

# Guidelines: Ethical Supplier Mandate

Version 2.0

Queensland Government Procurement



**Queensland**  
Government

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### Contact us

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

### Disclaimer

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

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

### Administration

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

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# 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 the application of the Mandate as set out in **Clause 28** of the QPP.

## This document should be read in conjunction with:

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

These documents are available online at:

<https://www.epw.qld.gov.au/about/strategy/buy-qld/compliance-complaints/ethical-suppliers>

# 2 Application of the Mandate

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

## 2.1 Suppliers and subcontractors

For the purposes of the Mandate, 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 non-compliance by their subcontractors; except where the supplier has taken reasonable action to prevent non-compliance by their subcontractors.

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

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

Actions that might constitute best endeavours by the principal contractor in selecting and engaging their subcontractors includes checking with procuring agencies to ensure the subcontractors engaged on the project are not currently sanctioned.

Principal contractors are also expected to ensure contracts with subcontractors:

- require compliance with the Mandate and Threshold;
- provide principal contractors the ability to terminate the contract where non-compliance occurs;
- require the subcontractor to provide information or any relevant documents to demonstrate compliance to the Principal or the Queensland Government Procurement (QGP) Compliance Branch as requested; and
- take appropriate action if the principal contractor becomes aware the subcontractor has breached the Threshold or a contract, including advising the procuring agency.

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

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

## 2.2 Phased implementation of the Mandate

Procuring agency	When the Mandate applies
<b>Budget sector agencies</b>	<ul style="list-style-type: none"> <li>• Building, Construction and Maintenance category (BCM) <ul style="list-style-type: none"> <li>– <i>contracts entered on or after 1 August 2019</i></li> </ul> </li> <li>• Transport, Infrastructure and Services category (TIS) <ul style="list-style-type: none"> <li>– <i>contracts entered on or after 1 October 2019</i></li> </ul> </li> <li>• Other procurement categories to be determined 2023.</li> </ul>
<b>Government-Owned corporations</b>	<ul style="list-style-type: none"> <li>• Building, Construction and Maintenance category (BCM) <ul style="list-style-type: none"> <li>– <i>contracts entered on or after 31 March 2023</i></li> </ul> </li> <li>• Transport, Infrastructure and Services category (TIS) <ul style="list-style-type: none"> <li>– <i>contracts entered on or after 31 March 2023</i></li> </ul> </li> <li>• Other procurement categories to be determined 2023.</li> </ul>
<b>Statutory bodies<sup>1</sup></b>	<ul style="list-style-type: none"> <li>• Building, Construction and Maintenance category (BCM) <ul style="list-style-type: none"> <li>– <i>contracts entered on or after 1 February 2022</i></li> </ul> </li> <li>• Transport, Infrastructure and Services category (TIS) <ul style="list-style-type: none"> <li>– <i>contracts entered on or after 1 February 2022</i></li> </ul> </li> <li>• Other procurement categories to be determined 2023.</li> </ul>
<b>Commercial entities</b> <ul style="list-style-type: none"> <li>– Queensland Rail and</li> <li>– Seqwater</li> </ul>	<ul style="list-style-type: none"> <li>• Building, Construction and Maintenance category (BCM) <ul style="list-style-type: none"> <li>– <i>contracts entered on or after 31 March 2023</i></li> </ul> </li> <li>• Transport, Infrastructure and Services category (TIS) <ul style="list-style-type: none"> <li>– <i>contracts entered on or after 31 March 2023</i></li> </ul> </li> <li>• Other procurement categories to be determined 2023.</li> </ul>
<b>Water entities</b> <ul style="list-style-type: none"> <li>– Mount Isa Water Board and</li> <li>– Gladstone Area Water Board</li> </ul>	<ul style="list-style-type: none"> <li>• Building, Construction and Maintenance category (BCM) <ul style="list-style-type: none"> <li>– <i>contracts entered on or after 31 March 2023</i></li> </ul> </li> <li>• Transport, Infrastructure and Services category (TIS) <ul style="list-style-type: none"> <li>– <i>contracts entered on or after 31 March 2023</i></li> </ul> </li> <li>• Other procurement categories to be determined 2023.</li> </ul>

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

## 3 During the procurement cycle

### 3.1 Before contracting with a supplier

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

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

The Portal will provide information about any current penalty to which a supplier is subject, as well as a supplier's history of non-compliance, including as authorised by any information access contract clauses in the tender documents. Sanctioned suppliers will be removed from all pre-qualified supplier lists and will appear as a sanctioned supplier when searched on the Portal.

Compliance with the Mandate and Threshold should be a requirement in tender documents.

### 3.2 When forming a contract with a supplier

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

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

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

The contract should require a supplier to:

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

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

### 3.3 During and after the contract

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

Procuring agencies and the QGP Compliance Branch are responsible for investigating alleged non-compliance identified either during or after a contract. The procuring agency should first undertake its

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usual contract management processes, as a delay in exercising contractual rights can lead to a loss of the rights.

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

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

### 3.3.1 Managing non-compliance

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

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

If the matter is an alleged breach of a regulation or law, the agency must refer the matter to the relevant regulator. In addition to referring to the regulator, the procuring agency must refer the alleged non-compliance under the Mandate to the Tripartite Procurement Advisory Panel (the Panel) (see **Section 4.3**) for recommendation of a penalty under the Mandate (see **Sections 7 and 8**) when there is compelling evidence that indicates the non-compliance occurred.

