



NSW Government Legal Services Panel – Transport cluster arrangements

16 September 2021 – 3:00pm – 4:30pm

TfNSW: Legal, Privacy & Internal Audit Branch



Chief Legal Officer
Sally Webb



Commercial & Technology
Anne McDonald (acting)



Government, Regulatory & Prosecutions
Kate Watts



Construction & Major Projects
Andrew Valente (acting)



Property, Planning & Environment
Cath Baxter



Employment & Safety
Liz Ball

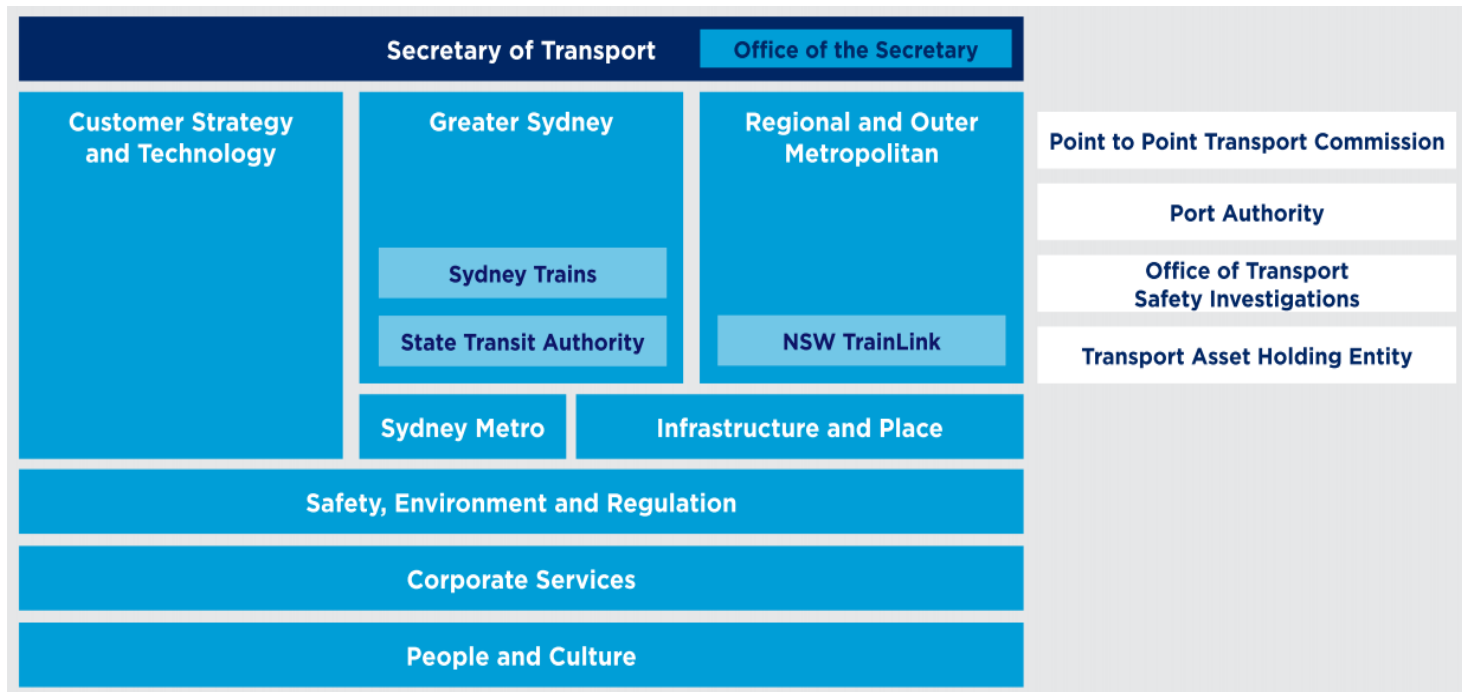


Branch Operations
Cath Cipro

TfNSW – Contact Page

Sally Webb	Chief Legal Officer	Sally.webb@transport.nsw.gov.au
Liz Ball	Executive Director Legal, Employment & Safety	Elizabeth.ball@transport.nsw.gov.au
Anne McDonald	A/Executive Director Legal, Commercial & Technology	Anne.mcdonald@transport.nsw.gov.au
Catherine Baxter	Executive Director Legal, Planning, Property & Environment	Catherine.baxter@transport.nsw.gov.au
Andrew Valente	A/Executive Director Legal, Construction & Major Projects	Andrew.valente@transport.nsw.gov.au
Kate Watts	Executive Director Legal, Government, Regulatory & Prosecutions	Katherine.watts@transport.nsw.gov.au
Cath Cipro	Director, Branch Operations	Catherine.cipro@transport.nsw.gov.au

