



**Transport
for NSW**

Services Brief

NSW Government Legal Services Panel

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INTRODUCTION

On behalf of the NSW Government, Transport for NSW (**TfNSW**) proposes to establish a non-exclusive panel for the provision of legal services (**Panel**).

TfNSW invites legal services providers to submit Proposals for appointment to the Panel to provide legal services as and when required. The Term of the Panel will be three years, with two one-year options to extend (3+1+1).

Part A of the RFP sets out the terms and conditions of participation and provides instructions to Proponents.

Part B is the Proponent's Response (**Returnable Schedules**).

Part C is this document, the Services Brief which describes the Services.

Part D is the Legal Services Panel Deed (**the Deed**) of the RFP. Acceptance of the Deed is a **mandatory** condition of this RFP.

Proponents must note that price is an important evaluation criterion of the RFP as it is the NSW Government's intention to **significantly reduce its overall expenditure** on legal services for the duration of the Panel. Proponents are strongly encouraged to offer competitive pricing in their Proposals.

1. ABOUT NSW GOVERNMENT AGENCIES

It is intended that the Panel will service the external legal needs of Agencies of the NSW Government.

In this document, the word 'Agencies' is used to describe departments, agencies, separate agencies, statutory bodies, and State-owned corporations of the NSW Government.

The Panel will be administered on a cluster basis with co-ordination on key aspects of the Panel provided by TfNSW's Legal Practice Unit within the Legal Services and Governance branch. NSW Government agencies are organised into the following ten clusters:

- Education
- Family and Community Services
- Finance, Services and Innovation
- Health
- Industry, Skills and Regional Development
- Justice
- Planning and Environment
- Premier and Cabinet
- Transport and Infrastructure

- NSW Treasury (*please see note at section 2.5 of this document*)

The link at Attachment A of this document lists the relevant ministers, departments, separate agencies, statutory bodies, and state-owned corporations aligned to each cluster.

This list is current as at December 2015 and is subject to change at any time.

2. COMPOSITION OF PANEL AND NON-EXCLUSIVITY OF ARRANGEMENTS

The Panel will be comprised of six sub-panels (**Sub Panels**), with **Areas of Law** within each Sub Panel.

2.1 Mix of Size of Firms

It is expressly the wish of the NSW Government to establish a Legal Services Panel which is constituted of a mix of small, medium and large law firms as appropriate having regard to the nature of the legal services required.

The RFP process has been explicitly designed to allow all firms to submit a Proposal for discrete Areas of Law rather than just entire Sub Panels.

This is to allow firms to submit a Proposal for their own particular area/s of speciality where they may be more competitive, rather than having to compete against other firms for whole Sub Panels. If a firm only submits a Proposal for one or more Area/s of Law of a Sub Panel then they will be assessed on those Area/s of Law only, and not against other proponents that have submitted Proposals for other Areas of Law under the Sub Panel.

Proponents may therefore elect to submit a Proposal for any or all of the Sub Panels, and/or any or all of the Areas of Law listed under each of the Sub Panels. For example:

Firm A is a specialist commercial litigation firm, but also has a particular speciality in property law. Therefore, **Firm A** submits a Proposal for (b) of Sub Panel 6, and (a) and (d) of Sub Panel 3.

Firm B is a full service law firm, with a particular speciality in construction law. It is conflicted against the NSW Government on employment, work health, and safety law matters. Therefore, **Firm B** submits a Proposal for all of Sub Panel 1, Sub Panel 2, Sub Panel 3, Sub Panel 5, and Sub Panel 6.

Firm B does not submit a proposal for any of Sub Panel 4.

Firm C is a small boutique firm specialising in maritime and rail safety law. Therefore, **Firm C** submits a Proposal for (d) of Sub Panel 4.

2.2 Capacity to provide services in regional and rural areas

Firms will also be expected to demonstrate a capacity to provide services in non-metropolitan, regional and rural areas of New South Wales where required, noting that some NSW Government Agencies (such as NSW Health, Education, and Family and Community

Services) have more geographically devolved organisational structures than other Agencies, and may require legal services to support their corporate functions in locations other than Sydney. See further section 9.9 of this Brief.

2.3 Firms must submit Proposals for work of all Agencies

Firms must submit a Proposal for the work of all Agencies and cannot submit Proposals for the work of one or more discrete Agencies only.

2.4 Non-exclusivity

All NSW Government Agencies will have access to the Panel, but it will still be a matter for each such Agency to obtain its own legal services. Agencies have discretion to retain legal services outside the Panel arrangement, including from the NSW Crown Solicitor's Office.

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 are not included in this Services Brief.

