



Appeals standard operating procedure

Ethical Supplier Mandate and Ethical Supplier Threshold



Queensland
Government

The State of Queensland (Department of Energy and Public Works) 2021



<http://creativecommons.org/licenses/by/4.0/deed.en>

This work is licensed under a Creative Commons Attribution 4.0 Australia Licence. You are free to copy, communicate and adapt this work, as long as you attribute by citing 'Ethical Supplier Mandate 2021, State of Queensland (Department of Energy and Public Works) 2021'.

Contact us

Queensland Government Procurement within the Department of Energy and 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 ethical_supply@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.

Table of Contents

1	Purpose.....	4
2	Scope.....	4
3	Making an appeal.....	5
3.1	Appeal process diagram	5
3.2	Lodging an appeal	5
3.3	Receipt of an appeal.....	6
4	Referral to the Panel	6
5	Referral to the decision maker	6
5.1	Appeal granted	7
5.2	Appeal denied.....	7
6	Appeal outcome	7
7	Regulator outcome review	7

1 Purpose

The *Ethical Supplier Mandate 2021* (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 document provides guidance for the process of appealing an outcome under the Mandate or the Threshold, for Queensland Government buyers and suppliers.

2 Scope

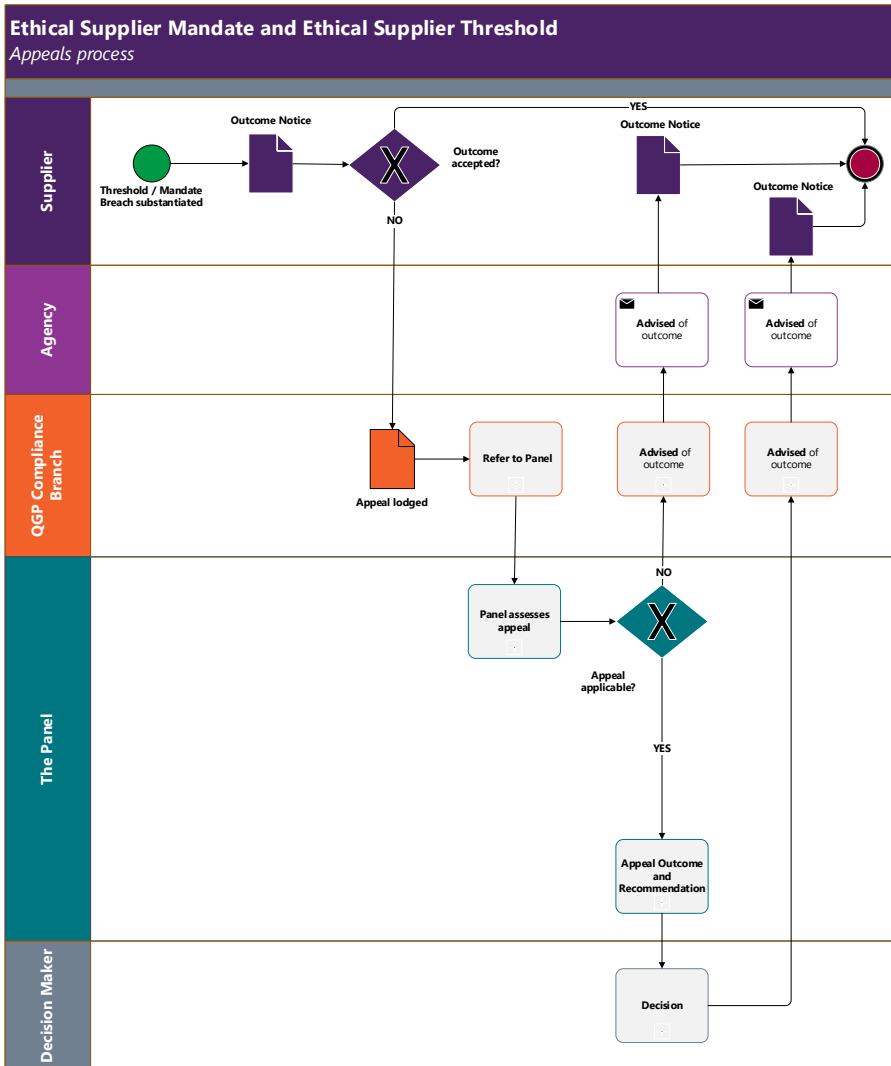
A supplier can appeal a decision to apply demerits or a sanction under the Mandate or Threshold if they believe:

- the process outlined in the *Ethical Supplier Mandate 2021* has not been followed, and/or
- 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.

