



NSW Procurement

# NSW Government Legal Services Panel

## Panel Rules

<b>Lead Agency:</b>	Transport for NSW
<b>Reference Number:</b>	TfNSW 2015/068
<b>Arrangement:</b>	Closed Panel
<b>Start Date:</b>	1 July 2016
<b>End Date:</b>	30 June 2021
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# 1 Introduction

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Transport for NSW (**TfNSW**) conducted a procurement process on behalf of the NSW Government to establish the NSW Government Legal Services Panel reference number TfNSW 2015/068 effective 1 July 2016 (**Panel**).

The Panel will satisfy the external legal requirements of eligible departments, agencies, separate agencies, statutory bodies, State-owned corporations of the NSW Government and other agencies eligible to purchase from NSW Government contracts (**Agencies**).

Agency staff should approach their in-house legal team to obtain legal services as only legal staff are permitted to obtain external legal services on behalf of their agency (subject to any specific rules established by individual Agencies).

The Panel has been extended to 30 June 2021, with no further option to extend.

TfNSW is the contracting entity for the Panel for the benefit of Agencies under which the Panel Firm makes a standing offer to provide legal services, as and when required by those Agencies.

## 2 Definitions

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Unless the context requires otherwise, capitalised terms in the Panel Rules have the meaning given in the Panel Deed, or if not used in the Panel Deed, defined here. Several Panel Deed terms are included here for convenience.

**Agency Contract Manager** means the person specified as the Agency Contract Manager for a Client in the Service Level Agreement or as notified from time to time in accordance with the panel deed (note that for some clusters this role will be centralised).

**General Counsels Group (or GCG)** means the group comprising the General Counsel of each central agency of the relevant NSW Government Cluster.

**Lead Agency** means Transport for NSW, acting on behalf of the State in establishing the NSW Government Legal Services Panel.

**Panel Contract Manager** means the person nominated by the Lead Agency under the panel deed or as notified from time to time.

**Panel Rules** means the rules set out in this document incorporating the terms and conditions set out in the Panel Deed and Services Brief, appended to this document as Annexures A and B respectively; the Panel Rules also include the Legal Services Panel Off-Panel Engagements Guideline (schedule 3 to the Panel Rules) and the Legal Services Panel Conflict Management Guideline for Legal and Commercial Conflicts (schedule 4 to the Panel Rules).

## 3 Panel Structure

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The Panel comprises six Sub-Panels, each of which contains several Areas of Law as follows:

### 3.1 Sub Panel 1: Major Transactions

This Sub Panel was established on the basis that the estimate of legal fees is anticipated to exceed \$250,000 (ex GST).

Areas of Law:

- a) Major Infrastructure Projects;
- b) Construction;
- c) Major Commercial Matters;
- d) PPP's and associated transactions; and
- e) Dispute Resolution

### **3.2 Sub Panel 2: Commercial Law**

Areas of Law:

- a) Commercial and contractual matters;
- b) Media law;
- c) Intellectual property;
- d) Information Technology;
- e) Insurance;
- f) Competition law;
- g) Taxation law;
- h) Construction

### **3.3 Sub Panel 3: Planning, Property and Environment**

Areas of Law:

- a) Complex property advice and transactions;
- b) Routine/standard property advice and transactions;
- c) Planning, environmental, heritage and natural resources law;
- d) Statutory land acquisition processes;
- e) Corridor/Infrastructure and accreditation requirements;
- f) Crown Land;
- g) Local Government law

### **3.4 Sub Panel 4: Employment, Work Health and Safety**

Areas of Law:

- a) Employment and industrial relations law;
- b) Visiting Practitioner Contract and Appointment Disputes and Appeals (Health only);
- c) Hurt on Duty Matters (NSW Police only);
- d) Work health and safety;
- e) Workers compensation; and
- f) Discrimination

### **3.5 Sub Panel 5: Government Regulatory and Administrative Law**

Areas of Law:

- a) Administrative, governance statutory interpretation and advice;
- b) Statutory applications;
- c) Enforcement, Regulation and Prosecution; and
- d) Aviation law

## 3.6 Sub Panel 6: Litigation and Inquiries

Areas of Law:

- a) Liability Litigation;
- b) General Litigation and Dispute Resolution;
- c) Debt Recovery; and
- d) Inquiries

The Panel comprises the Panel Firms set out in the table at schedule 1.