Panel members should also be aware that certain Government legal work, known as 'core legal work', must be referred to the Crown Solicitor's Office. This requirement is currently set out in Premier's Memorandum No 95-39 ('Arrangements for seeking legal advice from the Crown Solicitor's Office' – see section 7.2). That memorandum, including the definition of core legal work, may be subject to change from time to time.

Under this Panel, Agencies will continue to be responsible for meeting the savings targets of their Agency in the procurement of Legal Services.

2.5 NSW Treasury

It should be noted that NSW Treasury has limited external legal service needs, as legal work for NSW Treasury is 'core legal work' undertaken by the NSW Crown Solicitor's Office as described in the section above.

However, from time to time, the need may arise for NSW Treasury to brief legal practitioners other than the Crown Solicitor's Office, and/or to brief legal practitioners in conjunction with the Crown Solicitor's Office, such as in major transactions. In such cases NSW Treasury may consider using this Panel for such legal services.

As such, Proponents should note that NSW Treasury, and the Agencies within the NSW Treasury Cluster, have not committed to utilising the NSW Government Panel.

NSW Treasury also has a pre-existing prequalification panel for Public Private Partnerships and other major transactions, the term of which continues until June 2018 with two one-year options to extend.

2.6 Evaluation Criteria

Sections 7 to 10 of this Services Brief form part of the Evaluation Criteria as specified in the Returnable Schedules of the Request for Proposal document.

3. COMPOSITION OF SUB PANELS AND AREAS OF LAW

Sub Panel	Area of Law (a)	Area of Law (b)	Area of Law (c)	Area of Law (d)	Area of Law (e)	Area of Law (f)	Area of Law (g)	Area of Law (h)
1 Major Transactions	Major Infrastructure Projects	Construction	Major Commercial Matters	PPP's and associated transactions	Dispute Resolution	-	-	-
2 Commercial Law	Commercial and contractual matters	Media law	Intellectual property	Information Technology	Insurance	Competition law	Taxation law	Construction
3 Planning, Property and Environment	Complex property advice and transactions	Routine/standard Property advice and transactions	Planning, environmental, heritage and natural resources law	Statutory land acquisition processes	Corridor/ Infrastructure and accreditation requirements	Crown Land	Local Government Law	-
4 Employment, Work Health and Safety	Employment and industrial relations law	Visiting Practitioner Contract and Appointment Disputes and Appeals (Health only)	Hurt on Duty Matters (NSW Police only)	Work health and safety	Workers compensation	Discrimination	-	-
5 Government Regulatory and Administrative Law	Administrative and governance law	Statutory interpretation and advice	Statutory applications	Enforcement, Regulation and Prosecution	Aviation law	-	-	-
6 Litigation and Inquiries	Liability Litigation	General Litigation and Dispute Resolution	Debt Recovery	Inquiries	-	-	-	-

4. EXPLANATION OF AREAS OF LAW

In preparing responses, firms should consider the types of matters which will generally fall within the scope of the Areas of Law. Some are self-explanatory. However, other Areas of Law will incorporate numerous matters, as specified below. Assessment will be undertaken according to the Sub Panels and Areas of Law nominated by firms in the relevant Returnable Schedule.

Sub Panel 1 - Major Transactions Sub Panel

This Sub Panel is intended to cover matters which are high complexity, or high risk, or both.

- a) **Major infrastructure projects.**
- b) **Construction** (estimated value of total legal fees for matter in excess of \$250,000).
- c) **Major commercial matters including complex services and ICT contracts** (estimated value of total legal fees for matter in excess of \$250,000).
- d) **Public Private Partnerships and associated transactions**, which may also include review and advise on debt and equity project funding, construction and operational issues.
- e) **Dispute resolution** for areas of law under this Sub Panel (not covered by iCare), which may include matters such as:
 - SOPA claims/adjudications
 - Expert determination
 - Arbitration and other forms of alternative dispute resolution
 - Litigation

Sub Panel 2 - Commercial Law Sub Panel

Areas of Law (a), (d) and (h) of this Sub Panel are intended to cover matters which are outside of Sub Panel 1.

- a) **Commercial and contractual matters**, not covered by Sub Panel 1, which may include matters such as:
 - Professional Services and consultancy agreements
 - MoU's and inter-agency agreements
 - Licences
 - Funding agreements and grants
 - Tendering and Procurement

- General commercial drafting
- Other general commercial advice
- b) **Media law** (*only law firms with a specialised media law practice will be considered for appointment to this Area of Law*)
- c) **Intellectual Property**
- d) **Information Technology** (not covered by Sub Panel 1)
- e) **Insurance**
- f) **Competition law**
- g) **Taxation law** (*this area of law will be subject to special pricing criteria as nominated by Proponents in the Returnable Schedules*)
- h) **Construction** (not covered by Sub Panel 1)

