



# NSW Government Legal Services Panel

## Panel Rules

|                          |   |
|--------------------------|---|
| <b>Lead Agency:</b>      | Transport for NSW   |
| <b>Reference Number:</b> | TfNSW WS2395335079  |
| <b>Arrangement:</b>      | Closed Panel  |
| <b>Start Date:</b>       | 1 July 2021   |
| <b>End Date:</b>         | 30 June 2024 with two further options of 3 years each   |
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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 WS2395335079 effective 1 July 2021 (**Panel**).

The Panel satisfies the external legal requirements of any Agency of NSW Government whether forming part of a Cluster, Statutory Corporation, State Owned Corporation or other NSW Government Business Entity or Local Government Body (**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).

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 by an Agency in a Service Level Agreement or as notified from time to time. Note: In some Clusters this role will be centralised.

**General Counsel Group (GCG)** means the group comprising of 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 Firms** is a generic term referring to organisations admitted to the Panel. The term is used synonymously with Service Provider. Note: Some organisations are not law firms, particularly in Sub-Panel 7: Legal Support Services.

**Panel Rules** means the rules set out in this document incorporating the terms and conditions set out in the Panel Deed. The Panel Rules also include the Off-Panel Engagements Guideline (Schedule 3) and the Guideline for Conflicts of Interests (Schedule 4).

# 3 Panel Structure

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

## 3.1 Sub-Panel 1: Construction

Areas of Law:

- a) Construction
- b) Major Infrastructure Projects
- c) PPPs and Associated Transactions
- d) Construction-related Dispute Resolution and Arbitration

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

Areas of Law:

- a) Commercial and Contractual Matters
- b) Financial Services
- c) Intellectual Property
- d) Information Technology
- e) Competition Law
- f) Taxation Law

### **3.3 Sub-Panel 3: Property, Planning 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) Crown Land and Local Government

### **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) NSW Police Specific Matters
- d) Work Health and Safety
- e) Discrimination

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

Areas of Law:

- a) Administrative, Statutory Interpretation and Governance Advice
- b) Statutory Applications
- c) Enforcement, Regulation and Prosecutions

### **3.6 Sub-Panel 6: Litigation and Inquiries**

Areas of Law:

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

### **3.7 Sub-Panel 7: Legal Support Services**

Areas of Law:

- a) Document Discovery
- b) Document Production Services
- c) Automation services
- d) Digital forensics

NSW Government may obtain legal services from the Crown Solicitor's Office across any Sub-Panel or Area of Law. Refer section 5.1 for more information.

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

## 4 Exclusion of Core Legal Work

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.

The following must be referred to the Crown Solicitor's Office:

| Area of Law  | Types of matters excluded from the Panel  |
|--|---|
| Sub-Panel 3(d) Crown Land                              | Native Title and Aboriginal Land Rights   |
| Sub-Panel 5(a) Administrative Law                      | Reviews of decisions under the <i>Tattoo Parlours Act 2012</i> , the <i>Combat Sports Act 2013</i> , and the <i>Explosives Act 2013</i> .<br>Note: The administrative review by NCAT of decisions made under the <i>Security Industry Act 1997</i> is not Core Legal Work and is included in Area of Law 5(a).<br>Note: Legal advice relating to Standing Order 52 is Core Legal Work but document production assistance to an Agency to meet its obligations under call for papers made under Standing Order 52 can be provided under Sub-Panel 7(a) Document Discovery. |
| Sub-Panel 5(c) Enforcement, Regulation and Prosecution | Where native title defences are raised in prosecutions (e.g. in fisheries prosecutions), the native title component of the prosecution is core work.  |

## 5 Sourcing Services from the Panel

### 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 sourcing its own legal services.

Agencies are required to refer Core Legal Work to the Crown Solicitor in accordance with *Premier's Memorandum M2016-04*. The Crown Solicitor's Office is not part of the Panel, however, sits alongside of the Panel. Agencies have discretion to retain legal services from the Crown Solicitor and this work will not be required to be reported as an Off-Panel Engagement.

