Superannuation Guarantee 		<ul style="list-style-type: none"> ➢ Tender documents ➢ Contract ➢ <i>Fair Work Act 2009 (Cth)</i> 	<p>Australian Taxation Office</p> <p>Queensland Procurement Policy (QPP) 2023</p> <p>Ethical Supplier Mandate (the Mandate) 2024</p> <p>Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020 (Qld)</p>
Applicable evidence types		Example evidence	Regulator contact details
<ul style="list-style-type: none"> ✓ Compelling evidence <p style="text-align: center;"><u>and/or</u></p> <ul style="list-style-type: none"> ✓ Regulator outcome 	<ul style="list-style-type: none"> ➢ Evidence obtained through investigation, where a regulator outcome is not in consideration and/or ➢ A regulator outcome may be used to escalate a breach in this category, however it is not essential ➢ Where a regulator outcome is relied on, investigating agencies may obtain further evidence to assist the Panel in its consideration 	<ul style="list-style-type: none"> ✓ Time and wage records (e.g. pay slips, timesheets etc.) ✓ Bank Statements ✓ Superannuation information and supporting records (e.g., ATO payment) 	<p>Fair Work Ombudsman Ph: 13 13 94</p> <p>Australian Tax Office (ATO) Ph: 13 10 20</p> <p>Queensland Police</p>

		<p>plan, ATO penalties, Superannuation Guarantee Charge Statement)</p> <ul style="list-style-type: none"> ✓ Industrial Relations Management Plan ✓ Industrial instrument (e.g. Enterprise agreement, Modern award etc.) ✓ Contract/tender documentation (contractual obligation/s for industrial relations) 	<p>Ph: 131 444</p>
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d. Purported to treat employees as independent contractors, where they are not			
Related breach areas		Source of commitment - examples	Related resources
<ul style="list-style-type: none"> • Employment arrangements • Independent contractors • Sham contracting 		<ul style="list-style-type: none"> ➤ Tender documents ➤ Contract ➤ <i>Fair Work Act 2009 (Cth)</i> 	<p>Fair Work Ombudsman</p> <p>Queensland Procurement Policy (QPP) 2023</p> <p>Ethical Supplier Mandate (the Mandate) 2024</p>
Applicable evidence types		Example evidence	Regulator contact details
<ul style="list-style-type: none"> ✓ Compelling evidence <p style="text-align: center;"><u>and/or</u></p> <ul style="list-style-type: none"> ✓ Regulator outcome 	<ul style="list-style-type: none"> ➤ Evidence obtained through investigation, where a regulator outcome is not in consideration and/or ➤ A regulator outcome may be used to escalate a breach in this category, however it is not essential ➤ Where a regulator outcome is relied on, investigating agencies may obtain further evidence to assist the Panel in its consideration 	<ul style="list-style-type: none"> ✓ Supplier invoices ✓ Timesheets ✓ ATO Employee / Contractor Decision Tool outcome ✓ Engagement contracts/letters ✓ Site personnel classification/ engagement register ✓ Site attendance register ✓ ASIC company extract ✓ 	<p>Fair Work Ombudsman Ph: 13 13 94</p> <p>Australian Tax Office (ATO) Ph: 13 10 20</p>

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

Related breach areas		Source of commitment - examples	Related resources
<ul style="list-style-type: none"> • Employment arrangements • Independent contractors • Sham contracting 		<ul style="list-style-type: none"> ➤ Tender documents ➤ Contract ➤ <i>Fair Work Act 2009 (Cth)</i> 	<p>Fair Work Ombudsman</p> <p>Queensland Procurement Policy (QPP) 2023</p> <p>Ethical Supplier Mandate (the Mandate) 2024</p>
Applicable evidence types		Example evidence	Regulator contact details
<ul style="list-style-type: none"> ✓ Compelling evidence <p style="text-align: center;"><u>and/or</u></p> <ul style="list-style-type: none"> ✓ Regulator outcome 	<ul style="list-style-type: none"> ➤ Evidence obtained through investigation, where a regulator outcome is not in consideration and/or ➤ A regulator outcome may be used to escalate a breach in this category, however it is not essential ➤ Where a regulator outcome is relied on, investigating agencies may obtain further evidence to assist the Panel in its consideration 	<ul style="list-style-type: none"> ✓ Supplier invoices ✓ Timesheets ✓ ATO Employee / Contractor Decision Tool outcome ✓ Engagement contracts/letters ✓ Site personnel classification/engagement register ✓ Site attendance register ✓ ASIC company extract 	<p>Fair Work Ombudsman Ph: 13 13 94</p>