Sub Panel 3 - Planning, Property and Environment Law Sub Panel

- a) **Complex property advice and transactions**, which may include matters such as:
 - General property law advice and transactional work on complex property issues or major transactions, and strata and community title.
 - Complex commercial and residential leasing and licensing, including in relation to dry and wet lands
 - Property development and disposal strategies
 - Conveyancing of multiple or major parcels of land/ parcels with complex issues
 - Property dealings, including easements, land access agreements, and covenants.
 - b) **Routine/standard property advice and transactions** (*this area of law will be subject to special fixed-fee pricing criteria as nominated by Proponents in the Returnable Schedules*), which may include matters such as:
 - Commercial and residential leasing and licensing
 - Acquisitions and disposals
 - Conveyancing
 - Land Access Agreements
 - General property dealings, including easements and covenants
 - c) **Planning, environmental, heritage, and natural resources law** which may include matters such as:
-

- Water
 - Fisheries
 - Biosecurity
 - Mining law and energy law
 - Biodiversity law
 - Contaminated land
 - Compliance with environmental laws
 - Environmental protection licenses
 - Due diligence
 - Litigation, including prosecutions, merits appeals and judicial review proceedings relating to matters covered by this Area of Law *
 - Planning law, including rezoning processes under the Environmental Planning and Assessment Act 1979
 - Development assessments and approvals/certifications under Parts 4, 4A, Part 5 and Part 5.1 (and the former Part 3A) of the Environmental Planning and Assessment Act 1979
 - Requirements under, and compliance with, Federal law including the Environment Protection and Biodiversity Conservation Act 1999
 - Legislation applicable to Federal and State airports
 - Development contributions, including drafting planning agreements under s93F of the Environmental Planning and Assessment Act 1979.
- d) **Statutory land acquisition processes**, including compulsory acquisition and litigation matters (a maximum of 8 law firms will be appointed to this Area of Law and is subject to special arrangements in relation to conflicts management).
- f) **Corridor/infrastructure access and accreditation requirements.**
- g) **Crown land**, including all matters under the Crown Lands Act 1989, and native title and Aboriginal land claims on Crown land.
- h) **Local Government law**, relevant to the functions exercised by the Minister for Local Government and Chief Executive of the Office of Local Government including investigations and issues relating to governance and conduct under the Local Government Act 1993.

** Note: Government prosecution Agencies will only use this Panel when prosecuting non-Government entities.*

Sub Panel 4 - Employment, Work Health and Safety Law Sub Panel

- a) **Employment and industrial relations law**, which may include matters such as:
- Unfair dismissals (for non iCare matters)
 - Workplace investigations, grievances and discipline.
- b) **Visiting practitioner contract and appointment disputes and appeals** (Health cluster only).
- c) **Hurt on duty matters** under the *Police Regulation (Superannuation) Act 1906* (NSW Police only).
- d) **Work health and safety**, which may include matters such as:
- Regulatory compliance
 - Enforcement and litigation, including Mine safety prosecutions *
 - Industry safety schemes, including construction safety, rail safety, rail safety regulation and accreditation.
- e) **Worker's compensation** (non iCare matters only).
- f) **Discrimination** (for non iCare matters) including:
- in employment
 - in the provision of goods and services.

** Note: Government prosecution Agencies will only use this Panel when prosecuting non-Government entities.*

Sub Panel 5 - Government, Regulatory and Administrative Law Sub Panel

- a) **Administrative and Governance law**, which may include matters such as:
- Judicial review (for matters not covered by another Panel)
 - Merits reviews and related appeals (for matters not covered by another Panel)
 - Privacy and data protection
 - Orders for Production, including Standing Order 52 Orders
 - Subpoenas
 - Government Information Public Access and other NCAT matters
 - Preparation and/or review of policy and/or procedures.

- b) **Statutory interpretation and advice** (for all matters outside core legal work reserved to the Crown Solicitor).
- c) **Statutory Applications**, which may include matters such as:
- Liquor
 - Gaming
 - Restricted premises
 - Related appeals.
- d) **Enforcement, regulation and prosecution**, which may include matters such as:
- Roads
 - Marine law
 - Natural resources law
 - Fisheries law
 - Biosecurity resources
 - Energy law.
- e) **Aviation law** (only law firms with a specialised aviation law practice will be considered for appointment to this Area of Law.)

Sub Panel 6 - Litigation and Inquiries Sub Panel

- a) **Liability litigation** (non iCare matters only).
- b) **General Litigation and Dispute Resolution** (for matters not covered by any other panel).
- c) **Debt recovery** (*this area of law will be subject to special fixed-fee pricing criteria as nominated by Proponents in the Returnable Schedules*).
- d) **Inquiries**, which may include matters such as:
- ICAC and Police Integrity Commission inquiries
 - Royal Commissions and Special Commissions not reserved to the NSW Crown Solicitor
 - Ombudsman matters
 - Coronial matters (for non iCare matters).