Transport Cluster Operating Model



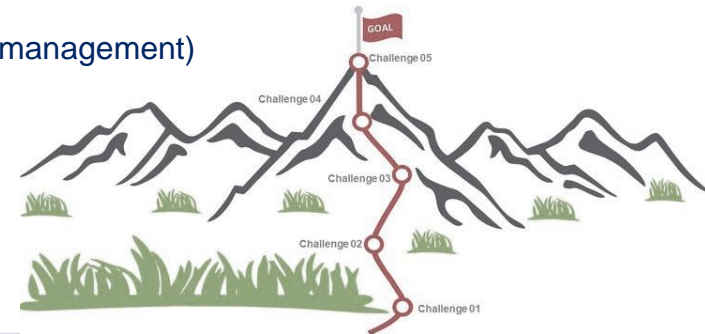
Opportunities & Challenges for our new team

Opportunities

- Building sustainable capability to support Transport's strategy, service and program delivery
- Leveraging best practice contracting across modes
- Alignment and collaboration between cluster agencies on legal risk management
- Consistency with benefits for partners and risk management
- Great career paths with exposure to all modes
- Transport's Stretch Reconciliation Action Plan

Challenges

- High quality training for our people (legal team and clients eg contract management)
- Digital literacy
- Knowledge management
- Tech enablement and digital processes – eg piloting OpenText
- Scale, diversity and volume of work



TfNSW – What we do



Employment & Safety

Key work

- Unfair dismissal claims (federal and state jurisdictions) – especially in our Trains business
- Anti-discrimination (customers and employees)
- Industrial disputes
- Advising on safety law including rail safety law, including responding to regulators
- Advising on industrial and statutory instruments
- Supporting the TfNSW COVID Taskforce
- Advising disciplinary committees and decision makers





Employment & Safety

Challenges

- Organisational transformation making significant changes to the way we all work
- COVID means pivoting and responding quickly to changing Public Health Orders plus WHS risks to staff and customers
- Rail entities' Enterprise Agreements have expired and protected industrial action is likely
- New inter-city "Mariyung" fleet coming into service
- Multiple industrial arrangements creating a complex industrial environment crossing federal and state jurisdictions

Opportunities

- Providing CLEs and other information on current industrial/employment/safety trends. COVID is a hot topic for us
- Understanding our risk profile and appetite so that you can provide useful and pragmatic advice
- Sharing your whole of government experience

Commercial & Technology

Key Work

- Technology & IP: Advice and contracting re technology, intellectual property and innovation
 - Cluster wide software contracts
 - Digital systems
 - SCATS
- Commercial: Contracting and disputes re goods and services procurement, passenger service contracts, GST, zero omission buses
- Rail operations: contracting including heavy rail, light rail and rail corridor access
 - Country Regional Network
 - ARTC Inland Rail Project
 - Regional Rail Project
 - Rail trails



Commercial & Technology

Challenges

- COVID 19 commercial matters - rapid legal assistance
- Infratech - futureproofing the Cluster for this challenge
- Intersection of Construction/Project work and commercial/technology work
- Supporting the business with implementation of TfNSW's Future Transport 2056 strategy including plans to transition to zero emission technology
- Refining processes around TV productions and other media in response to changing media landscape

Opportunities

- Team is very busy and will continue to rely on legal firms to supplement the internal team on a broad range of matters
- Programs of work currently driving main needs for external legal assistance include bus and zero emissions bus work, IT contracts, SCATS, track access agreements, and goods and services. This changes regularly
- Value adds – Training sessions e.g: SOPA and ICTA, secondments



Property, Planning & Environment

Key Work

- Advising on the planning pathway for Transport Cluster projects and concurrence role in relation to development applications
- Representing the Transport cluster in the Land and Environment Court
- Leasing, licensing and compliance activities associated with the management of Transport Cluster properties
- Development and commercialisation of Transport Cluster properties
- Leases, licences, stakeholder agreements third parties to enable delivery of Transport Cluster projects and advising on relevant project documents
- Agreements to protect Transport Cluster interests in transport assets: Works Deeds, Works Authorisation Deeds etc
- Environmental law
- Compulsory acquisition of land, Native Title and Aboriginal land claims





