



Queensland
Government

Department of
Energy and Public Works

Example Report Only

The entity's, dates and facts depicted in this report are fictional and are for example purposes only.

Best Practice Principles Investigation Report

Ethical Supplier Mandate

Cover summary

PIU reference no:	INS-XXX	Referral Source:	Choose an item.
		Other:	<Insert details or not applicable>
Project name:	Government Administration Precinct		
Project address:	<postal address>		
Procuring agency:	Department of Energy and Public Works		
Managing Procuring agency:	<Insert managing procuring agency name or> <input checked="" type="checkbox"/> Not applicable		
Business area:	<Area within the agency>		
Date of referral:	Click or tap to enter a date.		

Commented [TC1]: All sections of the report need to be completed and if sections are not applicable then select or note not applicable.

Subject of the Investigation

Subject of investigation:	Sub-contractor		
Insert company name:	XYZ Plumbing Pty Ltd	ABN:	01 987 654 321
		ACN:	987 654 321
Contact name:	Mick Citizen	Contact number:	0417 555 696
		Email:	Mick.citizen@xyzplumbing.com.au
Postal address:	1234 Smith Avenue Brisbane QLD 4001		

[If Principal contractor was selected as 'Subject of investigation', delete this instruction and the table below to avoid duplication]

Principal contractor (PC):	Big Building Company Pty Ltd (BBC)	ABN:	01 123 458 890
		ACN:	123 458 890
Contact name:	Bryan R Adams	Contact number:	07 5145 6698
		Email:	Bryan.r.admas@exbuildersqld.com
Postal address:	<postal address>		

Purpose

This report is prepared and compiled by the Queensland Government Procurement Compliance Branch (Compliance Branch) of the Department of Energy and Public Works (EPW) from information obtained during the investigation. It is for the use of the EPW and may contain information subject to privacy legislation, right to information legislation, confidentiality, and restriction in common law. The report may contain views and opinions including findings and recommendations, which are those of the Compliance Branch.

The scope of the investigation involved the collection of compelling evidentiary material to primarily determine whether a breach of contract and/or Government policy or regulation has been committed.

This report will assist the Procuring Agency to decide whether an alleged breach is capable of being progressed to the Tripartite Procurement Advisory Panel (the Panel).

This document, along with any attachments, is confidential and should be managed appropriately as per the Information Privacy Act 2009 (Qld) and other information sharing requirements relevant to the Queensland Government.

Requirements for this report:

- Identification of contract commitments
- Identification of an alleged breach under the Mandate
- Investigation of the allegation, producing evidence of non-compliance.
- Show cause proceedings.
- A determination by the agency the allegation is capable of being progressed.

Contract details

Contract type (subject of Investigation):	Subcontract
Date contract signed:	1/04/2021
Does a contract variation apply to this contract?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Date contract variation signed/executed:	Click or tap to enter a date. or <input checked="" type="checkbox"/> Not applicable
Other contract type/s relevant to Investigation:	<Insert contract type/<insert contract name> or <input checked="" type="checkbox"/> Not applicable
Contract overview	
On 1 March 2021, Big Building Company Pty Ltd (BBC) submitted a tender to the Department of Energy and Public Works (EPW) for the Government Administration Precinct (the project). BBC	

Commented [TC2]: This section of the investigation report needs to identify contract relationships and identify contracts that apply.

Explain how and when the contract was formed and refer to contract clauses that commit the supplier to the policy and other commitments.

was awarded the contract and appointed Managing Contractor of the project; this was communicated by Formal Instrument of Agreement (FIA) on 1 May 2021. The contract value for the project was \$160, 000, 000.00 therefore this is a *Best Practice Principles* (BPP) project.

On 1 April 2021 XYZ Plumbing Pty Ltd (XYZ) entered into an agreement with BBC for the provision of plumbing work for the project. As part of the tender process leading to this agreement XYZ have provided to BBC an executed Deed Poll that permits the 'Principal or it's agents' (EPW /BQAU) to access records held by XYZ to conduct an audit to assess compliance with XYZ's commitments to the BPP and *Ethical Supplier Threshold* made in its tender. These tender documents were adopted as part of the subcontract between XYZ and BBC.