5. ANTICIPATED VOLUME OF WORK

Under existing arrangements, each Agency has an internal legal services capability and is responsible for obtaining its own external legal services.

It is expected that approximately \$100 million to \$125 million (excluding GST) per annum may be available for external legal services through the Panel, although no guarantee of any work or expenditure levels is provided.

It is an express aim of this RFP process that external legal expenditure be reduced as much as possible over the term of the Panel. Firms are expected to provide innovative and competitive value pricing, including volume discounts, consistent with charging options in section 9.

6. ANTICIPATED MIX OF WORK

The NSW Government requires a diverse range of legal services. It is anticipated that many of the types of legal services will be required by most of the Agencies within the Clusters.

However, there are some areas of law which will only be required by some of the Agencies.

For example, only TfNSW and RMS will need marine pollution law services and only Sydney Trains, NSW Trains and TfNSW will need services relating to Rail Safety laws and accreditation.

In addition, it is expected that the Justice cluster will principally utilise the aviation law speciality for the Police Air Wing and for other Emergency Services agencies in that cluster that operate Aviation services.

RMS will not use conveyancing services under this Panel, as it has a pre-existing conveyancing panel in place. This also applies to RMS regional enforcement matters.

Areas of Law which are specific to only one Agency or Cluster have been identified in Part 4, but this is subject to change at any time.

7. CUSTOMER RELATIONSHIP MANAGEMENT

7.1 Organisational Knowledge

The Agencies publish detailed information about their businesses and operations on their websites. Panel Firms are expected, at their own expense, to have, or to develop, and maintain a strong awareness of:

- The legislative and policy framework within which the Agencies operate;
- The overall scope of what it is that the Agencies do;
- The key drivers for meeting the clusters' obligations to the community of NSW; and
- The key priorities for each forthcoming year.

TfNSW, as the contracting entity, expects that Panel firms will not charge Agencies for undertaking research about the above matters or training the Panel Firm's lawyers in these matters.

7.2 Compliance with Policy

In providing the Legal Services, the Panel Firm must, at its own cost, comply with relevant Government policies, procedures and guidelines and be aware of and ensure that consideration is given to the Agencies' obligation to comply with the above mentioned policies and the following:

NSW Government Code of Practice for Procurement

<https://www.procurepoint.nsw.gov.au/policies/nsw-government-procurement-information>

Briefing of Senior Counsel

<http://www.justice.nsw.gov.au/legal-services-coordination/Pages/info-for-govt-agencies/briefing-of-senior-counsel.aspx>

Litigation involving Government Agencies

<http://arp.nsw.gov.au/m1995-39-arrangements-seeking-legal-advice-crown-solicitors-office>

Alternative Dispute Resolution

http://www.courts.justice.nsw.gov.au/Pages/cats/catscorporate_adrdirectorate/catscorporate_adrdirectorate.aspx

Model Litigant Policy

<http://www.justice.nsw.gov.au/legal-services-coordination/Pages/info-for-govt-agencies/model-litigant-policy.aspx>

Equitable Briefing Policy

<http://www.justice.nsw.gov.au/legal-services-coordination/Pages/info-for-govt-agencies/eq-briefing-policy.aspx>

Premier's Memorandum No 95-39 'Arrangements for seeking legal advice from the Crown Solicitor's Office

<http://arp.nsw.gov.au/m1995-39-arrangements-seeking-legal-advice-crown-solicitors-office>

7.3 Practice and Contract Management

TfNSW is the administrator of the Panel and the Deed. The Panel Firms will be required to enter into the Deed with TfNSW on behalf of the NSW Government.

Agencies will directly engage Panel Firms on matters. Instructions for the legal conduct of matters will come from the Agencies who will also be responsible for managing the engagement of the Panel Firm and the payment of fees for their matters.

Instructions may be provided to Panel Firms by different Agencies within a cluster. For example, within the NSW Health cluster instructions will generally be provided by the local Agency.

Panel Firms will be required to perform at their own cost, those incidental services or functions that are required for the proper performance and provision of the Legal Services including:

1. Day to day management of the services provided to the Agencies;
2. Contract management with TfNSW, including reporting to TfNSW monthly on all Government agency matters as part of matter management requirements
3. Client relationship management with TfNSW and the Agencies as necessary;
4. Participation in induction at Panel and Sub-Panel levels, performance review and information exchange processes including attending performance review, Panel management and information exchange meetings with each Cluster;
5. Reporting to Agencies on matter progress or monthly reporting required as part of matter management;
6. Continuous improvement of Legal Services including:
 - Standard form methodologies, processes, policies, instruction templates, scoping documents;
 - Practice management and case management systems;
 - Project management procedures and methodologies;
 - Risk management and assurance procedures and methodologies;
 - Providing training to lawyers and invited staff of Agencies;
 - Providing newsletters and other public information to lawyers within Agencies; and
 - Reporting on innovations or new approaches that can be applied to reduce costs and improve service levels.
7. Firms must also commit to providing PDF versions of all legal advices supplied to an Agency each quarter on a removable hard drive or flash drive, and must submit an Excel spreadsheet summarising those advices (supplied in the reports section of this RFP). Please note that if an Agency requires this additional service, it is required to make this request in writing to a Panel Law Firm.