Property, Planning & Environment

Challenges

- TfNSW Legal represents the interests of TfNSW, Sydney Trains and TAHE in relation to property, planning & environment matters. This requires balancing the interests of each agency in the Transport Cluster across the lifecycle of our properties and assets from acquisition through development and delivery to operation and management or disposal
- Delivering a record program of projects means legal advice needs to be prompt, practical and able to be applied by the business with a minimum of interpretation and explanation
- Management of a large volume of external instructions requires strict adherence to Panel Rules regarding matter administration especially in relation to timely revisions to cost estimates

Opportunities

- To maximise the value of Transport Cluster assets throughout the property and asset lifecycle
- Adopting a whole of government approach to agreements between Transport Cluster and NSW Government agencies to free up legal and business time to negotiation of external agreements and delivery
- To streamline administration and invoicing practices and processes to ensure prompt payment of invoices

Construction & Major Projects

Key work

Front-end/ project procurement:

- Construction and major projects procurement including delivery strategy, contract development
- Public private partnerships (infrastructure)
- Systems, services, operations & maintenance procurement
- Rolling stock and plant & equipment procurement
- Construction interfaces

Back-end/ delivery:

- Contract administration
- Claims management including advices, claim assessment/ responses
- Construction insolvencies
- Disputes including ADR processes (eg DAB, ED, SOPA) and litigation
- Settlements





Construction & Major Projects

Challenges

- Unprecedented level of infrastructure work means unprecedented demand for legal services
- Clients require succinct and 'efficient' advice i.e appropriate level of detail depending on the circumstances
- COVID restrictions – challenging time for the industry as a whole

Opportunities

- Significant pipeline of projects
- Varying scale of projects creates opportunities at all levels
- Close 'partnerships' between in-house and external legal teams at multiple levels of seniority
- Innovations for delivering value for money outcomes and risk sharing on projects
- Mode agnostic contracting
- E-signing

Government, Regulatory & Prosecutions

Key Work

- **Regulatory advice and development:** we advise on Transport's statutory functions and obligations across all modes, including national transport reforms affecting NSW. We assist with the development of legislation and regulation in relation to the Transport statute book
- **Prosecutions, statutory appeals, litigation and regulatory processes:** we manage large volumes of prosecutions and statutory appeals relating to all modes of transport. We represent Transport in civil claims, inquiries, investigations, disputes, and coronial matters.
- **Privacy and data:** we prepare privacy impact assessments in relation to new projects and information flows, particularly in relation to key identity and mobility products such as driver licences and Opal trip data. We prepare data sharing agreements, provide general privacy advice and advise and assist in relation to data breaches
- **GIPA:** we advise on GIPA matters and assist in reviews of GIPA decisions in NCAT
- **Government and compliance:** we advise and support Transport in relation to Parliamentary and Cabinet matters. We advise on administrative law and compliance issues as they arise
- **COVID:** we provide ongoing, at-call advice on COVID issues to the COVID Taskforce





Government, Regulatory & Prosecutions

Challenges

- Reforming the way external services are provided to achieve consistency and efficiency
- Efficiently responding to surges in demand, particularly in relation to Parliamentary standing orders or disputes
- Timely delivery of high profile work in response to Court or Ministerial deadlines
- Locating specialist expertise in government, regulatory and prosecutions work

Opportunities

- Court reports and advices tailored to the needs of our clients
- Adding value by identifying ways to streamline complex processes, including by providing support in managing large document based matters such as standing orders or data breaches
- Building relationships by sharing knowledge (eg advocacy skills and legal updates) with the GRP team
- We have a steady stream of liability litigation and complex prosecution work, and a need to brief out other matters to manage peaks in demand