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

3 Making an appeal

Figure 3.1 below outlines the process for appealing an outcome received under the Mandate and Threshold.



3.2 Lodging an appeal

If the supplier wishes to lodge an appeal, they must do so within ten (10) business days from the date the *Outcome Notice* was issued. All appeals can be submitted to ethicalsupply@epw.qld.gov.au

The supplier may request an extension outside the standard 10-day timeframe, if required. Sound reasons must be provided.

Any appeal lodged should outline which of the grounds, as listed in Section 2 above, under which the supplier believes is the basis for the appeal. Supporting evidence must be provided for each.

An appeal should not re-explain how or why the breach occurred or provide circumstantial details of the conduct. The opportunity to relay this information is offered with the *Show Cause Notice* and *Extenuating Circumstances Notice* at earlier stages of the breach management process.

3.3 Receipt of an appeal

All appeal submissions are initially received by the Queensland Government Procurement (QGP) Compliance Branch, via ethicalsupply@epw.qld.gov.au

The Executive Officer (EO) of the QGP Compliance Branch will review the supplier's appeal submission to ensure sufficient details have been provided to progress the matter to the Tripartite Procurement Advisory Panel (the Panel). Where further details may be required, the EO will liaise with the supplier to address these concerns.

4 Referral to the Panel

All appeals made by suppliers will be referred to the Panel for consideration. This review will result in a separate recommendation being formed, specific to the details of the appeal, for consideration by the decision maker.

The Chair will convene four Panel members who were not involved in the original recommendation that led to the appeal submission.

In its deliberation, the Panel will:

- ensure the submission is within scope of appeal proceedings;
- considers the merits of the appeal; and
- produce a recommendation on the appropriate outcome of the appeal, including any reconsidered penalties.

The EO will facilitate delivery of the Panel's recommendation, along with all other case documents and materials, to the appropriate appeals decision maker.

5 Referral to the decision maker

The decision maker responsible for the final appeal outcome remains the Director-General of the procuring agency subject to the contract under which the breach occurred. For government-owned corporations (GOCs) and statutory bodies, the decision-maker will be the GOC or statutory body itself.

Where the breach did not relate to a Queensland Government contract, the Director-General of the category lead agency will be required to make the appeal decision. This specifically relates to decisions triggered by breaches of the Threshold.

The decision maker is responsible for considering all aspects of the appeal, including the recommendation formed by the Panel and the grounds for appeal, as outlined in Section 2.

If required, the decision maker may seek further information from any individual involved in, or relevant to, the breach process; including the supplier, agency, Panel, etc.

Where a decision maker intends to issue an outcome different to that recommended by the Panel, the decision maker is encouraged to coordinate a discussion with the Chair of the Panel. Consultation of this nature should further explore the reasoning for the Panel's recommendation.

Following adherence of this process, the final appeal decision of the Director-General (or appropriate delegate) will be considered final.

5.1 Appeal granted

An appeal may be granted if a failure under the scope as outlined in Section 2 above is found. In this circumstance, it will be the responsibility of the decision maker to establish the appropriate consequential action. An outcome to a granted appeal *may* include:

- a revised penalty, or
- an altered decision of no breach.

5.2 Appeal denied

If the decision maker finds that an appeal is not within the scope as outlined in Section 2 above, the appeal may be denied.

The decision maker will provide an explanation as to why the submission did not qualify as an appeal under the Mandate or Threshold in an *Outcome Notice*.

6 Appeal outcome

Once a determination has been reached, the appropriate decision maker will inform the agency officer managing the breach, as well as the QGP Compliance Branch.

It will be the responsibility of the decision maker to issue the appropriate *Outcome Notice* to the supplier.

The *Outcome Notice* must:

- state that it is a Notice under the Mandate or Threshold
- outline the details of the appeal submission
- state the final appeal decision, including any alterations to previously issued penalties
- explain why the appeal was granted/denied
- advise that the final appeal decision will be considered final.

7 Regulator outcome review

Decisions by regulators will be made in a different context and concerned with different factors than decisions under the Mandate or Threshold. A later finding by a regulatory body on a non-compliance matter may not affect a decision regarding a penalty applied under the Mandate or Threshold even if it seems to be contrary to the decision; however, once the agency or the Compliance Branch are made aware of a potentially conflicting regulator decision, due diligence will be conducted in the form of an internal review. All reviews of this nature are to be performed by the Director-General (or equivalent) responsible for the penalty decision, in conjunction with appropriate legal advice.

This review process may occur at any time after a formal breach decision has been made and will not constitute (or fall in scope of) an appeal.