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

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

## 3.4 Contract variations

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

## 4 Conducting investigations

Investigations relating to alleged non-compliances under the Mandate are to be conducted by the procuring agency or the QGP Compliance Branch. Procuring agencies will ensure the scale of the investigation is commensurate with the complexity and significance of the alleged non-compliance.

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

### 4.1 Investigate the alleged non-compliance

Procuring agencies or the QGP Compliance Branch are responsible for managing investigations into alleged non-compliance under the Mandate (including during the contract management process). This includes determining whether evidence supports that the non-compliance occurred.

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.

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



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

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

### 4.1.1 Subcontractors

Subcontractors are required to comply with their contractual commitments to the Mandate and the Threshold, including providing information to the QGP Compliance Branch regarding an investigation.

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

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

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

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

For example:

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

#### For regulatory matters (legislative breach)

Procuring agencies must refer potential regulatory breaches deemed capable of being progressed<sup>2</sup> to an appropriate regulator or law enforcement agency:

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

For example:

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

#### For where compelling evidence exists

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

- e.g., for the underpayment of wages and superannuation (including in relation to compliance with the Threshold)
  - this is in addition to referring the matter to the relevant regulatory bodies for regulatory compliance action, or

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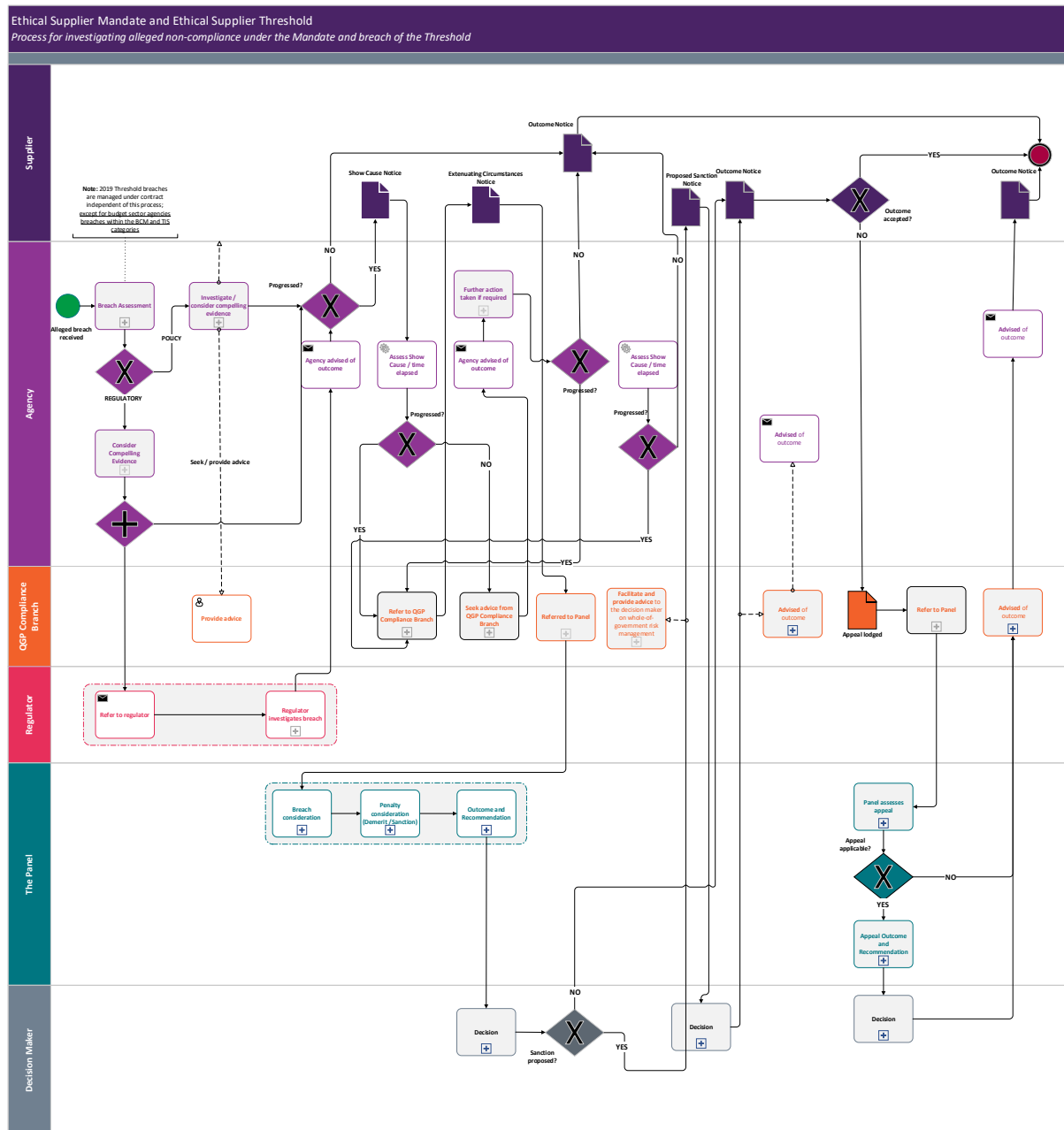
<sup>2</sup> A current Queensland Government supplier.

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- to law enforcement agencies for investigation of possible wage theft or other criminal offences.
  - e.g., for the supplier having treated employees as independent contractors when they are not (i.e., some instances of sham contracting), the agency must refer the matter to the Panel (see **Section 5**) for consideration of penalty.
  - this is in addition to referring the matter to the relevant regulatory bodies for regulatory compliance action (e.g., Fair Work Ombudsman regarding possible offences under the *Fair Work Act 2009*.)