Sourcing of legal services must 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 from time to time in accordance with section 10. 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.

An express aim of this Panel is that external legal expenditure is reduced as much as possible over the term of the Panel and for panel firms to support the Premier's Priorities by demonstrating their commitment to the following social procurement policies:

- SME and Regional Procurement
- Sustainability
- Australian Disability Enterprises

- Aboriginal Procurement

Agencies continue to be responsible for meeting the savings targets of their Agency in the sourcing of legal services. When deciding whether to source legal services under the Panel, Agencies must comply with the general requirements of the NSW Government [Procurement Policy Framework](#).

## 5.2 Selecting Panel Firms

Agencies should select Panel Firms having regard to:

- The Sub-Panel most applicable to the Area of Law (see Schedule 1).  
Spread of expenditure for the Agency across Firms on the Panel for the relevant Area of Law to mitigate 'key person risk' through concentration and conflict of interest risk.
- 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.
- 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 (Annexure A).

At the time of requesting an Estimate it is not always possible to anticipate how proceedings or a transaction will run. The thresholds for seeking written Estimates in section 5.6 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 the Service Provider to advise when 80% of the approved Estimate has been reached and whether the outstanding work will be completed within the remaining 20% of the Estimate. If the agreed scope of work cannot be completed within the approved estimate, Firms will need to provide background and a detailed explanation as to why the fee estimate has increased to support the request for a revised Estimate and seek approval (in advance) by the agency prior to the Estimate being exceeded. Service Providers must exercise cost consciousness in the management of legal matters including the management of professional fees, disbursements (engagement of experts etc.) and Counsel Fees. It is also a requirement that every invoice for a matter state the cumulative fees rendered to date including Professional Fees, Disbursements and Counsel fees and the percentage that figure represents of the Estimate (and including any revised Estimate).

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 to Sub-Panels 1 - 6 on the basis that hourly and daily rates for the following eight Resource Grades 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)

Panel Firms have been appointed to Sub-Panel 7 on the basis that hourly rates for Professional Fees and production rates will be fixed for the first three years of the Panel. Agencies need to request that Sub-Panel 7 suppliers quote for discrete pieces of work.

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

TfNSW has provided the following Cluster-level officers with details of the Panel Firm pricing. Agency Contract Managers should approach the contact for their Cluster in the first instance.

| Cluster   | Contact  |
|---|--|
| Climate Change, Energy and the Environment          | Kate Watts<br>A/General Counsel                                |
| Customer Service                                    | Andrew Floro<br>General Counsel                                |
| Education   | Sarah Hargans<br>General Counsel                               |
| Creative Industries, Tourism, Hospitality and Sport | Andrew James<br>A/General Counsel                              |
| Health  | Chris Carr<br>General Counsel                                  |
| Planning  | Somerset Hoy<br>Chief General Counsel                          |
| Premier and Cabinet                                 | Mark Hare<br>Matt Richards<br>Deputy Secretary/General Counsel |
| Primary Industries and Regional Development         | Kirsten Clayton<br>General Counsel                             |
| Communities and Justice                             | Lida Kaban<br>General Counsel                                  |
| Transport   | David Britton<br>Chief Legal Officer                           |
| Treasury  | Charles Cho<br>General Counsel                                 |

## **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 (Annexure A to the Panel Deed) that invokes the terms and conditions of the Panel Deed.

## **5.6 Thresholds**

### **5.6.1 Engagements valued less than \$250,000 (ex GST)**

Agencies are required to obtain at least one Estimate 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 \$250,000 (ex GST), having regard to the circumstances and any estimate from a Panel Firm.

### **5.6.2 Engagements valued \$250,000 (ex GST) and above**

Except as provided in section 5.6.1, Agencies are required to obtain at least three Estimates 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 \$250,000 (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.

