

Appendix 3: Categories of non-compliance - Reference table

To assist both procuring agencies and suppliers in the understanding and application of the Threshold 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.

a. Contravened a civil remedy provision of Chapter 2 or Chapter 3 of the *Fair Work Act 2009 (Cth)*, or committed an offence against the *Fair Work Act*

Related non-compliance areas	Source of commitment	Related resources
<ul style="list-style-type: none"> • National Employment Standards • Modern awards • Enterprise agreements • Workplace determinations • National minimum wage orders • Equal remuneration orders • Terms and conditions of employment • General protections requirements, including <ul style="list-style-type: none"> ○ Workplace rights ○ Discrimination 	<ul style="list-style-type: none"> ○ Sham arrangements ○ Costs orders • Unfair dismissals • Industrial actions • Action ballot orders • Rights of entry • Disputes • Misuse of rights • Employment rights and responsibilities • Offences against the <i>Fair Work Act 2009 (Cth)</i> 	<ul style="list-style-type: none"> • Tender documents • Contract • <i>Fair Work Act 2009 (Cth)</i>
		<ul style="list-style-type: none"> Fair Work Act 2009 Queensland Procurement Policy 2021 Ethical Supplier Mandate 2021 Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020 (Qld)

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.

Applicable evidence types		Example evidence	Regulator contact details
<ul style="list-style-type: none"> ✓ Compelling evidence <li style="text-align: center;">and/or ✓ Regulator outcome 	<p>Compelling evidence and/or a regulator decision may be considered where the breach relates to these non-compliance areas:</p> <ul style="list-style-type: none"> ▪ Underpayment of wages ▪ Underpayment of superannuation ▪ Certain instances of sham contracting 	<ul style="list-style-type: none"> ▪ Pay slips ▪ Bank statements ▪ Superannuation records ▪ Entry notice 	<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> <p>Australian Building and Construction Commission (ABCC) Ph: 1800 003 338</p>
<ul style="list-style-type: none"> ✓ Regulator outcome 	<p>For all other matters falling under category (a.), a regulator outcome is required</p> <p>Investigating agencies may obtain further evidence to assist the Panel in its consideration</p>		

b. Contravened a civil remedy provision of Chapter 2, 3, 4, 5, or 7 of the Industrial Relations Act 2016, or committed an offence against the Industrial Relations Act, or failed to pay employment related levies, or other payments, established under Queensland legislation

Related non-compliance areas		Source of commitment	Related resources
<ul style="list-style-type: none"> • Modern awards • Conciliation • Bargaining instruments • Industrial instruments • Industrial action • Attendance notices • Queensland Industrial Relations Commission requests • Bullying 		<ul style="list-style-type: none"> • Employment rights • Employment arrangements • Penalty orders • Inappropriate conduct • Contempt • Wages • Employee entitlements 	<ul style="list-style-type: none"> • Tender documents • Contract • <i>Industrial Relations Act 2016</i> (Qld)
<ul style="list-style-type: none"> • Employment rights • Employment arrangements • Penalty orders • Inappropriate conduct • Contempt • Wages • Employee entitlements 		<ul style="list-style-type: none"> • Tender documents • Contract • <i>Industrial Relations Act 2016</i> (Qld) 	<ul style="list-style-type: none"> Industrial Relations Act 2016 Queensland Procurement Policy 2021 Ethical Supplier Mandate 2021 Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020 (Qld)
Applicable evidence types		Example evidence	Regulator contact details
<ul style="list-style-type: none"> ✓ Compelling evidence 	<p>Compelling evidence and/or a regulator decision may be considered where the breach relates to these non-compliance areas:</p> <ul style="list-style-type: none"> ▪ Underpayment of wages ▪ Underpayment of superannuation ▪ Certain instances of sham contracting 	<ul style="list-style-type: none"> ▪ Pay slips ▪ Bank statements ▪ Superannuation records 	<p>Queensland Industrial Relations Commission Ph: 1300 362 128</p> <p>Australian Tax Office (ATO) Ph: 13 10 20</p> <p>Queensland Police Ph: 131 444</p>
<p>and/or</p> <ul style="list-style-type: none"> ✓ Regulator outcome 	<p>For all other matters falling under category (b.), 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"> ✓ Regulator outcome 	<p>For all other matters falling under category (b.), a regulator outcome is required</p> <p>Investigating agencies may obtain further evidence to assist the Panel in its consideration</p>		

c. Failed to make superannuation contributions on behalf of employees in accordance with law