The above also applies to these types of breaches under the Threshold (see **Sections 3.7.2 and 3.7.3** of the *Guidelines: Ethical Supplier Threshold*).

**Figure 4 – Ethical Supplier Mandate and Ethical Supplier Threshold overview**

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



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## 4.2 Show Cause Notice

Where the procuring agency (or the QGP Compliance Branch conducting the investigation) considers there is sufficient evidence to support an alleged non-compliance under the Mandate has occurred, the agency will provide the supplier with an opportunity to respond via a *Show Cause Notice*<sup>3</sup>.

The show cause process under the Mandate is separate from any contractual show cause notice that may be issued. The *Show Cause Notice* affords the supplier procedural fairness and is an opportunity for the supplier to provide further information about the non-compliance and any other details it would like the procuring agency to consider (e.g., rectification actions that may have occurred).

The procuring agency will consider any response to the *Show Cause Notice* before determining whether to refer the matter to the Panel for consideration of possible penalty.

The *Show Cause Notice* must:

- state that it is a Notice under the Mandate;
- specify the alleged non-compliance in adequate detail;
- outline any evidence that supports the alleged non-compliance;
- 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.

### 4.2.1 Capable of being progressed

If the supplier does not respond within the time specified in a *Show Cause Notice*, the procuring agency (or the QGP Compliance Branch conducting the investigation) may refer the matter to the Panel without further notice to the supplier.

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

### 4.2.2 Not capable of being progressed

Where a supplier does respond to a *Show Cause Notice*, the procuring agency or QGP Compliance Branch conducting the investigation 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 non-compliance as outlined in **Section 4.1** (*Ethical Supplier Mandate 2021*).

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

- the allegations are found to be unsupported by evidence;
- the supplier reasonably satisfies the agency that the alleged non-compliance was the result of an honest mistake that has been adequately rectified; or
- the supplier did not know or was not reasonably expected to know that the conduct was a breach of policy, legislative or contractual requirement.

Where the procuring agency determines the matter is to be closed, prior to any advice being provided to the supplier (e.g., *Outcome Notice*) the agency must consult with and provide to the QGP Compliance Branch the reasons and evidence supporting this decision.

The QGP Compliance Branch will then review the decision and where it considers, on evidence, that the non-compliance is capable of being progressed, the matter will be referred to the DDG – Procurement as an Internal Review (see **Section 9** – Internal Review).

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<sup>3</sup> Note, as this process is conducted under the Mandate and not the contract, it can be undertaken by an agency in relation to an alleged non-compliance by a subcontractor and does not require the direct involvement of the principal contractor, although it is preferable to keep the principal informed to assist them to work with the subcontractor to correct any potential non-compliance.

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If the non-compliance is determined as not capable of being progressed, the QGP Compliance Branch will liaise with the procuring agency to issue an *Outcome Notice* to the supplier.

## 4.3 Referral to the Tripartite Procurement Advisory Panel

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

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

- refer back to the investigating agency for clarification; or
- issue an *Extenuating Circumstances Notice* to the supplier (see **Section 4.4**) and following this process, refer the matter to the Panel for consideration of possible penalty.

### 4.3.1 Collating non-compliance

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

## 4.4 Extenuating Circumstances Notice

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

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

The *Extenuating Circumstances Notice* must:

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

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

## 5 Tripartite Procurement Advisory Panel

### 5.1 Recommendation must be given objectively

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

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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 alleged non-compliance 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.

In recommending an appropriate penalty for a non-compliance the circumstances of which substantiate two or more Types of non-compliance under the Mandate (as captured within **Section 4.1** of the *Ethical Supplier Mandate 2021*), the Panel, on consideration of all the circumstances has the discretion to recommend a penalty consistent with the type of non-compliance.

## 5.4 Compelling evidence

Where the procuring agency or QGP Compliance Branch has obtained compelling evidence (see **Appendix 1** – Definitions) supporting that the non-compliance has occurred (including breaches under the Threshold), the matter must be referred to the Panel to give recommendations on an appropriate penalty under the Mandate.

The agency will refer the matter to the Panel (via the QGP Compliance Branch) in addition to any separate processes for referring the matter to law enforcement or a regulator. Panel recommendations on penalties under the Mandate can be made without a court or regulator decision about whether there has been a breach of the law.

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

# 6 Procedural fairness

## 6.1 Procedural fairness requirements

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

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

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

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

## 7 Demerits

### 7.1 Recommendations by the Panel

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

Suppliers may request a further extension of time if sound reasoning for the extension is provided. The Panel must factor those circumstances outlined by the supplier in response to an *Extenuating Circumstances Notice* into their recommendation.

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

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

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

### 7.2 Decision maker for issuing demerits

The decision maker for imposing demerits under the Mandate (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.

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

If the decision maker issues demerits, the procuring agency will advise the supplier in writing that demerits have been issued, appeal options and that the demerit(s) will expire after 12 months from the date of the written notice (see **Section 7.3**).

### 7.3 Demerit advice

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

The *Outcome Notice* must:

- state that it is a notice under the Mandate
- specify the non-compliance in adequate detail
- state the number of demerits issued by the decision maker
- state that the demerit(s) will expire after 12 months from the date of the decision
- state that cumulative demerits of twenty (20) points may result in an exclusion from government procurement for a defined period of up to 12 months
- state that the supplier's demerit record will be available to procuring agencies to assess the risk profile of a supplier and
- inform the supplier that they have ten (10) business days from date of issue to appeal to the QGP Compliance Branch at [ethicalsupply@epw.qld.gov.au](mailto:ethicalsupply@epw.qld.gov.au) as set out in **Section 9** of the *Ethical Supplier Mandate 2021*.