7.4 Authorised Representative and Nominated Personnel

A. Panel Relationship Partner

Each Panel Firm must appoint a Panel Relationship Partner as its authorised representative for any matters related to the management of its relationship with TfNSW as principal under the Deed.

The Panel Relationship Partner must be a senior, experienced partner within the Panel Firm who is able to properly represent the interests of the NSW Government as an important client within the Partnership. Further information is to be completed in the relevant Returnable Schedule.

Panel Firms must also nominate a Cluster Relationship Partner for each Cluster as part of the Returnable Schedule.

It is expected that the Relationship Partner will undertake the following responsibilities at no cost to the Agencies or TfNSW as requested:

1. Facilitating knowledge sharing with Agencies and implementing value-add commitments by the Panel Firm;
2. Managing any contractual issues in accordance with the terms of the Panel deed, and
3. Attending induction sessions and client services management including:
 - attending half-yearly performance reviews, Panel management and information exchange meetings that may be conducted by TfNSW and each Cluster;
 - managing performance of the legal services against agreed service levels;
 - budgetary management;
 - issues resolution; and
 - discussing and resolving potential conflicts of interest.

B. Nominated Personnel

Maintaining very high quality legal resources is a key aim of this RFP. As such, Nominated Personnel must be nominated by Proponents in the Returnable Schedules. Any personnel proposed to act for the NSW Government in the following categories must be nominated:

- **Partner**
- **Special Counsel**
- **Senior Associate.**

It should be noted that once the panel is awarded, nominated personnel in the categories of Partner, Special Counsel and Senior Associate that have not been listed in the executed Professional Services Deed, and are required to be engaged on a legal matter, will require prior approval by Transport for NSW before the work commences on the matter.

Under this Panel, there is now a requirement that all invoices from panel law firms **must** include a declaration from the issuing partner that all nominated personnel in the categories of Partner, Senior Associate and Special Counsel who have billed on the matter have either been included in the Tender Returnable Schedule as a Nominated Personnel and listed in the executed version of the Professional Services Deed, or

have been subsequently pre-approved by Transport for NSW to act on behalf of the NSW Government.

Approval for nominated personnel in these categories will not be retrospective.

C. Referrals within the Partnership

Section 5.3 of Returnable Schedule 5 of the RFP requires Proponents to explain the internal processes of the Panel Firm when matters are transferred internally within the Partnership to ensure that the best qualified Partner and/or Group within the Panel Firm supply the Services, and that sufficient incentives exist within the Partnership to allow this to occur.

D. Insurance Renewals

Panel Firms must provide Certificates of Currency upon renewal of the policy. No invoices will be paid until TfNSW has received the updated Certificate of Currency for Professional Indemnity insurance, Worker's Compensation insurance and Public Liability insurance.

7.5 Transfer of existing matters to the new Panel

Existing matters may be transferred to the new Panel, and if necessary, to a new firm on the Panel if the firm with current carriage of the matter does not succeed in being appointed to the Panel.

The decision as to whether to transfer a matter will be at the discretion of the relevant Agency.

Once the Panel is awarded, all successful Firms will provide a list of current matters with each Agency (if any) to each Agency to allow for determination of the matters that will transfer to the new Panel (which will then attract the new rates).

Matters which are not transferred will become off-panel matters attracting the previously agreed rates. Firms will be required to report to each Agency on both Panel and off panel matters on separate reporting templates (supplied).

In the event that a matter is transferred to the new panel, the new rates will apply, unless the matter has been the subject of a separately tendered project, which will (subject to any contrary agreement between the Law Firm and the relevant Agency) remain subject to the previously agreed rate.

7.6 Conflict management

It is expected that Firms will not generally act against the NSW Government on matters relating to the Panels or Areas of Law for which they have been appointed.

Conflicts (or potential conflicts) are to be raised with the relevant group corporate counsel or corporate counsel on an Agency level before accepting instructions from another client. TfNSW will not manage conflicts on behalf of the NSW Government; any such conflicts must be raised at the Agency level.

Compulsory acquisitions: Panel Firms selected for this Area of Law may not act against the NSW Government in any compulsory acquisition matter. Having regard to this, the number of Proponents to be appointed to this Area of Law will be capped at no more than eight (8), and will possibly be less.