Sydney Metro - Legal



General Counsel
Catrina Cresswell



**A/Executive Director Legal
Project Procurement**
Bethany Harper



**A/Director Legal Regulatory
Employment & Commercial**
Patrick O'Meally



**Executive Director Legal
Project Delivery**
Anita Panikkar



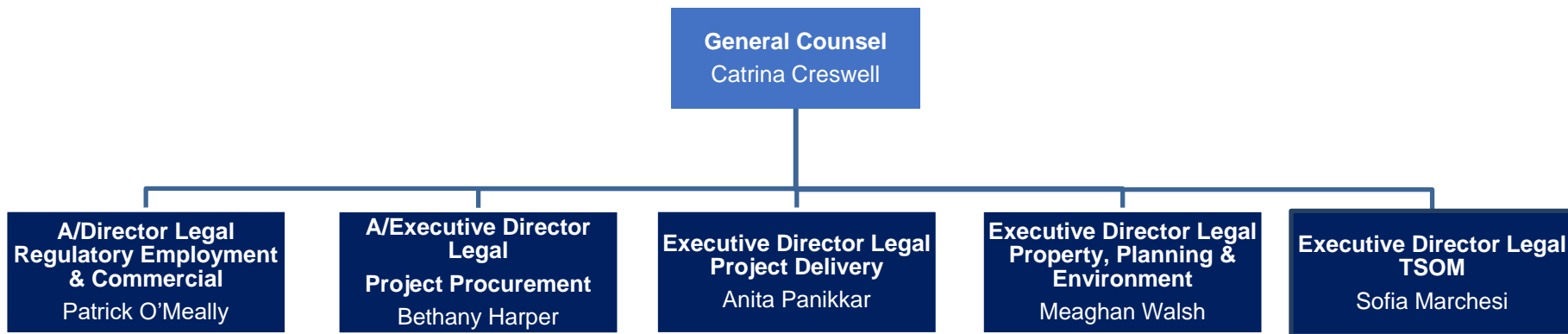
**Executive Director Legal
Property, Planning & Environment**
Meaghan Walsh