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## 8 Sanctions

### 8.1 Recommendations by the Panel

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

### 8.2 Decision maker for sanctions

The decision maker for deciding sanctions under the Mandate (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.

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

Sanctions can include:

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

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

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

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

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

### 8.3 Sanction advice

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

The *Proposed Sanction Notice* must:

- state that it is a notice under the Mandate
- specify the non-compliance in adequate detail
- specify the proposed sanction determined by the decision maker
- state the proposed duration of the sanction (including the expiry of the demerits used to apply the sanction) and



- 
- inform the supplier that they have ten (10) business days from date of issue to respond to the decision maker.

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

The *Outcome Notice* must:

- state that it is a notice under the Mandate
- specify the non-compliance in adequate detail
- specify the sanction determined by the decision maker
- specify remedial or corrective actions to be undertaken (if any)
- state the duration of the sanction (including the expiry of the demerits used to apply the sanction) and
- inform the supplier that they have ten (10) business days from date of issue to appeal to the QGP Compliance Branch via [ethialsupply@epw.qld.gov.au](mailto:ethialsupply@epw.qld.gov.au).
  - as set out in **Section 9** of the *Ethical Supplier Mandate 2021* or
  - as otherwise required by the National Prequalification System (NPS).

## 8.4 Imposition of penalties – publication of information about sanctions

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

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

The supplier will be given an opportunity to be heard before the proposed publication. Where the supplier is a natural person (a sole trader), then the agency must comply with the *Information Privacy Act 2009 (Qld)* and the *Human Rights Act 2019 (Qld)*.

## 9 Internal review

The DDG – Procurement may review an investigation by an agency into a non-compliance allegation. This review will only occur once:

- the procuring agency investigation has been finalised (but before the *Outcome Notice* is issued), and
- the procuring agency has determined not to make a referral to the Panel (i.e., alleged non-compliance not progressed under the Mandate).

**On these occasions, the procuring agency must:**

- advise the QGP Compliance Branch of its decision not to proceed with the matter prior to issuing an *Outcome Notice* to the supplier (see **Section 4.2.1**), noting;
  - where the matter was triggered by an external complaint, the complainant may, on a case-by-case basis be advised of this decision. Where appropriate, matters may proceed to an Internal Review.
  - where the matter was triggered by an audit, the QGP Compliance Branch has the right to seek an Internal Review.
- await advice on the outcome of the Internal Review (or decision not to review) before issuing the *Outcome Notice*.

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- As a result of the review, the DDG – Procurement may decide on the basis of evidence available, to direct the procuring agency to refer the matter to the Panel for recommendation of an appropriate penalty.

The procuring agency will be advised of the DDG Internal Review final decision so that the *Outcome Notice* can either be issued, or held pending the outcome of the referral process.

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

A regulator's finding that the legislative non-compliance is not proven may not affect a decision regarding a penalty applied under the Mandate; however, an internal review will be conducted. Procuring agencies may elect to take advice, including legal or procurement advice.

The procuring agency decision maker will determine the appropriate response following the internal review and will advise the DDG – Procurement of the final outcome.

## 10 Appeal

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

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

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

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;
- considers the merits of the appeal; and
- makes a recommendation to the decision maker regarding the appeal.

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

### 10.1 The decision maker for appeals

The decision maker responsible for the appeal decision remains the 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.

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

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

## Appendix 1 – Definitions

Term	Description
<b>Breach</b>	A failure by the supplier to comply with one or more requirements of the Ethical Supplier Threshold as determined by a regulator or the decision maker.
<b>Business day</b>	A day that is not a Saturday, Sunday or a public holiday in Queensland.
<b>Compelling evidence</b>	<p>Compelling evidence of a non-compliance under the Mandate or breach of the Threshold having occurred (e.g., pay slips indicating underpayment of wages or superannuation, or ATO records, bank statements) regardless of whether the evidence has or has not been considered by any regulator or court, or whether or not there is any relevant regulator.</p> <ul style="list-style-type: none"> <li>– A non-compliance can be dealt with based on compelling evidence, even where the non-compliance standard is breach of a law that has not been established by a court or regulator (including as set out in the Threshold). The same applies in the case of breach of the Local Benefits Test or other contractual requirements where there is no regulator.</li> <li>– A decision regarding imposing a penalty under the Mandate can be made where compelling evidence exists for relevant non-compliance. Procedural fairness will still apply and suppliers will have a chance to challenge an allegation or rectify a non-compliance.</li> </ul>
<b>Complainant</b>	The person who has made a complaint regarding an alleged non-compliance under the Mandate.
<b>Date of issue</b>	<p>The date of issue means the day the Notice was provided to the supplier, where the method of issue results in immediate receipt (for example, in person, email).</p> <ul style="list-style-type: none"> <li>– Where same day delivery is not possible (i.e., post) the date of issue is five (5) business days after the Notice was posted.</li> </ul>
<b>Declared by the Minister</b>	<p>Declared in writing by the Minister responsible for the category, in consultation with:</p> <ul style="list-style-type: none"> <li>– the Minister for Energy, Renewables and Hydrogen and Minister for Public Works and Procurement, and</li> <li>– the Premier and Minister for Trade.</li> </ul>
<b>Deputy Director-General – Procurement</b>	The Deputy Director-General – Procurement (DDG – Procurement) of Queensland Government Procurement within the Department of Energy and Public Works.
<b>Decision maker</b>	The head of the procuring agency or such suitably qualified and senior delegate, to make decisions regarding whether a non-compliance under the Ethical Supplier Mandate or a breach of the Ethical Supplier Threshold occurred from the dates the policies apply (following recommendation from the Tripartite Procurement Advisory Panel) and whether a penalty in the form of demerits and or a sanction should be applied.
<b>Ethical Supplier Threshold</b>	<p>The Ethical Supplier Threshold described in the Queensland Procurement Policy, that is, whether a supplier has on or after 1 August 2019:</p> <ul style="list-style-type: none"> <li>(a) contravened a civil remedy provision of Chapter 2 or Chapter 3 of the <i>Fair Work Act 2009</i> (Cth), or committed an offence against the <i>Fair Work Act</i></li> <li>(b) contravened a civil remedy provision of Chapter 2, 3, 4, 5, or 7 of the <i>Industrial Relations Act 2016</i>, or committed an offence against the <i>Industrial Relations Act</i>, or failed to pay employment related levies, or other payments, established under Queensland legislation</li> <li>(c) failed to make superannuation contributions on behalf of employees in accordance with law</li> <li>(d) purported to treat employees as independent contractors, where they are not</li> </ul>