## 4 Exclusion of Core Legal Work

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Core Legal Work is excluded from the scope of the Panel in accordance with [Premier's Memorandum M2016-04](#). Agencies should also refer to the Off-Panel Engagements Guideline at Schedule 3.

## 5 Procuring Services from the Panel

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### 5.1 Applicability of Panel to NSW Government Agencies

The Panel has been established on a non-exclusive basis; that is, each Agency remains responsible for procuring its own legal services. Agencies are still required to refer Core Legal Work to the Crown Solicitor in accordance with Premier's Memorandum M2016-04. An Agency's procurement of legal services outside the Panel arrangement will usually be on an exceptional basis, for example, for work requiring unique or specialist expertise or resources that the Agency considers are not available among firms on the Panel, or for matters that may arise in new categories of legal work that were not included in the Services Brief. Further information is included in the Off-Panel Engagements Guideline at Schedule 3.

Otherwise, Agencies have discretion to retain legal services outside the Panel arrangement, including from the NSW Crown Solicitor's Office<sup>1</sup>. Accordingly, the Panel is not subject to NSW Procurement Board Direction [PBD-2012-02](#) *Obligation by government agencies to use whole of government contracts*. However, procurement of legal services should be undertaken as contemplated by these Panel Rules and accompanying Guidelines. In particular, legal services procurement is subject to the Off-Panel Engagements Guideline, as amended by the General Counsels Group from time to time in accordance with section 11.

An express aim of establishing this Panel is that external legal expenditure is reduced as much as possible over the term of the Panel.

Agencies will continue to be responsible for meeting the savings targets of their Agency in the procurement of Legal Services. When deciding whether to procure legal services under the Panel, Agencies must comply with the general requirements of the NSW Government Procurement Policy Framework.

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<sup>1</sup>Agencies may continue to use the Crown Solicitor on non-core legal matters, in addition to panel firms. See Premier's Memorandum No M2016-04 ('NSW Government Core Legal Work Guidelines').

## 5.2 Selecting Panel Firms

Agencies must select Panel Firms having regard to:

1. Panel Rules – including the composition of the Panel in schedule 1.
2. Spread of expenditure to date across firms on the Panel for the relevant area of law.
3. Principles in “[The Informed Purchaser](#)”, a guide to procurement of legal services, including module 3 relating to selection of external legal services; and to consideration of alternative fee arrangements (see <http://www.justice.nsw.gov.au/legal-services-coordination/Pages/info-for-govt-agencies/info-purch-training.aspx>).
4. Capability and experience of the firm, however this should be balanced against the risk, over time, of concentrating that capability and experience in one firm.
5. Any relevant provisions of the Agency’s procurement framework.

## 5.3 Form of Panel Firm quotations

Panel Firms must provide Agencies with fee estimates that include, without limitation, professional fees, disbursements and, where applicable, counsel fees prior to commencement of the matter.

The Panel Deed includes a Legal Services Order form.

At the time of seeking an estimate it is not always possible to anticipate how proceedings or a transaction will run. The thresholds for seeking written estimates in sections 5.6 and 5.7 apply at the time a firm is initially engaged to provide Services. These requirements do not change if the costs for a matter subsequently exceed that threshold provided this is reasonable in the circumstances.

The Panel Deed requires firms to advise when an estimate needs to be increased and to obtain approval in advance. Agencies are required to establish arrangements for recording reasons where estimates are increased or exceeded. Accordingly, estimates may need to provide for some variability, for example by reference to stages of work or by including estimates for different events which may or may not occur.