7.7 Vendor Management System

Panel Firms must utilise any Vendor Management System mandated by TfNSW for some or all Agencies. Fieldglass, a SAP company, is currently being investigated for its suitability in this regard.

8. PERFORMANCE MANAGEMENT

8.1 Overview

This section deals with the performance requirements that Panel Firms must meet in performing the legal services and sets out the performance review process that may be used to monitor the Panel Firm's performance, address any performance issues and to benchmark its performance against other Panel Firms.

It also deals with the expectation on appointed firms to participate in meetings and other processes to:

- Monitor the effectiveness of the Panel arrangement;
- Share information, expertise and knowledge among Agencies and firms; and
- Continuously improving the responsiveness, quality and cost-effectiveness of legal services provided under the Panel arrangements.

8.2 Objectives

The objectives of the NSW Government's performance review processes are to:

1. Encourage Panel Firms to implement a culture of continuous improvement in the performance of legal services;
2. Provide TfNSW with performance data for performance review purposes;
3. Ensure that the Panel Firms that are meeting or exceeding requirements are offered more engagement opportunities than those who are not meeting requirements;
4. Share information with Agencies on Panel Firm performance; and
5. Facilitate the development of a more complete understanding of legal services procurement across TfNSW and Agencies and identify opportunities for improving future legal service provision.

8.3 Service Levels

The following performance measures will be used to assess the performance of the Panel Firms:

	Topic	KPI
1.	Updating/revising estimates	<p>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 not greater than 80% of the original estimate.</p> <p>This notification is important to an Agency as it allows it to either agree a revised scope of work to enable the original estimate to be maintained, or an increase in the estimate.</p>
2.	Monthly reporting	By seventh day of each month (for preceding month)
3.	Satisfactory performance over previous period as confirmed in Client Relationship Meetings.	Half yearly (or as otherwise arranged)

8.4 Panel Firm Monthly reporting

Panel firms are to provide the monthly reports in the formats attached to the Panel Deed by way of email. Email addresses for each Agency will be supplied to successful Proponents during the induction period prior to 30 June 2016.

8.5 Panel Meetings

Clusters, or Agencies within Clusters, may conduct meetings from time to time for the purposes of:

1. Performance review; and
2. Information exchange and Panel management to monitor the effectiveness of the Panel arrangement and to promote continuous improvement of the Legal Services.

Reasonable notice of each meeting will be provided in each instance. Depending on the purpose of the meeting, some meetings will be conducted at an Agency's discretion with all members of the Panel, or with members from a particular Sub Panel. Other meetings will be conducted with individual Panel Firms.

Panel Firms must make their Panel Relationship Partner and relevant key personnel available for attendance at these meetings.

An Agency will schedule individual meetings with Panel Firms and be responsible for issuing meeting invitations and agendas, taking minutes and maintaining all records associated with the meeting process.

8.6 Outcomes from Panel Firm Performance Reviews

If the NSW Government determines that a Panel Firm's performance is not acceptable during the term of the Panel, the relevant Agency may:

- Advise other Agencies of areas of under performance by the Panel Firm;
- Work with the Panel Firm to ensure that the Panel Firm's performance improves for the duration of the term of the Panel; and/or
- Recommend to the General Counsel's Group that consideration be given to the termination of the Panel Firm's appointment to the Panel.

A decision to terminate a Panel Firm from the relevant Sub Panel or Area of Law will be made by the Transport Group Corporate Counsel, following a recommendation from the NSW Government's General Counsels' Group.

9. COST MANAGEMENT

9.1 Overview

The following matrix will apply for pricing across all Sub Panels (with the exception of Sub Panel 1; Area of Law (g) of Sub Panel 2); Area of Law (b) of Sub Panel 3; and Area of Law (c) of Sub Panel 6, which are subject to special pricing criteria):

Partner	Single fixed hourly rate
Special Counsel	Single fixed hourly rate
Senior Associate	Single fixed hourly rate
Lawyer, year 3 to year 6	Single fixed hourly rate
Lawyer, year 1 to year 3	Single fixed hourly rate
Graduate/Paralegal	Single fixed hourly rate

9.2 Special Pricing Criteria

Proponents may elect to offer differential pricing for nominated personnel for all of Sub Panel 1 within the Fees Proposal Template in Returnable Schedule 7 of the RFP.

For Area of Law (b) within Sub Panel 3, and for Area of Law (c) within Sub Panel 6, Proponents must offer fixed fee pricing for these matters.

9.3 No rate increases for initial term of agreement

There will be **no rate increases** considered by the NSW Government for the initial Term of the agreement, including, without limitation, any annual Consumer Price Index adjustments. The rates as agreed in the Deed will be the locked-in rates for the term of the agreement, excluding the two one year options to extend.