	<ul style="list-style-type: none"> <li>(e) required persons who would otherwise be employees to provide an Australian Business Number so that they could be treated as independent contractors</li> <li>(f) engaged persons on unpaid work trials or as unpaid interns, where they should be treated as employees</li> <li>(g) entered into an arrangement for the provision of labour hire services with a person who is not licensed under the <i>Labour Hire Licensing Act 2017</i>, or a supplier who is an unlicensed supplier under the Act</li> <li>(h) paid employee wages below those provided for in an applicable modern award (including for people with disability, 'suppliers' must provide award-based wages (using the Supported Wage System where appropriate)).</li> </ul>
<b>Guidelines</b>	<p>A document detailing information and guidance that assists a user to fulfil a policy requirement or understand concepts about a related process.</p> <ul style="list-style-type: none"> <li>– Guides may include specific steps that should be followed to complete a given process in support of a policy requirement</li> </ul>
<b>Low value procurement</b>	<p>Low value procurement is defined by an agency's existing purchasing threshold, where this value is less than \$20,000 (per purchase or order).</p> <ul style="list-style-type: none"> <li>– Where an agency's low value procurement threshold exceeds \$20,000, that agency's definition of low value spend will be capped at \$20,000 for the purpose of the Mandate and the Threshold.</li> </ul>
<b>Non-compliance</b>	<p>A failure by the supplier to comply with a policy, legislative or contractual requirement as set out in <b>Section 4.1</b> '<i>Categories of non-compliance</i>' (within the <i>Ethical Supplier Mandate 2021</i>) or <b>Section 2.2</b> '<i>Types of non-compliance</i>' (within the <i>Ethical Supplier Mandate 2019</i>) where the supplier knew or ought to have known the conduct was non-compliant as decided by the decision maker, on advice from the Panel. This may include, but is not limited to, where the decision maker considers that the supplier's conduct was deliberate, negligent, or repeated.</p>
<b>Policy requirement</b>	<p>A requirement of:</p> <ul style="list-style-type: none"> <li>– the <i>Queensland Procurement Policy</i> (QPP)</li> <li>– the <i>Queensland Government Procurement Strategy</i></li> <li>– procurement-related policies and instruments as listed in Schedule 3 to the QPP</li> <li>– procurement-related guidance and codes approved by the DDG – Procurement Queensland Government Procurement or a contractual term, designed to effect a policy requirement, in a Queensland Government contract, a subcontract to a Queensland Government contract, or a contract in a supply chain supporting a Queensland Government contract or a requirement of a law or regulation specified in this Mandate.</li> </ul>
<b>Pre-qualified supplier</b>	<p>A pre-qualified supplier means a supplier registered with:</p> <ul style="list-style-type: none"> <li>– the Prequalification System of the Capital Works Management Framework</li> <li>– the National Prequalification System for Civil (Road and Bridge) Construction Contracts</li> <li>– arrangements administered by General Goods and Services, Department of Energy and Public Works; or</li> <li>– QBuild as a prequalified supplier.</li> </ul>
<b>Procuring agency</b>	<p>An agency subject to the QPP, including a budget sector agency, a statutory body, special purpose vehicle or government owned corporation.</p> <ul style="list-style-type: none"> <li>– The 'department sponsoring the project' for the purposes of the <i>Capital Works Management Framework</i> is the 'procuring agency' for the purposes of this Mandate.</li> <li>– For the purposes of this Mandate, the procuring agency is the agency responsible for the contract during which the supplier's non-compliance occurred</li> </ul>

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

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## Appendix 2 – Example Clauses

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

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

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

### Building and construction related contracts

**Example clause:**

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

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

### Liquidated damages

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

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

### Apprentices and trainees

**Example clause:**

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

**Schedule:**

*Liquidated damages amount for apprentices and trainees \$ (for example, apprentice hourly rate of pay x number of hours not delivered by the Contractor)<sup>4</sup>*

### Unpaid wages

**Example clause:**

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<sup>4</sup> Note: This suggested method of calculating the amount of the liquidated damages represents a genuine pre-estimate of the department's damage or is a proportionate amount to the State's interest in the engagement of apprentices if there is a failure to deliver apprentice hours because it seems likely that a contractor would price the delivery of the commitment in this way, and it represents something that the department paid for but did not receive. It is not the only way that the amount can be calculated. The amount should be the subject of contract negotiations with the contractor.