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

Related breach areas		Source of commitment - examples	Related resources
<ul style="list-style-type: none"> • Employment arrangements • Interns • Work trials 		<ul style="list-style-type: none"> ➤ Tender documents ➤ Contract ➤ <i>Fair Work Act 2009 (Cth)</i> 	<p>Fair Work Ombudsman</p> <p>Queensland Procurement Policy (QPP) 2023</p> <p>Ethical Supplier Mandate (the Mandate) 2024</p>
Applicable evidence types		Example evidence	Regulator contact details
<ul style="list-style-type: none"> ✓ Compelling evidence <p><u>and/or</u></p> <ul style="list-style-type: none"> ✓ Regulator outcome 	<ul style="list-style-type: none"> ➤ Evidence obtained through investigation, where a regulator outcome is not in consideration, and/or ➤ A regulator outcome may be used to escalate a breach in this category, however it is not essential ➤ Where a regulator outcome is relied on, investigating agencies may obtain further evidence to assist the Panel in its consideration 	<ul style="list-style-type: none"> ✓ Agreement records ✓ Time and wage records ✓ Position description ✓ Work Experience Agreement 	<p>Fair Work Ombudsman</p> <p>Ph: 13 13 94</p>

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

Related breach areas		Source of commitment - examples	Related resources
<ul style="list-style-type: none"> • Trade licenses • Business licenses 		<ul style="list-style-type: none"> ➤ Tender documents ➤ Contract ➤ <i>Labour Hire Licensing Act 2017 (Qld)</i> 	Labour Hire Licensing Act 2017 (Qld) Queensland Procurement Policy (QPP) 2023 Ethical Supplier Mandate (the Mandate) 2024
Applicable evidence types		Example evidence	Regulator contact details
✘ Compelling evidence	✘ Not applicable	<ul style="list-style-type: none"> ✓ Information Notice ✓ License registration records 	Office of Industrial Relations Ph: 1300 576 088
✓ Regulator outcome	<ul style="list-style-type: none"> ➤ A breach in this category will require a regulator outcome. Investigating agencies may obtain further evidence to assist the Panel in its consideration 		

h. Paid employees wages below those provided for in an applicable modern award			
Related breach areas		Source of commitment - examples	Related resources
<ul style="list-style-type: none"> • Modern awards • Staff wages 		<ul style="list-style-type: none"> ➤ Tender documents ➤ Contract ➤ <i>Fair Work Act 2009 (Cth)</i> 	<p>Fair Work Act 2009 (Cth)</p> <p>Queensland Procurement Policy (QPP) 2023</p> <p>Ethical Supplier Mandate (the Mandate) 2024</p>
Applicable evidence types		Example evidence	Regulator contact details
<ul style="list-style-type: none"> ✓ Compelling evidence <p><u>and/or</u></p> <ul style="list-style-type: none"> ✓ Regulator outcome 	<ul style="list-style-type: none"> ➤ Evidence obtained through investigation, where a regulator outcome is not in consideration and/or ➤ A regulator outcome may be used to escalate a breach in this category, however it is not essential ➤ Where a regulator outcome is relied on, investigating agencies may obtain further evidence to assist the Panel in its consideration 	<ul style="list-style-type: none"> ✓ Time and wage records (e.g. pay slips, timesheets etc.) ✓ Bank statements ✓ Superannuation information and supporting records ✓ Employment contracts/ engagement letters ✓ Industrial instrument (Modern Award) ✓ Industrial Relations Management Plan 	<p>Fair Work Ombudsman Ph: 13 13 94</p>

Appendix 6 – Supplier timelines for responding to a breach

The timeframes are standard best practice:

- where a matter is complex, the supplier can apply for an extension at any stage;
- extensions are granted 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 breach process		Recommended timeframes <i>(from date of issue)</i>	Further comments / advice
Breach in a tender			
Breach Assessment	Response to notice of non-compliance under the Ethical Supplier Mandate and/or notice of breach of the 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 the breach 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 breach matter to the Tripartite Procurement Advisory Panel	<ul style="list-style-type: none"> • Five (5) business days 	<ul style="list-style-type: none"> • The QGP Compliance Branch or procuring agency must refer the declared breach 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 breach register.
Breach 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 QGP Compliance Branch or procuring agency advises the supplier that the matter has been referred to the appropriate regulator (regulatory processes apply).

Step in breach process		Recommended timeframes (from date of issue)	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 QGP Compliance Branch or procuring agency advises the supplier that the matter has been referred to the Panel.
Consequences of breach – application of the Ethical Supplier Mandate and Ethical Supplier Threshold			
Notification of Outcome	Response to <i>Show Cause Notice</i>	<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 Strategy Coordination Unit - 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.
Outcomes / Recommendations	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 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.