

BUY

Queensland

Unite & Recover



Queensland Government construction site, Brisbane

Supporting ethical suppliers: Information for government buyers

The Queensland Government is committed to engaging suppliers who deliver quality, secure ongoing local jobs with fair pay and safe working conditions.

The *Buy Queensland* procurement approach emphasises the state's responsibility to maximise the social, economic and environmental benefits for Queenslanders when it comes to government procurement. This includes 2 complementary initiatives – the Ethical Supplier Mandate (the Mandate) and the Ethical Supplier Threshold (the Threshold).

Ethical Supplier Mandate

The Mandate reflects the Queensland Government's focus on conducting business with ethically, socially and environmentally responsible suppliers. It outlines how the Queensland Government will manage instances where a supplier fails to comply with a policy requirement, regulatory requirement or contractual obligation and how penalties will be applied.

The Mandate provides a scaled approach to non-compliant actions with a range of penalties including a demerit system and potential for sanction.

The Mandate only impacts the small percentage of suppliers who negligently, deliberately and/or repeatedly breach contractual or policy requirements, or break laws. It is not intended to penalise honest mistakes or oversights that are found and corrected. The Mandate is captured in the [Queensland Procurement Policy \(QPP\)](#) at Clause 2.2. More information on the QPP is available at forgov.qld.gov.au/procurement-policy.

How it works

If a supplier is proven to have breached the Mandate following agency investigation, penalties will be considered and recommended by an Tripartite Procurement Advisory Panel (the Panel). A sliding-scale of 2-20 demerits for minor, moderate, major or aggravated non-compliance will apply.

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

If businesses repeatedly behave unethically and incur 20 or more demerits in a 12-month period, they face up to a 12-month suspension (sanction) from doing business with the Queensland Government.

Application

Penalties will only be issued for actions that occurred, and on contracts entered into, after the commencement date of the Mandate and won't be retrospective. Demerits and sanctions will expire 1 year from the date issued.

The Mandate currently applies only to:

- the Building and Construction category – contracts entered on or after 1 August 2019
- the Transport Infrastructure and Services category – contracts entered on or after 1 October 2019.

The government will consider extending the application of the Mandate in 2021.

Ethical Supplier Threshold

The Threshold is the minimum legal entitlements expected of all suppliers who want to do business with the Queensland Government. It applies to all Queensland Government suppliers in all categories. The Queensland Government introduced the Threshold in response to Report No. 9 of the 56th Parliament Education, Employment and Small Business Committee: "A fair day's pay for a fair day's work?: Exposing the true cost of wage theft in Queensland".

Declaring compliance with the Threshold is a requirement to proceed with any government tenders. The Threshold requirements are mandated at Clause 2.3 of the QPP.

What this means for government buyers

Government buyers will be responsible for:

- ensuring suppliers haven't been excluded under the Threshold or sanctioned under the Mandate by using the online checking tool prior to procurement, available at forgov.qld.gov.au/complete-supplier-check
- ensuring that invitation to tender (ITO) documents include a Threshold declaration, completion of which is mandatory if the tender is to be considered further
- investigating alleged non-compliance with the Mandate
- investigating alleged breaches of the Threshold
- referring substantiated non-compliance (i.e. breaches) to the Queensland Government Procurement (QGP) Compliance Branch for referral to the Panel for consideration
- applying sanction outcomes (for example, not exercising contract extension options) approved by the relevant Director-General.

All government contracts from date of implementation will be updated to include standard clauses that reference the Mandate and Threshold. Example tender clauses are available in the Guideline documents available at forgov.qld.gov.au.



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Frequently Asked Questions

1. Why is an Ethical Supplier Mandate or Ethical Supplier Threshold needed?

The Threshold and Mandate provide practical tools to help buyers in ensuring they only do business with ethical suppliers. The Mandate and the Threshold highlight that procurement is about much more than capability and cost. They are the mechanism for buyers to apply the Queensland Government's policy.

2. What procurement categories does the Mandate apply to?

The Mandate currently applies to budget sector agencies:

- Building, Construction and Maintenance suppliers - contracts entered on or after 1 August 2019
- Transport Infrastructure and Services suppliers - contracts entered on or after 1 October 2019.

Government-owned corporations, statutory bodies, and special purpose vehicles are to be considered in 2021.

3. Does the Mandate apply to subcontractors?

Yes. The Mandate's definition of 'supplier' includes subcontractors within the supply chain.

4. What is considered unethical supplier conduct?

Unethical supplier conduct relates to a breach in a supplier's predetermined contractual obligations or actions that contravene policy or laws.

5. How will alleged breaches be identified?

Breaches may be identified through:

- contract management and performance reporting
- a third-party complaint
- audits conducted by the QGP Compliance Branch, agencies or regulators.

6. What happens if an existing supplier is in breach of the Mandate or Threshold?

Penalties may only be issued for actions that occurred on contracts entered into on or after the date of implementation. Non-compliance before this date should be handled by the procuring agency's existing contractual processes.

7. How do I check for supplier eligibility?

Government buyers can access a secure online register that confirms a supplier's eligibility under the Mandate and Threshold. Unless you are using a prequalified supplier, you must check if the supplier has been suspended.

The online service (including a list of prequalified supplier registers) is available at forgov.qld.gov.au/complete-supplier-check. The Executive Officer of the Ethical Supply Team will notify operators of these registers to ensure sanctions are reflected where appropriate.

8. How does the Mandate and Threshold benefit my work?

The Mandate and Threshold provides procuring agencies reassurance they are engaging quality, responsible and ethical suppliers. Reviewing the secure register also helps ensure your agency meets policy requirements.

9. What do I need to do differently in my tender or quoting process?

As the Mandate progressively applies to your business area, tender documentation and contract clauses will need to be updated to reflect the Mandate. Draft clauses are available in the Mandate and Threshold guidance documents at forgov.qld.gov.au.

10. What is compelling evidence?

Compelling evidence of a breach having occurred (for example pay slips indicating underpayment of wages or superannuation, or Australian Taxation Office (ATO) records, bank statements), without the need of a regulator.

For some cases, compelling evidence can be used to progress an alleged breach for consideration by the Panel where the breach has not yet been determined by a regulator. This would occur in addition to referring the matter to the relevant regulator or law enforcement agency. For further information refer to Appendix 3 of the Guidelines: Ethical Supplier Mandate available at forgov.qld.gov.au.

11. Who will decide if a supplier is in breach?

If an allegation is substantiated, the procuring agency will refer it to a Tripartite Procurement Advisory Panel through the QGP Compliance Branch to make demerit and sanction recommendations to the decision maker (the procuring agency's Director-General).

12. How will breaches be reported to the Panel?

Substantiated breaches must be submitted to the Executive Officer of the QGP Compliance Branch by the appropriate procuring agency following investigation. This can be done by emailing ethicalsupply@epw.qld.gov.au.

13. What is the Tripartite Procurement Advisory Panel?

The Tripartite Procurement Advisory Panel (the Panel) is the expert independent body that will supersede the existing Procurement Penalties and Sanctions Committee (PPSC).

It will comprise of equal representation of employers and unions with the requisite knowledge and experience to make assessments of non-compliance and make recommendations to the Queensland Government on appropriate penalties. The Panel will have the capacity to seek independent advice from additional experts as required. The existing PPSC will remain in effect until the Panel is formally inducted.