**Executive Director Legal
TSOM**
Sofia Marchesi



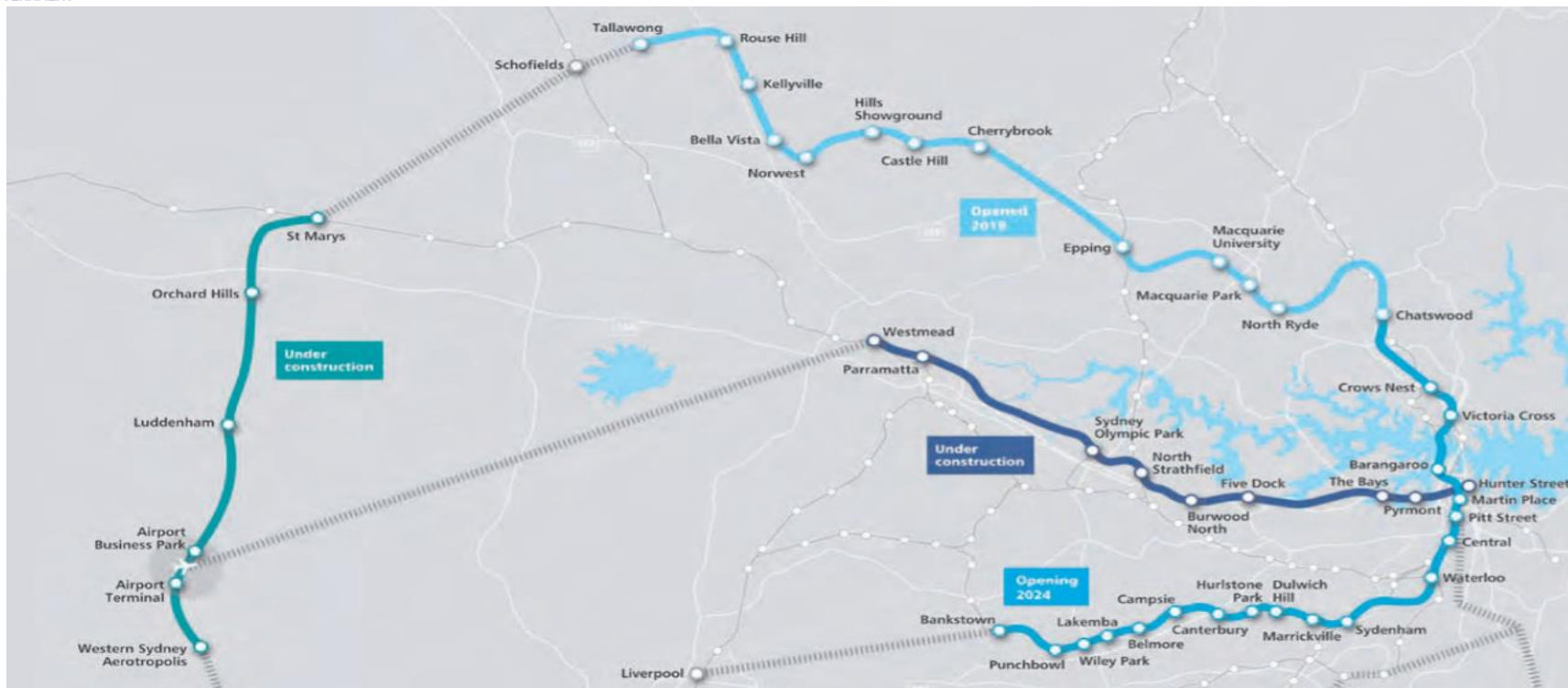
Sydney Metro – Legal



Sydney Metro – What we do



Sydney Metro Alignment





Sydney Metro Legal – Contact Page

Catrina Cresswell	General Counsel	Catrina.Cresswell@transport.nsw.gov.au
Meaghan Walsh	Executive Director Legal Property, Planning & Environment	Meaghan.walsh@transport.nsw.gov.au
Bethany Harper	A/Executive Director Legal Project Procurement	Bethany.Harper@transport.nsw.gov.au
Anita Panikkar	Executive Director Legal Project Delivery	Anita.Panikkar@transport.nsw.gov.au
Sofia Marchesi	Executive Director Legal TSOM	Sofia.Marchesi@transport.nsw.gov.au
Patrick O'Meally	A/Director Legal Regulatory Employment & Commercial	Patrick.OMeally@transport.nsw.gov.au
Kate Hadley	Legal Business Coordinator	Kate.Hadley@transport.nsw.gov.au

Sydney Metro – Project Procurement

Key Work – West and Western Sydney Airport



Challenges

- COVID restrictions – makes interactives and negotiations more challenging than 'being in the room'
- Market appetite means Government needs to consider changes to contract types and risk allocation
- Tight procurement timelines given large pipeline of work puts pressure on legal resources
- Design and Building Practitioners Act 2020 applicability to Integrated Station Developments

Opportunities

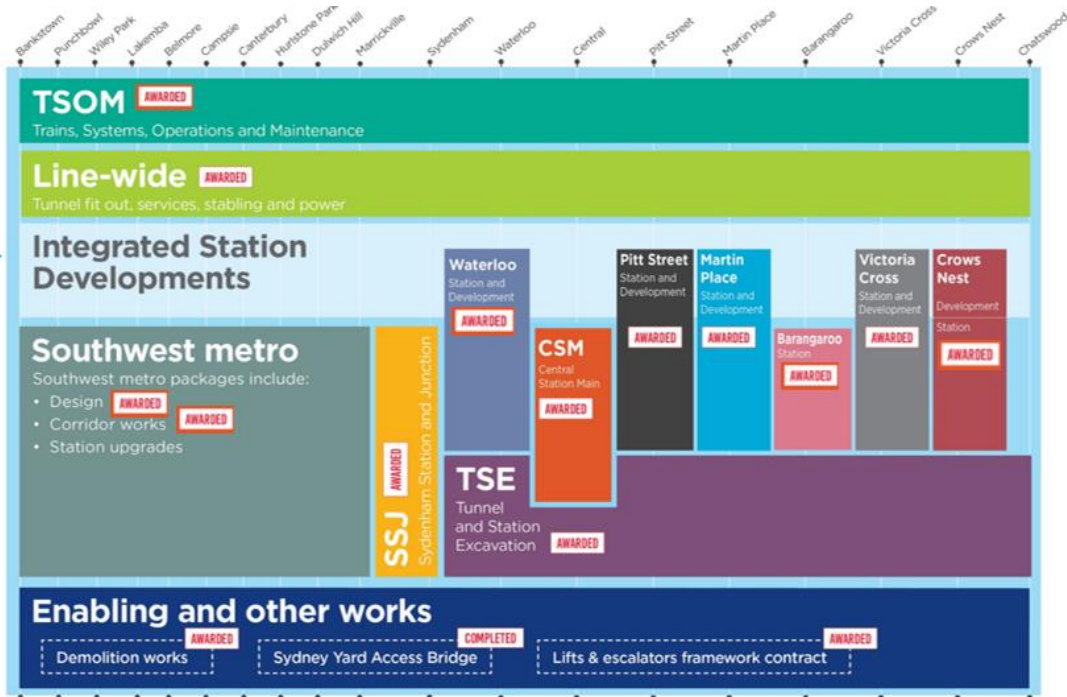
- Developing new more collaborative contract models, including within PPPs
- Insights from law firms across different States and Projects to inform best outcome for contracts
- Ability to work across 3 major projects, 6 enabling works contracts, 4 tunnels packages, 6 stations packages, 1 major civil works package, 7 Systems Framework Contracts, 2 IC Frameworks, numerous interface agreements, and 2 potential PPPs

Sydney Metro – Legal Project Delivery & Operations

Key Work

- Strategic advice on delivery and contract administration issues
- Assisting with claims, settlements and management of dispute resolution processes
- Northwest, City & Southwest (90% of workload) and West

City & Southwest Structure





Sydney Metro – Legal Project Delivery & Operations

Challenges

- Interdependencies across 14 separate CSW contracts, with different contracting structures
- Flow on impact of CSW works into the CSW PPP
- Numerous interface issues and claims
- COVID impact – managing claims, as well as implementing mechanisms to accelerate and incentivise contractors to mitigate program delays and deliver a coordinated CSW program
- NW defects, including impact on CSW works