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

**Schedule:**

*Liquidated damages amount for failure to pay terms and conditions of employment \$ (for example, difference between Best Practice Principle (BPP) hourly rates and usual hourly x number of hours of work that BPP rates are not paid for, or allowances or superannuation)<sup>5</sup>*

## Access to information

**Example clause:**

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

## Definitions

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

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

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

## Publication of information about sanctions

**Example clause:**

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

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<sup>5</sup> Note: This suggested method of calculation represents a genuine pre-estimate of the department's damage or is a proportionate amount to the State's interest if there is a failure to pay the promised terms and conditions of employment because presumably that is how the contractor priced the delivery of the commitment, and it represents something that the department paid for but did not receive. It is not the only way that the amount can be calculated. The amount should be the subject of contract negotiations with the contractor.

## Appendix 3 – Categories of non-compliance: reference table

To assist both procuring agencies and suppliers in the understanding and application of the *Ethical Supplier Mandate 2021* categories of non-compliance, the below table has been developed<sup>6</sup>. This reference table provides a break-down of the key areas related to the category and links users back to the source of the obligation<sup>7</sup>.

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

1. Local Benefits				
Types of non-compliance	a) Commitment to employment of local workers	b) Other commitments		Related resources
<i>Examples of non-compliance areas</i>	<ul style="list-style-type: none"> <li>Local workers</li> </ul>	<ul style="list-style-type: none"> <li>Local commitments</li> <li>Local business engagement</li> </ul>		<a href="#">Queensland Procurement Policy (QPP) 2023</a> <a href="#">Ethical Supplier Mandate (the Mandate) 2021</a>
Applicable evidence types		Example evidence	Source of commitment - examples	Regulator contact details
✓ Compelling evidence	Evidence obtained through investigation, where a regulator outcome is not in consideration (or scope)	<ul style="list-style-type: none"> <li>Contract/ tender documentation (contractual obligations/ commitments)</li> <li>Contract Management Plan</li> </ul>	<ul style="list-style-type: none"> <li>Tender documents</li> <li>Contract</li> <li>Contract Management Plan</li> <li>Deed of variation</li> </ul>	Not applicable
✗ Regulator outcome	Not applicable	<ul style="list-style-type: none"> <li>Site attendance register</li> </ul>		

<sup>6</sup> The Department of Energy and Public Works disclaims all liability that may arise from the use of this document. This guide should not be used as a substitute for obtaining appropriate probity and legal advice as may be required. In preparing this document, reasonable efforts have been made to use accurate and current information. It should be noted that information may have changed since the publication of this document. Where errors or inaccuracies are brought to attention a reasonable effort will be made to correct them.

<sup>7</sup> Regulators as mentioned in the *Categories of non-compliance: Reference table* refer to the appropriate regulator or law enforcement agency.



		<ul style="list-style-type: none"> <li>▪ Personnel residential suburb and postcode</li> <li>▪ Project closure reports</li> <li>▪ Charter for Local Content outcome reports (managing contractors)</li> <li>▪ Audit reports</li> </ul>		
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2. Apprentices and trainees – (Queensland Government Building and Construction Training Policy and BPP commitments)				
Types of non-compliance	a) Commitment to engagement hours	b) Other commitments		Related resources
<i>Examples of non-compliance areas</i>	<ul style="list-style-type: none"> <li>▪ Employment of apprentices</li> <li>▪ Employment of trainees</li> </ul>	<ul style="list-style-type: none"> <li>▪ Staff training</li> </ul>		<a href="#">Queensland Government Building and Construction Training Policy (Training Policy)</a> <a href="#">Queensland Indigenous Procurement Policy (QIPP)</a> <a href="#">Queensland Procurement Policy (QPP) 2023</a> <a href="#">Ethical Supplier Mandate (the Mandate) 2021</a>
Applicable evidence types		Example evidence	Source of commitment - <i>examples</i>	Regulator contact details
✓ Compelling evidence	Evidence obtained through investigation, where a regulator outcome is not in consideration (or scope)	<ul style="list-style-type: none"> <li>▪ Contract/ tender documentation (contractual obligations/ commitments)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Tender documents</li> <li>▪ Contract</li> <li>▪ Contract Management Plan</li> <li>▪ Deed of variation</li> </ul>	<i>Not applicable</i>

✗ Regulator outcome	Not applicable	<ul style="list-style-type: none"> <li>Contract Management Plan</li> <li>TPAS records</li> <li>Site attendance register</li> <li>Evidence of training records and supporting documentation</li> <li>Project closure reports</li> <li>Audit reports</li> </ul>		
<b>3. Aboriginals and Torres Strait Islander business and engagement</b>				
<b>Types of non-compliance</b>	<b>a) Commitment to Indigenous business engagement</b>	<b>b) Indigenous business ownership status- at time of contract signing</b>	<b>Related resources</b>	
<i>Examples of non-compliance areas</i>	<ul style="list-style-type: none"> <li>Aboriginal or Torres Strait Islander business engagement</li> <li>Indigenous Economic Opportunities</li> </ul>	<ul style="list-style-type: none"> <li>Indigenous business ownership</li> </ul>	<a href="#">Queensland Indigenous Procurement Policy (QIPP)</a> <a href="#">Queensland Procurement Policy (QPP) 2023</a> <a href="#">Ethical Supplier Mandate (the Mandate) 2021</a>	
<b>Applicable evidence types</b>		<b>Example evidence</b>	<b>Source of commitment - examples</b>	<b>Regulator contact details</b>
✓ Compelling evidence	Evidence obtained through investigation, where a regulator outcome is not in consideration (or scope)	<ul style="list-style-type: none"> <li>Contract/ tender documentation (contractual obligations/ commitments)</li> </ul>	<ul style="list-style-type: none"> <li>Tender documents</li> <li>Contract</li> <li>Contract Management Plan</li> <li>Deed of variation</li> </ul>	Not applicable
✗ Regulator outcome	Not applicable	<ul style="list-style-type: none"> <li>Contract Management Plan</li> <li>TPAS records</li> </ul>	<ul style="list-style-type: none"> <li>Indigenous Economic Opportunities Plan (IEOP)</li> </ul>	