On 5 December 2021, the Buy Queensland Audit Team (BQAU) conducted an audit to assess XYZ's compliance to their contracted commitments to the *Ethical Supplier Threshold* and *Best Practice Principles* (BPP) for their work on the project.

The audit established the industrial agreement that must be used by XYZ in remunerating their employees working on the project is the *XYZ Plumbing Pty Ltd Government Administration Precinct Greenfields Agreement 2020* (the GA).

Alleged non-compliance overview

[For collated submissions (more than one non-compliance matter), copy and paste the following table within this Section of the document, ensuring one table is completed per alleged breach – delete text when finished].

Commented [TC3]: The alleged non-compliance overview section of the report informs the decision maker in clear and concise language what the allegation is about. It informs who, when, where and what with regards to the allegation and the non-compliance. This section also outlines what policy or commitment the non-compliance relates to. This example identifies a breach of the Award, *Fair Work Act 2009* and *Ethical Supplier Mandate and Threshold*.

For investigations where there are multiple non-compliances this process will be repeated for each non-compliance and all non-compliances should be outlined separate.

Overview: alleged non-compliance number 1	
Alleged breach details:	<p>XYZ Plumbing Pty Ltd (XYZ) failed to pay Mr Phil Foden (employee 1) and Mr Harry Kane (employee 2) a meal allowance on 10 occasions between 30 September 2021 and 8 November 2021.</p> <p><i>XYZ Plumbing Pty Ltd Government Administration Precinct Greenfields Agreement 2020</i> (GA) – Appendix 1 section 5 - Allowances, prescribes the rate at which a meal allowance is paid is \$23.45, employee 1 and employee 2 were not paid this allowance when entitled to it. The underpayments occurred once per week over a 10-week period, the total combined amount back paid to employee 1 and employee 2 was \$234.50.</p> <p>A breach of the Award constitutes a breach of s.50 of the Fair Work Act 2009.</p> <p>Breach of s.50 of the Fair Work Act 2009 constitutes a breach of section 2(a) the Ethical Supplier Threshold.</p> <p>A breach of the Ethical Supplier Threshold constitutes a breach under the Ethical Supplier Mandate.</p>
Is this repeated activity, related to a prior breach of the same contract?	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Not applicable</p> <p><If yes, insert previous breach details, including breach reference number></p>

Regulator outcome

Is a regulator outcome required for this type of breach?	<input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Has a regulator outcome been obtained?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input checked="" type="checkbox"/> Not applicable
Summary of regulator outcome:	<input checked="" type="checkbox"/> Not applicable Compelling evidence is being used for this investigation and regulator outcome is not required.

Overview: alleged non-compliance number 2

Alleged breach details:	The nominated Health and Safety Representative (HSR) for XYZ did not complete the required training within the timeframe prescribed in s21(2)(a) of the <i>Workplace Health and Safety Regulations 2011</i> once being elected to the position. On 1 February 2021, Mr Jordan Henderson, was appointed HSR for XYZ on the Government Administration Precinct project. Section 21(2)(a) of the <i>Workplace Health and Safety Regulations 2011</i> prescribes that any employee elected as a workplace HSR must complete the HSR training course within three months of being elected. Mr Henderson was required to complete the HSR training course by 1 May 2021. Mr Henderson did not complete the five-day HSR training course until 7 July 2021.
Is this repeated activity, related to a prior breach of the same contract?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Not applicable <If yes, insert previous breach details, including breach reference number>

Regulator outcome

Is a regulator outcome required for this type of breach?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Has a regulator outcome been obtained?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Not applicable
Summary of regulator outcome:	<input type="checkbox"/> Not applicable or On 15 June 2022, PIU referred this non-compliance to the regulator, Workplace Health and Safety Queensland. A regulator outcome has not been received, therefore this non-compliance is not capable of being progressed for consideration at this time.