Opportunities

- Advising on complex, often high risk / highly sensitive issues
- Assisting with high value claims and dispute processes
- Resolution of issues in strategic and innovative ways
- Secondment opportunities



Sydney Metro Legal Property, Planning & Placemaking

Key Work

- Acquisitions (surface & substratum - negotiated & compulsory)
- Adjoining owner agreements
- Tenure documents (leases, licences, easements)
- Over station development tenders and agreements
- Property and planning provisions in ISD, delivery & development project documentation (legal review, advice & negotiation)
- General property advice including titling
- Planning advice
- Approval pathways – advice and strategy
- Environment – compliance, contamination & notification
- Concurrence
- Land & Environment, Supreme Court and Court of Appeal litigation

Challenge

- Infrastructure project – delays
- Timing of work
- Substratum
- Power
- Residential owners
- Class 3
- Covid

Opportunity

- Class 3
- Placemaking
- Leases
- Licences
- Easements



Sydney Metro – Regulatory, Employment & Commercial

Key Work

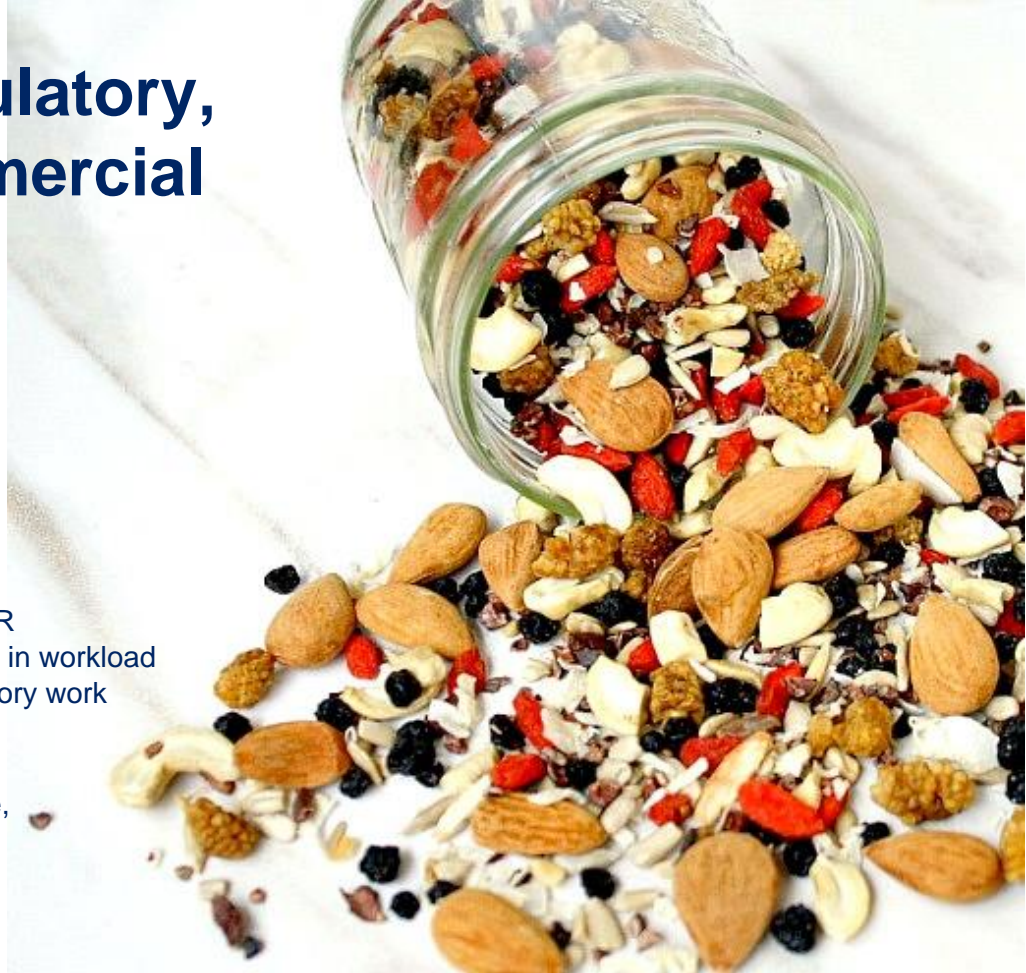
- All non-project related legal work
- Safety, employment & HR
- Inquiries, investigations & prosecutions
- Corporate governance, Regulatory legal issues, ICAC
- Cabinet, Parliamentary matters, GIPA/ PIPA, NCAT
- Non-delivery disputes, Subpoenas
- Non project commercial, Intellectual property