		<ul style="list-style-type: none"> <li>▪ Evidence of implementation of IEOP</li> <li>▪ Project closure reports</li> <li>▪ Audit reports</li> </ul>		
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4. Workplace Health and Safety (WHS) – including BPP commitments				
Types of non-compliance	a) Commitment to standards			Related resources
<i>Examples of non-compliance areas</i>	<ul style="list-style-type: none"> <li>▪ Workplace health and safety</li> <li>▪ Electrical safety</li> </ul>			<a href="#">Work Health and Safety Act 2011 (Qld)</a> <a href="#">Electrical Safety Act 2002 (Qld)</a> <a href="#">Queensland Procurement Policy (QPP) 2023</a> <a href="#">Ethical Supplier Mandate (the Mandate) 2021</a>
Applicable evidence types		Example evidence	Source of commitment - examples	Regulator contact details
✗ Compelling evidence	<i>Not applicable</i>	<ul style="list-style-type: none"> <li>▪ Workplace health and safety compliance history (e.g., Improvement Notices, Prohibition Notices, Infringement Notices, Stop work order, Court orders, Industrial manslaughter conviction, etc.)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Tender documents</li> <li>▪ Contract</li> <li>▪ <i>Work Health and Safety Act 2011 (Cth)</i></li> <li>▪ <i>Electrical Safety Act 2002 (Qld)</i></li> </ul>	WorkSafe Ph: 1300 362 128
✓ Regulator outcome	A non-compliance in this category will require a regulator outcome. Investigating agencies may obtain further evidence to			

	assist the Panel in its consideration	<ul style="list-style-type: none"> <li>▪ Corrective action reports</li> <li>▪ Evidence of workplace health and safety records and supporting documentation (e.g., Safety Management Plan, Safe work method statement (SWMS), incident reports, Health and safety representative (HSR) nomination, appointment, and training, etc.)</li> <li>▪ Site attendance register</li> <li>▪ Toolbox talks and meeting minutes</li> <li>▪ Audit reports</li> </ul>		
<b>5. Industrial relations (IR) – including BPP commitments</b>				
<b>Types of non-compliance</b>	<b>a) Commitment to Best Practice Principles (BPP)</b>		<b>b) Commitment to standards</b>	<b>Related resources</b>
<i>Examples of non-compliance areas</i>	<ul style="list-style-type: none"> <li>▪ Superannuation</li> <li>▪ Wages</li> <li>▪ Modern awards</li> <li>▪ Enterprise agreements</li> <li>▪ Enforceable undertakings</li> <li>▪ Sham contracting</li> </ul>	<ul style="list-style-type: none"> <li>▪ Industrial relations</li> <li>▪ Industrial relations management plans (IRMP)</li> <li>▪ Employee entitlements</li> <li>▪ Superannuation</li> <li>▪ Wages</li> <li>▪ Modern awards</li> <li>▪ Enterprise agreements</li> <li>▪ Enforceable undertakings</li> <li>▪ Sham contracting</li> </ul>		<a href="#">Fair Work Act 2009 (Cth)</a> <a href="#">Queensland Procurement Policy (QPP) 2023</a> <a href="#">Ethical Supplier Mandate (the Mandate) 2023</a> <a href="#">Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020 (Qld)</a>

Applicable evidence types		Example evidence	Source of commitment - <i>examples</i>	Regulator contact details
<p>✓ Compelling evidence</p> <p><b>and/or</b></p> <p>✓ Regulator outcome</p>	<p>Compelling evidence and/or a regulator decision may be considered where the non-compliance relates to these non-compliance areas:</p> <ul style="list-style-type: none"> <li>▪ Underpayment of wages</li> <li>▪ Underpayment of superannuation</li> <li>▪ Certain instances of sham contracting</li> </ul>	<ul style="list-style-type: none"> <li>▪ Fair Work Ombudsman (FWO) compliance history (e.g., Contravention letter, Letter of Caution, Infringement Notice, Compliance Notice, Court order, FWO Notice etc.)</li> <li>▪ Pay records (e.g., pay slips, timesheets etc.)</li> <li>▪ Bank statements</li> <li>▪ Superannuation information and supporting records</li> <li>▪ Industrial relations management plan</li> <li>▪ Site personnel register</li> <li>▪ Site personnel register summary report</li> <li>▪ Site personnel classification/engagement register</li> <li>▪ Employment contracts/engagement letters</li> <li>▪ Industrial instrument (e.g., EBA, Modern Award etc.)</li> <li>▪ Induction records</li> <li>▪ Audit reports</li> </ul>	<ul style="list-style-type: none"> <li>▪ Tender documents</li> <li>▪ Contract</li> <li>▪ <i>Fair Work Act 2009</i> (Cth)</li> </ul>	<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>
✓ Regulator outcome	<p>For all other matters falling under category 5, a regulator outcome is required</p> <p>Investigating agencies may obtain further evidence to assist the Panel in its consideration</p>			