Related non-compliance areas		Source of commitment	Related resources
<ul style="list-style-type: none"> • Superannuation • Employee entitlements • Superannuation Guarantee 		<ul style="list-style-type: none"> • Tender documents • Contract • <i>Fair Work Act 2009</i> (Cth) 	Australian Taxation Office Queensland Procurement Policy 2021 Ethical Supplier Mandate 2021 Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020 (Qld)
Applicable evidence types		Example evidence	Regulator contact details
<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, 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"> ▪ Pay slips ▪ Superannuation records 	<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> <p>Australian Building and Construction Commission (ABCC) Ph: 1800 003 338</p>

d. Purported to treat employees as independent contractors, where they are not

Related non-compliance areas		Source of commitment	Related resources
<ul style="list-style-type: none"> • Employment arrangements • Independent contractors • Sham contracting 		<ul style="list-style-type: none"> • Tender documents • Contract • <i>Fair Work Act 2009</i> (Cth) 	Fair Work Ombudsman Queensland Procurement Policy 2021 Ethical Supplier Mandate 2021
Applicable evidence types		Example evidence	Regulator contact details
<ul style="list-style-type: none"> ✓ Compelling evidence <p>and/or</p> <ul style="list-style-type: none"> ✓ Regulator outcome 	<p>Evidence obtained through investigation, where a regulator outcome is not in consideration, 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"> ▪ Supplier invoices ▪ Rosters ▪ Responses to employee status questions e.g., ATO 	<p>Fair Work Ombudsman Ph: 13 13 94</p> <p>Australian Tax Office (ATO) Ph: 13 10 20</p>

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

Related non-compliance areas		Source of commitment	Related resources
<ul style="list-style-type: none"> • Employment arrangements • Independent contractors • Sham contracting 		<ul style="list-style-type: none"> • Tender documents • Contract • <i>Fair Work Act 2009</i> (Cth) 	Fair Work Ombudsman Queensland Procurement Policy 2021 Ethical Supplier Mandate 2021
Applicable evidence types		Example evidence	Regulator contact details
<ul style="list-style-type: none"> ✓ Compelling evidence 	Evidence obtained through investigation, where a regulator outcome is not in consideration, and/or	<ul style="list-style-type: none"> ▪ Supplier invoices ▪ Rosters ▪ Responses to employee status questions e.g., ATO 	Fair Work Ombudsman Ph: 13 13 94 Australian Tax Office (ATO) Ph: 13 10 20
<ul style="list-style-type: none"> ✓ Regulator outcome 	A regulator outcome may be used to escalate a breach in this category, however it is not essential Where a regulator outcome is relied on, investigating agencies may obtain further evidence to assist the Panel in its consideration		

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

Related non-compliance areas		Source of commitment	Related resources
<ul style="list-style-type: none"> • Employment arrangements • Interns • Work trials 		<ul style="list-style-type: none"> • Tender documents • Contract • <i>Fair Work Act 2009</i> (Cth) 	Fair Work Ombudsman Queensland Procurement Policy 2021 Ethical Supplier Mandate 2021
Applicable evidence types		Example evidence	Regulator contact details
<ul style="list-style-type: none"> ✓ Compelling evidence <p>and/or</p> <ul style="list-style-type: none"> ✓ Regulator outcome 	<p>Evidence obtained through investigation, where a regulator outcome is not in consideration, 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"> ▪ Agreement records ▪ Rosters ▪ Position description 	<p>Fair Work Ombudsman Ph: 13 13 94</p>

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

Related non-compliance areas		Source of commitment	Related resources
<ul style="list-style-type: none"> Trade licenses Business licenses 		<ul style="list-style-type: none"> Tender documents Contract <i>Labour Hire Licensing Act 2017</i> (Qld) 	Labour Hire Licensing Act 2017 Queensland Procurement Policy 2021 Ethical Supplier Mandate 2021
Applicable evidence types		Example evidence	Regulator contact details
✘ Compelling evidence	Not applicable	<ul style="list-style-type: none"> Information notice License registration records 	Office of Industrial Relations Ph: 1300 576 088
✔ Regulator outcome	A breach in this category will require a regulator outcome. Investigating agencies may obtain further evidence to assist the Panel in its consideration		

h. Paid employees wages below those provided for in an applicable modern award

Related non-compliance areas		Source of commitment	Related resources
<ul style="list-style-type: none"> Modern awards Staff wages 		<ul style="list-style-type: none"> Tender documents Contract <i>Fair Work Act 2009</i> (Cth) 	Fair Work Act 2009 Queensland Procurement Policy 2021 Ethical Supplier Mandate 2021
Applicable evidence types		Example evidence	Regulator contact details
<ul style="list-style-type: none"> ✓ Compelling evidence <p>and/or</p> <ul style="list-style-type: none"> ✓ Regulator outcome 	<p>Evidence obtained through investigation, where a regulator outcome is not in consideration, 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"> ▪ Pay slips 	<p>Fair Work Ombudsman Ph: 13 13 94</p> <p>Australian Building and Construction Commission (ABCC) Ph: 1800 003 338</p>