Investigation details

[Outline non-compliance summary and investigation details using the below table. For collated submissions (more than one non-compliance matter), itemise non-compliance details and determination findings in the follow table. Delete text when done].

Audit overview

The audit undertaken by BQAU assessed XYZ's compliance to their contracted commitments to the BPP included in their tender and subsequently the contract with BBC for work on the project.
The audit identified one non-compliance relating to industrial relation matter and one non-compliance relating to a workplace health and safety matter.

Commented [TC4]: This section of the report is critical in explaining the comprehensive audit process and outlines all steps undertaken as part of the audit. This section also shows the steps of procedural fairness undertaken by BQAU. It outlines any supplier response and evidence that was submitted as part of the audit. If agency is not sure of the process undertaken request overview from PIU.

As part of the industrial relations component of the audit, BQAU audited the pay records of 2 employees of the 6 employees XYZ employed on the project. These pay records included pay slips, timesheets, superannuation contribution documents and employment contracts.

The following was undertaken by BQAU as part of the audit:

- A review of the pay slips issued to employee 1 and employee 2 during the pay periods 30 September 2021 and 8 November 2021
- This review showed both employee 1 and employee 2 had worked a period of overtime that triggered a meal allowance payment on each Wednesday afternoon of the pay period.
- A review of the GA identified Appendix One – Section 5 prescribes the rate of meal allowances to be paid to employees as \$23.45.
- On 18 January 2022, BQAU advised XYZ the non-compliance had been identified as a breach of section 50 of the *Fair Work Act 2009 – Contravening an Enterprise Agreement*.
- BQAU required XYZ to provide evidence of corrective actions taken to rectify the issue.
- A review undertaken by XYZ established both employees worked overtime on Wednesday afternoon each week for 10 weeks (30 September 2021 – 8 November 2021). This overtime triggered a meal allowance payment.
- On 20 February 2022, BQAU received evidence that both employees were back paid \$234.50 each on 3 February 2022. This evidence included a pay slips from 30 September 2021 – 8 November 2021 and a payroll summary showing the meal allowance adjustment for each employee.
- Overtime was not worked after 8 November 2021 as the work necessitating the overtime was complete.
- At the conclusion of the audit this matter was referred to the Compliance Coordination and Referral Team (PIU) for further investigation.

The workplace health and safety non-compliance require' s a regulator decision for it to be capable of being progressed. This matter has been referred to Workplace Health and Safety Queensland and no regulator decision has been received by PIU to date, therefore non-compliance 2 is not being progressed for consideration at this time.

PIU Investigation

The matter was referred to PIU to conduct further investigations into the alleged non-compliances, and to establish if the non-compliances are considered negligent, deliberate and/or repeated. During the investigation procedural fairness was afforded in the form of a Request for Information (RFI) and a Show Cause Notice, both of which encourage the supplier to provide a response in the form of evidence and written information, so that this can be considered by the investigation and the relevant decision maker.

On review of the contract and sub-contract PIU established the following:

- **Enter Contract clauses**
- Clause (bb) of Annexure F of the 'Major Works Contract' between BBC and XYZ establishes:
 - The subcontractor must in carrying out the Work Under Contract (WUC) and the Works, comply with:*
 - i. *the principles of the Queensland Procurement Policy and any requirements under the Subcontract or of the Client or BBC in this regard.*
 - ii. *the Ethical Supplier Threshold; and*

Commented [TC5]: PIU assesses non-compliances and any supporting evidence referred by BQAU. PIU identifies contractual relationships and commitments and outlines that information. Further, a series of research and analysis relating to the supplier and their business set up is undertaken by PIU.