## 5.4 Panel Firm pricing

Panel Firms have been appointed on the basis that hourly and daily rates for the following eight roles will be fixed for the first three years of the Panel:

- Partner,
- Special Counsel,
- Senior Associate,
- Lawyer Y4-6
- Lawyer Y1-3
- Graduate
- Paralegal
- Licensed Conveyancer (Sub Panel 3 only)

TfNSW has provided the following officers with details of the Panel Firm pricing and volume discounts. Agency contract managers should approach the contact for their cluster in the first instance.

Cluster	Contact
Education	Michael Waterhouse General Counsel
Communities & Justice	Lida Kaban General Counsel
Customer Service	Colleen Dreis General Counsel
Health	Leanne O'Shannessy Director of Legal and Regulatory Services and General Counsel
Planning, Industry and Environment	James Hebron Chief General Counsel
Premier and Cabinet	Kate Boyd A/General Counsel
Transport	Christine Lithgow A/Group General Counsel
The Treasury	Charles Cho General Counsel

Agencies are required to establish arrangements to verify that Panel Firms are charging Agencies in accordance with the rates set out in the Panel Deed.

## 5.5 Instruments under which Panel Firms may be engaged

The Panel Deed sets out the basis on which Agencies can engage Panel Firms. Generally, Agencies will engage Panel Firms under a Legal Services Order that invokes the terms and conditions of the Panel Deed.

## 5.6 Engagements valued less than \$150,000 (ex GST)

Agencies are required to obtain at least one estimate or quotation from Panel Firms where, at the time of engaging a firm to provide the Services, the anticipated value of fees for the engagement is less than \$150,000 (ex GST), having regard to the circumstances and any estimate from a Panel Firm.

## 5.7 Engagements valued \$150,000 (ex GST) and above

Agencies are required to obtain at least three estimates or quotations from Panel Firms where, at the time of engaging a firm to provide the Services, the anticipated value of the fees for the engagement is \$150,000 (ex GST) or greater, having regard to the circumstances and any estimate from a Panel Firm. The quotations should be sought in accordance with the provisions of the Panel Deed.

There is an exception to this rule for the major transactions sub-panel. This sub-panel was established specifically for high complexity and/or high risk matters, where legal fees of more than \$250,000 (ex GST) are likely to be incurred. Accordingly, for reasons of efficiency and in order to gain the benefit of the competitive tender process undertaken to establish the Panel, the threshold for seeking at least 3 quotes for the major transactions sub-panel is anticipated fees, at the time of engaging a firm to provide the Services, of \$400,000 (ex GST) or more, having regard to the circumstances and any estimate from a Panel Firm.

## **5.8 Exemptions from competitive quotation process**

Agencies do not need to seek competitive quotations from Panel Firms provided that they have obtained the necessary approvals in accordance with their agency's procurement framework.

## **5.9 Engagements of providers of legal services that are not on the Panel**

In the event agencies need to engage providers of legal services that are not Panel Firms, they must secure the necessary approvals in accordance with their agency's procurement framework having regard to Procurement Board Direction [PBD-2016-01](#) and [The NSW Procurement Policy Framework for Government Agencies](#).

Agencies must have regard to Off-Panel Engagements Guideline at Schedule 3 when deciding whether it is appropriate to engage a provider that is not a Panel Firm.

# **6 Panel Firm Obligations**

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The Panel Deed sets out the obligations of Panel Firms.

# **7 Panel Firm Nominated Personnel**

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The Panel Deed provides for nominated personnel with the necessary legal expertise and experience from Panel Firms to perform the Services. Where a Panel Firm proposes engaging personnel that are not nominated in the Panel Deed in the categories of Partner, Special Counsel and Senior Associate, the prior written approval of Transport for NSW, as the panel administrator on behalf of the State, must be obtained before such personnel commence work on any matter.

Requests for approval must be submitted to the Panel Manager in the form of Returnable Schedule 3 of the RFP. A copy of this form is available on the ProcurePoint website.

# **8 Performance Management**

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The Deed sets out the way in which Panel Firms' performance will be managed. Panel Firms are required to comply with KPIs and performance will be assessed against service levels. These will form a basis for discussion at Panel Firm performance meetings.

