

Appendix 2: 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 developed². This reference table provides a break-down of the key areas related to the category and links users back to the source of the obligation³.

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

² 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.

³ Regulators as mentioned in the *Categories of non-compliance: Reference table* refer to the appropriate regulator or law enforcement agency.

2. Apprentices and trainees – (Queensland Government Building and Construction Training Policy and BPP commitments)

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

3. Aboriginals and Torres Strait Islander business and engagement

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

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

5. Industrial relations (IR) – including BPP commitments

Types of non-compliance	a) Commitment to Best Practice Principles (BPP)	b) Commitment to standards		Related resources
<i>Examples of non-compliance areas</i>	<ul style="list-style-type: none"> ▪ Superannuation ▪ Wages ▪ Modern awards ▪ Enterprise agreements ▪ Enforceable undertakings ▪ Sham contracting 	<ul style="list-style-type: none"> ▪ Industrial relations ▪ Industrial relations management plans (IRMP) ▪ Employee entitlements ▪ Superannuation ▪ Wages ▪ Modern awards ▪ Enterprise agreements ▪ Enforceable undertakings ▪ Sham contracting 		Fair Work Act 2009 Queensland Procurement Policy 2021 Ethical Supplier Mandate 2021 Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020 (Qld)
Applicable evidence types		Example evidence	Source of commitment	Regulator contact details
<ul style="list-style-type: none"> ✓ Compelling evidence and/or ✓ Regulator outcome 	Compelling evidence and/or a regulator decision may be considered where the breach relates to these non-compliance areas: <ul style="list-style-type: none"> ▪ Underpayment of wages ▪ Underpayment of superannuation ▪ Certain instances of sham contracting 	<ul style="list-style-type: none"> ▪ Pay slips ▪ Bank statements ▪ Superannuation records ▪ Industrial relations management plan ▪ Contravention letter ▪ Letter of caution ▪ Infringement notice ▪ Compliance notice ▪ Court order ▪ FWO notice ▪ Site personnel register ▪ Site personnel register summary report 	<ul style="list-style-type: none"> ▪ Tender documents ▪ Contract ▪ <i>Fair Work Act 2009 (Cth)</i> 	Fair Work Ombudsman Ph: 13 13 94 Australian Tax Office (ATO) Ph: 13 10 20 Queensland Police Ph: 131 444
<ul style="list-style-type: none"> ✓ Regulator outcome 	For all other matters falling under category 5, a regulator outcome is required Investigating agencies may obtain further evidence to assist the Panel in its consideration			Australian Building and Construction Commission (ABCC) Ph: 1800 003 338

6. Security of payment				
Types of non-compliance	a) Adjudication standards	b) Breaches of the Building Industry Fairness (BIF) Act		Related resources
<i>Examples of non-compliance areas</i>	<ul style="list-style-type: none"> ▪ Supply chain payments ▪ Adjudication ▪ Payment disputes ▪ Judgement debts 	<ul style="list-style-type: none"> ▪ Supply chain payments ▪ Payment disputes ▪ QBCC notices ▪ Trade licenses 		The Building Industry Fairness Act 2017 Queensland Procurement Policy 2021 Ethical Supplier Mandate 2021
Applicable evidence types		Example evidence	Source of commitment	Regulator contact details
✘ Compelling evidence	<i>Not applicable</i>	<ul style="list-style-type: none"> ▪ Contravention letter ▪ Letter of Caution ▪ Infringement notice ▪ Compliance notice 	<ul style="list-style-type: none"> ▪ Tender documents ▪ Contract ▪ <i>Building Industry Fairness (BIF) Act 2017 (Qld)</i> 	Queensland Building and Construction Commission Ph: 139 333 Australian Building and Construction Commission (ABCC) Ph: 1800 003 338
✓ 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
<i>Examples of non-compliance areas</i>	<ul style="list-style-type: none"> ▪ Supply chain payments 		Queensland Procurement Policy 2021 Ethical Supplier Mandate 2021
Applicable evidence types		Example evidence	Source of commitment
<ul style="list-style-type: none"> ✓ Compelling evidence and/or ✓ Regulator outcome 	<p>Evidence obtained through investigation, where a regulator outcome is not in consideration (or scope), and/or</p> <p>A regulator outcome may be used to escalate a breach in this category, however it is not essential</p> <p>Where a regulator outcome is relied on, investigating agencies may obtain further evidence to assist the Panel in its consideration</p>	<ul style="list-style-type: none"> ▪ Payment agreements/terms ▪ Supplier invoices ▪ Bank statements ▪ Adjudication records ▪ Court order 	<ul style="list-style-type: none"> ▪ Tender documents ▪ Contract ▪ Contract Management Plan ▪ Deed of variation
			Regulator contact details
			<p>Queensland Building and Construction Commission</p> <p>Ph: 139 333</p> <p>Australian Building and Construction Commission (ABCC)</p> <p>Ph: 1800 003 338</p>

8. [other] Contractual and policy			
Types of non-compliance	a) Other commitments, including engage sanctioned subcontractor on government job – demerits here cannot duplicate those applied in other rows		Related resources
<i>Examples of non-compliance areas</i>	<ul style="list-style-type: none"> ▪ Social commitments ▪ Environmental commitments ▪ Prioritising 'Buy Queensland first' ▪ Subcontractor non-compliances ▪ Engagement of a sanctioned subcontractor 		Queensland Procurement Policy 2021 Ethical Supplier Mandate 2021
Applicable evidence types		Example evidence	Source of commitment
✓ Compelling evidence	Evidence obtained through investigation, where a regulator outcome is not in consideration (or scope)	<ul style="list-style-type: none"> ▪ Audit reports ▪ Contract management reports ▪ Project closure reports 	<ul style="list-style-type: none"> ▪ Tender documents ▪ Contract ▪ Contract Management Plan ▪ Deed of variation ▪ Government policy ▪ Legislation
✗ Regulator outcome	<i>Not applicable</i>		
			Regulator contact details
			<i>Not applicable</i>

9. Communication and Co-ordination

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