If either or both of the two one-year options to extend are exercised, then any fee increase will not exceed the annual Consumer Price Index, calculated from the end of the third year of the initial Term and applicable for the first year of the first option to extend, and again from the first beginning of the second further term.

Panel Firms must provide fee estimates (which includes professional fees, disbursements and counsel fees but excludes GST) to Agencies for engagements prior to commencement of the matter and, having regard to the “80% rule” set out in section 8.3, updated fee estimates through the life of the matter, for approval by the relevant Agency.

Panel Firms **must** exercise cost consciousness in the management of legal matters. It is a requirement that every invoice for a matter should state the cumulative fees rendered to date including disbursements and Counsel fees and the percentage that figure represents of the fee estimate (and including any revised fee estimate) to assist Agencies to track costs against estimates.

9.4 Participation in mini-tenders

The NSW Government intends to drive competition and savings within the Panel, and will regularly conduct mini-tenders for more substantial matters, such as a Major Transaction, an Inquiry, and/or where it requires particular skills and expertise for a matter, and also to ensure compliance with the NSW Government Procurement Framework. Panel Firms are expected to participate in such mini-tenders when requested.

9.5 Fee Estimates

In developing fee estimates (which include professional fees, disbursements and Counsel fees but excludes GST), Panel Firms will consider alternative fee proposals with the view of minimising costs to government as far as possible, noting the requirements at section 9.1.

9.6 Volume Discounts

Volume Discounts will apply to all sub-panels for all government agencies once the nominated threshold has been reached. The volume discount threshold will include legal professional fees, disbursements and counsel fees, excluding GST.

Panel firms offering a volume discount should outline the additional percentage discount to hourly rates that will be applied to all sub panel billings greater than a nominated threshold for all government agencies. This will be a cumulative discount over the life of the Panel (please assume each option will be exercised for the purposes of volume discounts).

The overall additional percentage discount applied to all Sub Panel billings as well as new discounted rates for each category of lawyer (i.e. Partner, Special Counsel, Senior Associate, Lawyer, year 3 to year 6, Lawyer, year 1 to year 3 and Graduate/Paralegal) should be outlined in the returnable schedule. In order to enable a proper assessment, this will be the only volume discount considered in this RFP.

9.7 High Complexity Matters

Panel Firms are expected to use a project management approach for the management of high value and complex commercial transactions; major infrastructure projects; and major litigation.

This approach will be determined on a per-matter basis by the Agency, in consultation with the Panel Firm. For example in suitable matters a detailed program for the performance of legal services which details the following may be required from a Panel Firm:

- Project phases;
- Milestones and tasks;
- Target dates for performing tasks and meeting key milestones;
- Allocation of resources;
- Estimates of costs including by phase, milestone and key deliverables; and
- Assumptions and contingencies.

9.8 Non-chargeable Items

Agencies will not pay for:

- Preparation of any fee estimate contemplated in clause 9.3 above.
- Any and all taxi travel, hire care travel, or other ride-sharing services charges.
- Preparation of a detailed program as contemplated in clause 9.6 above.
- Time spent travelling within the Sydney Metropolitan area for Panel Firms based in Sydney.
- Internal conferences.
- Time spent travelling to and from Sydney for Panel Firms located outside of the Sydney Metropolitan area.
- Internal photocopying and printing of documents. Agencies will reimburse for bulk printing or bulk photocopying at the rates charged to the Panel Firms by external providers, without mark up, and with the prior approval of the Agency.
- Any meetings between an Agency and/or TfNSW and the Panel Firm related to relationship management, performance review or information exchange.
- All telephone charges, fax charges and postage.
- Internal conferencing between lawyers unless pre-agreed by an Agency.
- Research undertaken by junior lawyers / paralegals at the request of another lawyer in the Panel Law Firm unless the outputs of that research is shared with the Agency.
- Any costs, including courier costs or other administrative changes, associated with a Panel Firm complying with the reporting or administrative requirements of TfNSW or an Agency.
- Annual Audit Certificate.

9.9 Non-metropolitan areas

Firms will be required to provide services in non-metropolitan, regional and rural areas of New South Wales noting that some NSW government Agencies (such as NSW Health) have more geographically devolved organisational structures than other Agencies. Firms are therefore required to indicate the basis on which they will charge for lawyers' travel time where this is required for the purpose of providing services under the Panel. Further information regarding this will be provided in an upcoming Addendum. Further protocols may be issued from time to time by TfNSW as to charges that Agencies will agree to incur.