Commented [SC6]: This section should address the contract clauses in the PC and QLD Gov. contract, as well as the contract clauses between PC and SC (including Deed Poll)

iii. *its tender in respect of the Best Practice Principles, including any workplace relations management plan in relation to the Best Practice Principles*

Request for Information

On 13 May 2022, XYZ were sent correspondence that included a series of questions in relation to this issue. On 15 June 2022 XYZ provided the following in response to these questions:

- XYZ advised they became aware of the non-compliance when compiling the payroll documentation to provide to BQAU for their audit.
- XYZ advised the underpayment was rectified within 2 weeks of XYZ being made aware of the issue.
- XYZ advised the underpayment occurred due to an inexperienced payroll officer being tasked with compiling timesheets and conducting the reconciliation. This payroll officer was not aware of the meal allowance trigger included as part of overtime calculations.
- XYZ have an internal audit process whereby a senior manager cross checks payroll details that similarly did not identify the issue.
- XYZ have implemented a 'New Project IR HR Checklist' to prevent any similar human errors occurring in the future.
- XYZ advised they have not previously been found to have underpaid meal allowances.

Show Cause Notice

On 13 June 2022, through the show cause process, XYZ were asked to consider all evidence and documents collected as part of the investigation and then provide any further evidence that was not been considered as part of the investigation refuting or contesting the allegation.

XYZ provided no additional information in the response received by PIU on 15 June 2022.

Non-compliance 1

On review of the GA, the Award and the evidence provided by XYZ, PIU determined the following:

- The table in Appendix One, Section 5 of the GA prescribes the meal allowance applicable for the period between 1 July 2021 to 30 June 2022 as \$23.45.
- Aside from prescribing the meal allowance amount, the GA is silent on when an employee is entitled to a meal allowance.
- Clause 5.2 of the GA states; *"Where this Agreement is silent the terms of the relevant Award apply for the Employee"*.
- The relevant award for Plumbers is the *Plumbing and Sprinklers Award* (the Award).
- Clause 18.1 of the Award - Allowances states; *"Employers must pay to an employee the allowances the employee is entitled to under clause 18"*.
- Clause 18.3 of the Award – Expense Related Allowances states:
 - (f) *Meal allowance*
An employee will be paid a meal allowance in accordance with clauses 15.2(d), 15.2(e) and 15.2(f).
- Clause 15.2 of the Award – Meal Break During Overtime states:

Commented [TC7]: The purpose of the Request for Information (RFI) is to ask questions around the Training Policy non-compliance to help to establish if the non-compliance was negligent, deliberate or repeated. This information is integral for Panel to make recommendations and for DG as a decision maker to consider when deliberating on demerit points of sanction.

Commented [TC8]: The Show Cause Notice is an opportunity for the supplier to provide any information or evidence that has not yet been provided to the investigation, that the supplier believes should be considered when deliberating:

- a) If a non-compliance has occurred
- b) If the non-compliance was negligent repeated or deliberate
- c) If the supplier accumulates 20 demerit points, how long the sanction should be – panels consideration only

A matter can still be progressed with or without a response to the Show Cause Notice.

This Show Cause Notice is a mandatory step in affording procedural fairness in line with the Ethical Supplier Mandate Standard Operating Procedure (ESM SOP).

(d) An employee required to work overtime for more than 1.5 hours after working ordinary hours will either be supplied meals by the employer, or be paid \$16.80 for the first and subsequent meals...

- A review of the pay slips issued to employee 1 and employee 2 identified each worked overtime of 3.5 hours on one day/week, which triggered the meal allowance pursuant to clause 15.2(d) of the Award.
- Although the rate of the meal allowance is \$16.80 in the award, this is superseded by the meal allowance of \$23.45 prescribed in the EA.
- By failing to pay employee 1 and employee 2 a meal allowance, XYZ have failed to comply with the requirement set out in the award which then constitutes a breach of s50 of the *Fair Work Act 2009 – Contravening an Enterprise Agreement*. (as per Clause 5.2 of the GA)
- A breach of the s50 of the of the *Fair Work Act 2009 - Contravening an Enterprise Agreement* is by definition a breach of section 2(a) of the *Ethical Supplier Threshold* - a contravention of a civil remedy provision of Chapter 2 or 3 of the *Fair Work Act 2009*, or an offence committed against the *Fair Work Act 2009*.