		<ul style="list-style-type: none"> <li>Contract/ tender documentation (contractual obligations for industrial relations)</li> </ul>		
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6. Security of payment				
Types of non-compliance	a) Adjudication standards	b) Breaches of the Building Industry Fairness (BIF) Act		Related resources
<i>Examples of non-compliance areas</i>	<ul style="list-style-type: none"> <li>Supply chain payments</li> <li>Adjudication</li> <li>Payment disputes</li> <li>Judgement debts</li> </ul>	<ul style="list-style-type: none"> <li>Supply chain payments</li> <li>Payment disputes</li> <li>QBCC notices</li> <li>Trade licenses</li> </ul>		<a href="#">The Building Industry Fairness (BIF) Act 2017 (Qld)</a> <a href="#">Queensland Procurement Policy (QPP) 2023</a> <a href="#">Ethical Supplier Mandate (the Mandate) 2021</a>
Applicable evidence types		Example evidence	Source of commitment - <i>examples</i>	Regulator contact details
✗ Compelling evidence	<i>Not applicable</i>	<ul style="list-style-type: none"> <li>Contravention letter</li> <li>Letter of Caution</li> <li>Infringement notice</li> <li>Compliance notice</li> </ul>	<ul style="list-style-type: none"> <li>Tender documents</li> <li>Contract</li> <li><i>Building Industry Fairness (BIF) Act 2017 (Qld)</i></li> </ul>	Queensland Building and Construction Commission Ph: 139 333
✓ Regulator outcome	A breach in this category will require a regulator outcome. Investigating agencies may obtain further evidence to assist the Panel in its consideration			

7. Payment standards					
Types of non-compliance	a) Payments not covered by the BIF Act				Related resources
Examples of non-compliance areas	<ul style="list-style-type: none"> <li>Supply chain payments</li> </ul>				<a href="#">Queensland Procurement Policy (QPP) 2023</a> <a href="#">Ethical Supplier Mandate (the Mandate) 2021</a>
Applicable evidence types		Example evidence	Source of commitment - examples		Regulator contact details
<ul style="list-style-type: none"> <li>✓ Compelling evidence</li> </ul> <p><b>and/or</b></p> <ul style="list-style-type: none"> <li>✓ Regulator outcome</li> </ul>	<p>Evidence obtained through investigation, where a regulator outcome is not in consideration (or scope), and/or</p> <p>A regulator outcome may be used to escalate a breach in this category, however it is not essential</p> <p>Where a regulator outcome is relied on, investigating agencies may obtain further evidence to assist the Panel in its consideration</p>	<ul style="list-style-type: none"> <li>Payment agreements/terms</li> <li>Supplier invoices</li> <li>Bank statements</li> <li>Adjudication records</li> <li>Court order</li> </ul>	<ul style="list-style-type: none"> <li>Tender documents</li> <li>Contract</li> <li>Contract Management Plan</li> <li>Deed of variation</li> </ul>		<p>Queensland Building and Construction Commission</p> <p>Ph: 139 333</p>

8. [other] Contractual and policy				
Types of non-compliance	a) Other commitments (including not engaging sanctioned suppliers when doing business with government)			Related resources
Examples of non-compliance areas	<ul style="list-style-type: none"> <li>Social commitments</li> <li>Environmental commitments</li> <li>Prioritising 'Buy Queensland first'</li> <li>Subcontractor non-compliances</li> <li>Engagement of a sanctioned subcontractor</li> </ul>			<a href="#">Queensland Procurement Policy (QPP) 2023</a> <a href="#">Ethical Supplier Mandate (the Mandate) 2021</a>
Applicable evidence types		Example evidence	Source of commitment - examples	Regulator contact details
✓ Compelling evidence	Evidence obtained through investigation, where a regulator outcome is not in consideration (or scope)	<ul style="list-style-type: none"> <li>Contract/ tender documentation (contractual obligations/ commitments)</li> <li>Contract Management Plan</li> <li>Project closure reports</li> <li>Audit reports</li> </ul>	<ul style="list-style-type: none"> <li>Tender documents</li> <li>Contract</li> <li>Contract Management Plan</li> <li>Deed of variation</li> <li>Government policy</li> <li>Legislation</li> </ul>	Not applicable
✗ Regulator outcome	Not applicable			



9. Communication and Co-ordination				
Types of non-compliance	a) Co-operation with requests			Related resources
<i>Examples of non-compliance areas</i>	<ul style="list-style-type: none"> <li>Non-compliance with procuring agency requests</li> <li>Uncooperative with QGP Compliance Branch requests</li> </ul>			<a href="#">Queensland Procurement Policy (QPP) 2023</a> <a href="#">Ethical Supplier Mandate (the Mandate) 2021</a>
Applicable evidence types		Example evidence	Source of commitment - <i>examples</i>	Regulator contact details
✓ Compelling evidence	Evidence obtained through investigation, where a regulator outcome is not in consideration (or scope)	<ul style="list-style-type: none"> <li>Warning notices</li> </ul>	<ul style="list-style-type: none"> <li>Tender documents</li> <li>Contract</li> <li>Contract Management Plan</li> <li>Deed of variation</li> </ul>	<i>Not applicable</i>
✗ Regulator outcome	<i>Not applicable</i>			

## Appendix 4 – Supplier timelines for responding to non-compliance

The timeframes are standard best practice:

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

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

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

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

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

## Appendix 5 – Ethical Supplier Mandate and Ethical Supplier Threshold overview