Challenges

- Security of critical infrastructure reforms, including TSSR
- Anticipated Parliamentary Orders and associated surge in workload
- Locating specialist expertise in government and regulatory work

Opportunities

- Training on bullying & harassment, officer due diligence, environmental compliance due diligence and fraud & corruption prevention
- Secondment opportunities
- Support for SO52 Orders for papers



Transport Asset Holding Entity (TAHE)





Transport Asset Holding Authority of NSW (TAHE)

– Contact Page

George Roins	General Counsel	George.roins@tahensw.com.au
Carmen Enwiya	Lawyer	Carmen.enwiya@tahensw.com.au
Damien Clarke	Lawyer	Damien.clarke@tahensw.com.au
Christine Pintabona	Lawyer	Christine.Pintabona@transport.nsw.gov.au
Margaretta Adam	Executive Assistant	Margaretta.adam@tahensw.com.au

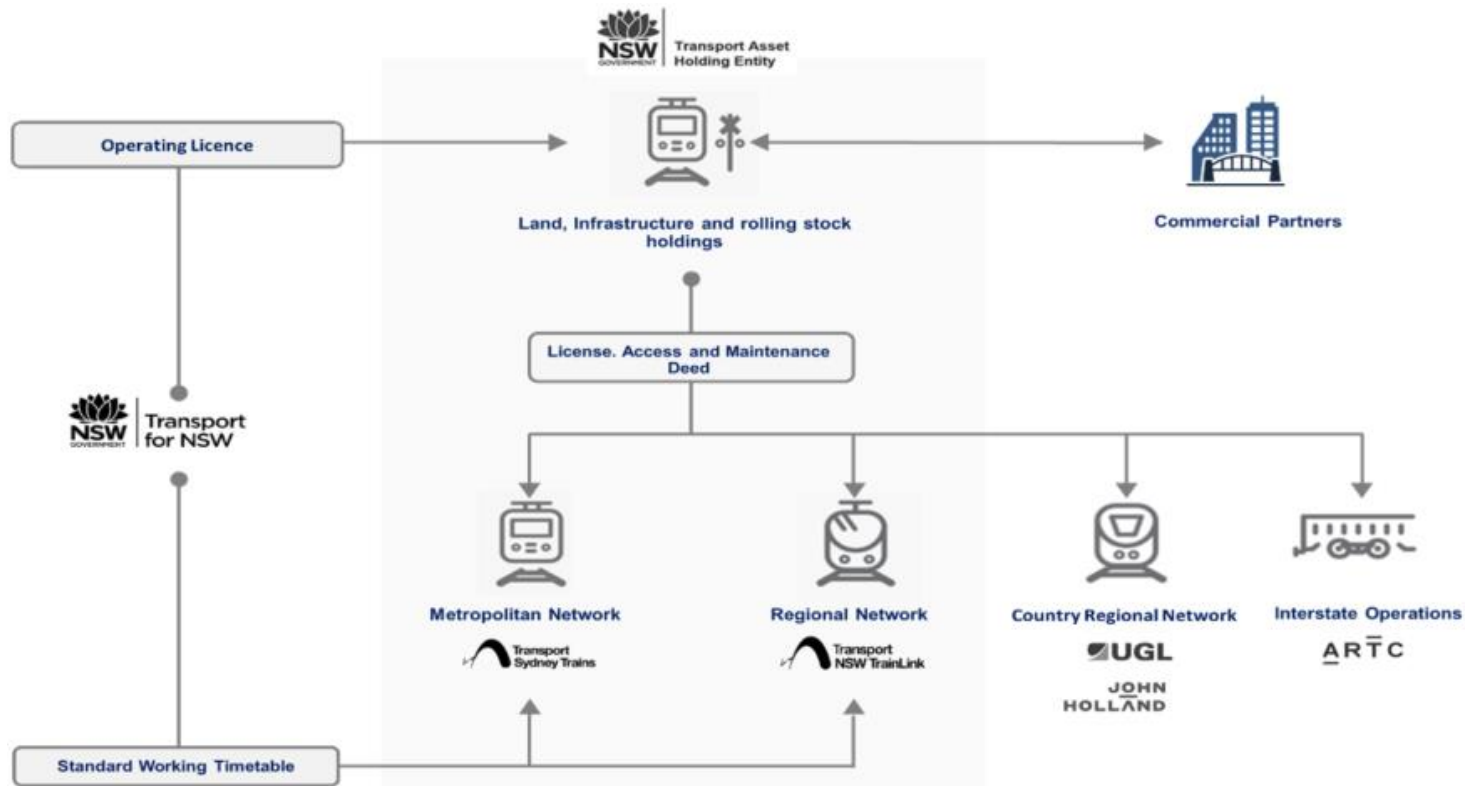


Transport Asset Holding Entity

About TAHE

- TAHE is a statutory State Owned Corporation of the NSW Government – owner of rail property assets, rolling stock and rail infrastructure in the Sydney metropolitan area and limited country locations in the NSW
- TAHE is constituted under the Transport Administration Act (1988) and the State-Owned Corporations Act (1989)
- TAHE makes assets available to Sydney Trains and NSW Trains for their operations, as well as to third party operators
- TAHE's functions are to acquire, develop, finance, divest and hold transport assets
- TAHE has 5 objectives (each of equal importance):
 1. Undertake its activities in a safe and reliable manner
 2. Be a successful commercial business
 3. Support the interests of the communities in which it operates
 4. Conduct its operations in compliance with principles of ecologically sustainable development
 5. Promote regional economic development
- TAHE must exercise its functions within the terms and conditions of the operating licence, granted to TAHE by the Minister for Transport and Roads
- TAHE has an independent Board of Directors, consisting of members appointed pursuant to section 6 Transport Administration Act (1988) and the Chief Executive

TAHE's Operating Model





Operating Model – Key Agreements

On the 1 July 2021 a number of commercial operating agreements were entered with various transport cluster agencies as part of the implementation of the new TAHE operating model, including:

- Rail Operations Agreements
- Licence, Agency & Maintenance Deed
- Project and Property Development Deed
- Access Agreements
- Corporate Services Agreement
- Services Agreement



Transport Asset Holding Entity

Key Work

- Provide legal advice to the wider TAHE team in order to achieve our **five legislative objectives**
- Work closely with TfNSW, Sydney Trains and NSW Trains to administer and operationalise the key operating agreements