Note: Section 50 of the *Fair Work Act 2009* is identified as a 'civil remedy provision' of Chapter 2.

The response provided by XYZ to the RFI and Show Cause Notice was considered, the evidence provided further substantiates the allegation of non-compliance.

PIU has formed the view that XYZ has clearly contravened the *Ethical Supplier Threshold* therefore this matter should be referred to Queensland Health to consider progressing the matter to the panel for their consideration.

Is there sufficient evidence to substantiate non-compliance 1?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Is non-compliance 1 capable of being progressed to the Panel?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Proposed Mandate category:	Ethical Supplier Mandate 2019 category of non-compliance Section 2.2 of the <i>Ethical Supplier Mandate 2019 – A breach of the Ethical Supplier Threshold results in the application of 20 demerit points.</i>
Have any contract management actions been taken in relation to non-compliance 1?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> Not applicable <If yes, EPW to insert details of contract management actions>
Has non-compliance 1 been referred to the relevant regulator?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable On 15 June 2022, PIU referred allegation of underpayment for meal allowance to Fair Work Ombudsman.

Non-compliance 2

The workplace health and safety non-compliance requires a regulator decision for it to be capable of being progressed. This matter has been referred to Workplace Health and Safety Queensland and no regulator decision has been received by PIU to date, therefore non-compliance 2 is not being progressed for consideration at this time.

Is there sufficient evidence to substantiate non-compliance 2?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is non-compliance 2 capable of being progressed to the Panel?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No This non-compliance requires a regulator outcome to be capable of being progressed to the Panel.
Proposed Mandate category:	Ethical Supplier Mandate 2019 category of non-compliance Not applicable
Have any contract management actions been taken in relation to non-compliance 2?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> Not applicable <If yes, EPW to insert details of contract management actions>
Has non-compliance 2 been referred to the relevant regulator?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable On 15 June 2022, PIU referred non-compliance to Workplace Health and Safety Queensland.

Investigation determination

PIU has formed the view that non-compliance 1 clearly constitutes a contravention of the *Ethical Supplier Threshold*. A breach of the *Ethical Supplier Threshold* constitutes a non-compliance under the *Ethical Supplier Mandate* therefore this matter should be referred to EPW to consider progressing the matter to the panel for their consideration.

In addition to establishing a contravention of the *Ethical Supplier Threshold*, the *Ethical Supplier Mandate Standard Operating Procedure* requires the investigation evaluate if the behaviour that contributed to the non-compliance was negligent, deliberate, or repeated. In considering this, PIU applies the provisions of section 9 of the *Civil Liability Act 2003 – General Principles*:

- (1) A person does not breach a duty to take precautions against a risk of harm unless—
- (a) the risk was foreseeable (that is, it is a risk of which the person knew or ought reasonably to have known); and
 - (b) the risk was not insignificant; and
 - (c) in the circumstances, a reasonable person in the position of the person would have taken the precautions.
- (2) In deciding whether a reasonable person would have taken precautions against a risk of harm, the court is to consider the following (among other relevant things)—
- (a) the probability that the harm would occur if care were not taken;
 - (b) the likely seriousness of the harm;
 - (c) the burden of taking precautions to avoid the risk of harm;
 - (d) the social utility of the activity that creates the risk of harm.

PIU has formed the view XYZ's failure to pay the correct meal allowance to employees is clearly negligent.

Commented [TC9]: PIU considers the suppliers response to RFI, and Show Cause Notice and all evidence made available by the audit and investigation.