	Topic	KPI
1.	Updating/revising estimates	Law Firms are to inform the Agency in the event they consider that a matter will exceed the estimate provided. This notification is to be provided by no later than when the total of costs billed to date plus WIP is 80% of the original estimate.
2.	Monthly reporting	By seventh day of each month (for preceding month)
3.	Satisfactory performance over the previous period as confirmed in Client Relationship Meetings	Annually (or as otherwise arranged)

## 9 Reporting

### 9.1 Panel reporting

Firms are required by the Deed to provide regular financial reports and to provide an input in preparation for an annual performance review meeting arranged by the Panel Contract Manager.

Agencies are responsible for monitoring firm performance against the KPIs and completing surveys quarterly (or as otherwise agreed by a majority of the GCG) which will also inform annual performance review meetings. Survey questions will reflect the service standards contained in the SLA (Annexure C to the Deed). The GCG will discuss firm reporting and performance in its regular meetings.

The Panel reporting arrangements are summarised in the following table.

Period	Panel Contract Manager (TfNSW)	Agencies	Firms
Monthly			<ul style="list-style-type: none"> <li>Conflicts (or more often if required)</li> <li>Estimate compliance (firm KPI)</li> <li>Matter invoice report – to each Agency Contract Manager</li> <li>Nominated personnel update (or more often if required)</li> </ul>

Period	Panel Contract Manager (TfNSW)	Agencies	Firms
Quarterly	<ul style="list-style-type: none"> <li>• Summary of panel spend by: <ul style="list-style-type: none"> <li>○ Agency/Cluster</li> <li>○ Sub-panel</li> <li>○ area of law</li> <li>○ Firm (GCG only)</li> </ul> </li> <li>• Cost benefits</li> </ul>	Satisfaction surveys	<ul style="list-style-type: none"> <li>• Agency/Cluster billing summary – to Panel Contract Manager</li> <li>• Counsel – to Panel Contract Manager</li> <li>• Advice database – to each Agency Contract Manager in the Transport Cluster (and any other agencies if requested)</li> <li>• Value add – to Panel Contract Manager</li> </ul>
Annually	<ul style="list-style-type: none"> <li>• Summary of panel spend by: <ul style="list-style-type: none"> <li>○ Agency/Cluster</li> <li>○ Sub-panel</li> <li>○ area of law</li> <li>○ Firm (GCG only)</li> </ul> </li> <li>• Cost benefits (GCG only)</li> </ul>		<ul style="list-style-type: none"> <li>• Assurance of compliance – to Panel Contract Manager</li> <li>• Continuous improvement initiatives</li> <li>• Pro bono (against national aspirational target)</li> </ul>

## 9.2 Reporting off-Panel engagements

Off-panel expenditure will be monitored on a bi-annual basis by the Procurement Board. Cluster General Counsels are required to put in place processes to track off-panel legal expenditure and report this in July and January each financial year to the Panel Contract Manager for provision to the Procurement Board. This information will be used to review the performance of the Panel, including appropriateness of the exemption arrangements.

## 10 Panel Administration

The Panel will be administered on a cluster basis with co-ordination on key aspects of the Panel provided by TfNSW.

## 11 Variation of Panel Rules

The General Counsels Group, by majority decision, can vary the Panel Rules and associated Guidelines at any time with the concurrence of NSW Procurement and Transport for NSW Procurement.

## **Schedule 1 – Panel Firms by Sub-Panel and Area of Law**

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Link to [Schedule 1 - Panel Firms by Sub-Panel and Area of Law](#) (or see the [summary list](#))

## **Schedule 2 – Agency Contract Managers**

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Link to [Schedule 2 – Agency Contract Managers](#)

## **Schedule 3 – NSW Government Legal Services Panel Off-Panel Engagements Guideline**

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Link to [Schedule 3 - Off-Panel engagements guideline](#)

## **Schedule 4 – NSW Government Legal Services Panel Conflict Management Guideline for Legal and Commercial Conflicts**

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Link to [Schedule 4 - Conflict management guideline](#)