- Provide legal support to the wider TAHE team on all of TAHE's principal activities, including areas such as Track Access, Asset/Safety Management, Commercial and Investment Management, Planning and Capital Delivery and Revenue Management
- **Property and Commercial** – administering the property and commercial portfolio (i.e. compulsory acquisitions, vesting's, retail leasing etc..)
- **Projects** – facilitating the delivery of inflight projects and transacting new projects
- **Regulatory** – providing advice on TAHE's statutory functions and obligations, as well as standing orders and GIPA matters
- **Employment** – drafting contractual arrangements and employment advice
- **Policy** – implementation of new policies and procedures across the organisation



Transport Asset Holding Entity

Challenges

- Resourcing constraints with a small internal legal team, we rely heavily on our contractual arrangements with TfNSW and Sydney Trains
- TfNSW and Sydney Trains act as TAHE's agent on a number of projects.
- External advice provided in connection with various projects must consider landowner interests of TAHE and operational issues of TfNSW/Sydney Trains/NSW Trains
- Locating specialist expertise with State Owned Corporations and the application of the ***State Owned Corporations Act 1989*** and ***Transport Administration Act 1988*** and other legislation applicable to SOC's
- Need flexibility from the panel – mirroring the diversity of issues confronting TAHE

Opportunities

- The large remit of legal work available within TAHE
- Varying scale of projects and commercial opportunities at all levels
- Major capital projects to be delivered over the 2021-22 financial year
- Development of precedent documentation as well as assistance with policy and procedure

Amy Beaumont	General Counsel	abeaumont@portauthoritiesw.com.au
Matthew Butt	Deputy General Counsel	mbutt@portauthoritiesw.com.au
Georgia Dersch	Senior Legal Counsel	gdersch@portauthoritiesw.com.au
Donna Lee	Senior Legal Counsel	dlee@portauthoritiesw.com.au



Port Authority of New South Wales





Port Authority of New South Wales



Key Work

- Property and development including front end project work, leases, licences, easements
- Dispute, litigation and prosecutions
- Employment including advices, industrial and employee related disputes
- Regulatory and compliance



Port Authority of New South Wales



Challenges

- Small legal team covering large geographic and subject matters
- Complex governance structure and obligations – commercial entity with regulatory responsibilities
- Six enterprise bargaining agreements, unionised workforce

Opportunities

- Opportunity to provide specialist knowledge and building relationships with small internal legal team
- Varying scale of projects – providing opportunity for variety of firms on the panel
- Variety and interesting subject matters

Thank you and Questions