9.10 Disbursements

Agencies will reimburse Panel Firms for reasonable third party disbursements at cost, such as courier fees, court fees, and lodgement fees. The following principles apply to reimbursement of other third party disbursements (including Counsel's fees, airfares and accommodation):

- prior approval in writing of the category of expenses is required from the Agency which has engaged the Panel Firm (with the exception of reasonable third party disbursements such as courier fees, court fees, and lodgement fees);
- for internal audit purposes, the Panel Firm must provide appropriate evidence of the expenses claimed and the relationship the expense bears to the services provided;
- prior approval is required where the expense is likely to be in excess of \$500.00; and
- no service charge or administration charge is to be applied to any expenses, disbursements, or Counsel fees.

10. VALUE ADDS AND PRO BONO, DIVERSITY, AND COMMUNITY ACTIVITIES

10.1 Value Adds

The NSW Government wants to work with law firms that are seeking to build a partnership with Agencies and add value to the Government. The NSW Government is therefore seeking to engage Panel Firms that are prepared to invest time and effort in building that relationship and are prepared to offer, within their capacity, value added activities.

However, it is also recognised that different firms will have differing abilities in providing value-added services. It should be noted that the ability of firms to provide 'hot desk' advice on matters is particularly valued, as is the ability for mid and larger sized firms to provide secondees to Agencies.

Panel Firms should note that where firms have the internal resources to do so they will be expected to put forward value-add propositions that include the development and delivery of Government sector specific, face-to-face workshops to Agency staff across NSW, including rural and regional NSW (see table below). As such, the following table should serve as a guide only in determining the value-added services that any Panel Firm offers. Panel Firms are encouraged to offer a wide array of value-add services.

For example:

Small Firms	<ul style="list-style-type: none"> • An advice hot-desk for small ad-hoc requests. • Provision of newsletters or updates on legal reform for staff.
Mid-Sized Firms	<ul style="list-style-type: none"> • An advice hot-desk for small ad-hoc requests. • Provision of newsletters or updates on legal reform for staff. • Provision of precedent documents for a small or fixed fee. • Use of or access to the Panel Firm's library or research facilities by staff. • Secondments of the Panel Firm's staff (at the discounted rate of cost plus on cost plus 10% margin) to Agencies, to cover extended absences of Agency staff or to address capacity issues. • CPD seminars or other professional development seminars/workshops provided by the firm, either specific to the Agency, or that Agency staff may attend (including in regional/rural areas of the State where relevant).
Large Firms	<ul style="list-style-type: none"> • An advice hot-desk for small ad-hoc requests. • Provision of newsletters or updates on legal reform for staff • Provision of precedent documents for a small or fixed fee. • Use of or access to the Panel Firm's library or research facilities by staff. • Secondments of the Panel Firm's staff (at the discounted rate of cost plus on cost plus 10% margin) to Agencies, to cover extended absences of Agency staff or to address capacity issues. • CPD seminars or other professional development seminars/workshops provided by the firm, either specific to the Agency, or that Agency staff may attend (including in regional/rural areas of the State where relevant); • Reverse secondments (where members of an Agency's staff are seconded to the Panel Firm for short periods, for professional development purposes.

10.2 Pro Bono, Diversity, and Community Activities

The NSW Government recognises the valuable pro bono work done by many law firms. It is an aspirational target of this RFP that all mid to large law firms appointed to the panel will meet the National Pro Bono Aspirational Target of 35 hours of pro bono work per lawyer per year. For smaller firms, a commitment to community activity will be similarly valued.

As part of the Premier's Priorities, the NSW Government has identified targets to increase the levels of women, Aboriginal and Torres Strait Islander peoples. Therefore, firms that can demonstrate a similar commitment will be highly regarded.

NOTE: The NSW Government expressly requests that Panel Firms do not offer hospitality or events that are not educational in purpose to staff of NSW Government Agencies.

Panel Firms should be aware of and ensure that consideration is given to the Agencies' obligation to comply with the terms of applicable gifts and benefits policies.

ATTACHMENT 1

INFORMATION ABOUT NSW GOVERNMENT CLUSTERS AND AGENCIES

Information about the various NSW Government clusters can be found at their websites:

- Education
<http://www.dec.nsw.gov.au/>
- Family and Community Services
<http://www.facs.nsw.gov.au/>
- Finance, Services and Innovation
<https://www.finance.nsw.gov.au/>
- Health
<http://www.health.nsw.gov.au/>
- Industry, Skills and Regional Development
<http://www.industry.nsw.gov.au/>
- Justice
<http://www.justice.nsw.gov.au/>
- Planning and Environment
<http://www.planning.nsw.gov.au/>
- Premier and Cabinet
<http://www.dpc.nsw.gov.au/>
- Transport and Infrastructure
<http://www.transport.nsw.gov.au/>
- Treasury
<http://www.treasury.nsw.gov.au/>

Further information relating to the structure of NSW Government Clusters can be found at:

http://www.dpc.nsw.gov.au/_data/assets/pdf_file/0005/126086/Cluster_Arrangements_for_NSW_government_departments_and_agencies.pdf