PIU as guided by the ESM SOP needs to establish if the supplier's non-compliance was negligent, deliberate or repeated. As explained by PIU the report notes on what basis this is considered. To establish this, PIU considers:

1. The size and capacity of the company
2. A review of any previous contracts where similar contractual commitments applied
3. The communications between the supplier and the audit
4. Any factors that contributed to the non-compliance put forward by the supplier for consideration

The following has been considered and forms the basis for this determination:

- XYZ made contractual commitments relating to their work on the project to comply with the *Ethical Supplier Threshold*.
- Has failed to meet those commitments.
- XYZ is a large company providing Plumbing services to large building projects Australia Wide.
- On examination of XYZ's own internet page it is evident they claim they are and have been a subcontractor on large government and commercial projects Australia wide and thus have significant experience in the management of contracts and related commitments these contracts impose on a subcontractor. This is substantiated as XYZ are known to have been a subcontractor on the new Central Train Station Project procured by the Queensland Government that was completed in early 2022.
- It is reasonable to expect that XYZ was aware of its contractual commitments to the *Ethical Supplier Threshold*, and that care would be taken in ensuring they met these commitments.
- It is reasonable to expect that if care was not taken in management of its contract, a breach of its contractual commitment would occur.
- XYZ has 3 separate, approved 'Enterprise Agreements' listed on the Fair Work Commission website. It is reasonable to assume that XYZ has significant experience in the management and implementation of Enterprise Agreements as part of contracts they enter into and perform work under.
- A breach of this contractual obligation is potentially a contravention of the *Fair Work Act 2009*, leaving XYZ liable to penalty under this legislation.
- XYZ has provided no further explanation of how this breach may have occurred apart from it was an 'inexperienced payroll officer' that was tasked with compiling timesheets and conducting weekly reconciliation.
- Further, XYZ have an internal audit process whereby a senior manager cross checks payroll details, this manager did not identify this issue.
- It is reasonable to expect that if care was not taken in management of its contract a breach of its contractual commitment would occur.

Penalty risk profile & Other details

This section of the report requires completion by the procuring agency Chief Procurement Officer (or organisation equivalent).

Penalty risk profile

Would sanctioning this supplier present a risk to your business area?

Yes No

<Procuring Agency to include any exposed markets caused from a possible sanction and if this risk is identified, provide a summary of this impact>.

Other details

Is there any other information you want the Tripartite Procurement Advisory Panel or decision maker to consider?

Yes No

If 'Yes', provide details here:

Supporting evidence

Attachment No.	Attachment name
1.	Contract and Agreements - XYZ Plumbing Pty Ltd <organise any contract documentation in a separate folder, name the folder '1. Contract Documentation' and reference here. Each folder will be compressed and sent as an attachment to this report>
2.	Request for Information and Response - XYZ Plumbing Pty Ltd <organise the RFI and any response received in a separate folder, name the folder '2. Request for Information and Response' and reference here. Each folder will be compressed and sent as an attachment to this report>
3.	Show Cause Notice and Response - XYZ Plumbing Pty Ltd <organise the Show Cause Notice and any response received in a separate folder, name the folder '3. Show Cause Notice and Response' and reference here. Each folder will be compressed and sent as an attachment to this report>
4.	Evidence Non-Compliance 1 <organise evidence for each non-compliance in a separate folder, name the folder '4. Evidence – Non-compliance 1' and reference here. Each folder will be compressed and sent as an attachment to this report>

Report sign-off

[This report should be reviewed and signed-off by the procuring agency's representative]

The QGP Compliance Branch has considered <insert subject of investigation's> response to the <i>Show Cause Notice</i> and the decision(s) made in this report and has determined the Choose an item. Choose an item. of being progressed to the Tripartite Procurement Advisory Panel.			
Details of signee QGP Compliance Branch:		<Insert name of signee>, <Manager/Director QGP Compliance Branch>, <Insert department name>	
Signature:		Date of signing:	Click or tap to enter a date.
The Procuring Agency's delegate has considered <insert subject of investigation's> response to the <i>Show Cause Notice</i> and the decision(s) made in this report and has determined the Choose an item. Choose an item. of being progressed to the <i>Tripartite Procurement Advisory Panel</i> .			
Details of signee EPW representative:		<insert name of signee>, <Chief Procurement Officer>, <insert department name>	
Signature:		Date of signing:	Click or tap to enter a date.