### **5.6.3 Engagements valued \$400,000 (ex GST) and above in relation to Sub-Panel 1 and Sub-Panel 3(d) only**

In relation to Sub-Panel 1 and Sub-Panel 3(d) only, for reasons of efficiency and in order to realise the benefit of the competitive tender process undertaken to establish the Panel, Agencies are required to obtain at least three Estimates from Panel Firms where, at the time of requesting the estimate, the anticipated value of the engagement is \$400,000 (ex GST) or more.

## **5.7 Exemptions from competitive quotation process**

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

## **5.8 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-2020-04](#) and [Approved Procurement Arrangements](#).

Refer also to Off-Panel Guidelines for instructions specific to this Panel.

As provided in the following NSW Government policies, current at the time of panel commencement, certain procurements are excluded:

Agencies may negotiate directly with and engage SME or a regional supplier for goods and services up to \$250,000 ex GST.



Agencies may directly procure services up to \$250,000 ex GST from a suitably qualified Aboriginal business with a minimum of one quote without regard for the Panel.

- [Aboriginal Procurement Policy](#)
- [Small and Medium Enterprises and Regional Procurement Policy](#)

Note there is also a NSW Government Regional and Rural Legal Services Panel covering specific Areas of Law.

[Regional and Rural Legal Services Panel | info.buy.nsw](#)

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

## 6 Panel Firm Obligations

The Panel Deed sets out the obligations of Panel Firms.

## 7 Performance Management

The Panel 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 the Service Level Agreement (SLA) (Annexure B to the Panel Deed). These will form a basis for discussion at Panel Firm performance meetings.

|   | Topic             | KPI   |
|---|-------------------|---|
| 1 | Managing Budget   | <p>Panel 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 <b>no later than when the total of costs billed to date plus WIP is 80% of the original estimate.</b></p> <p>Panel Firms must actively manage and control costs in the provision of Services and must provide accurate Estimates of Legal Services including Professional Fees, Disbursements and Counsel Fees (ex GST) for all Legal Services Contracts throughout the Term of the Panel Deed.</p>  |
| 2 | Regular reporting | <p>Panel Firms must provide regular Reports as required by the Panel Deed, including the Service Level Agreement.</p> <p>Reports required to be submitted on a Monthly basis must be submitted to each NSW Government Agency that have had billings no later than the 7<sup>th</sup> day of each month (for the preceding month).</p> <p>Reports required to be submitted on a Quarterly basis must be submitted to the Panel Contract Manager no later than the 7<sup>th</sup> day of the month following the end of the quarter (e.g. Reports for the 1<sup>st</sup> quarter of a Financial Year would be submitted on 7 October).</p> <p>Reports required to be submitted on an Annual basis must be submitted to the Panel Contract Manager no later than 7 July each year.</p> |

|   | Topic                                 | KPI   |
|---|---------------------------------------|---|
| 3 | Client Satisfaction with the Services | <p>The Panel Firms must maintain Client satisfaction with the following aspects of the provision of the Services throughout the Term of the Panel Deed:</p> <ul style="list-style-type: none"> <li>• Overall satisfaction</li> <li>• Quality of work</li> <li>• Approach and strategy</li> <li>• Scope and instructions</li> <li>• Personnel assigned</li> <li>• Cost management</li> <li>• Management of work</li> <li>• Time management</li> <li>• Communication and reporting</li> </ul> |

## 8 Reporting

### 8.1 Panel reporting

Panel Firms are required by the Deed to provide regular financial reports.

Agencies are responsible for monitoring Panel Firm performance against the KPIs and completing surveys annually (or as otherwise agreed by a majority of the GCG). Survey questions will reflect the service standards contained in the SLA (Annexure B to the Panel Deed). The GCG will discuss Panel Firm reporting and performance in its regular meetings.

The Panel reporting arrangements are summarised in the tables below.

| Reports to be provided by Panel Firms  | To  |
|--|---|
| <b>Invoices (including estimate compliance)</b><br><b>Monthly</b><br>Service Providers must provide a Report containing Transactional Data for each Legal Service Contract and for Existing Matters<br>To be provided monthly or as otherwise required by the Panel Contract Manager.                            | Agency Contract Manager<br>(Using template provided by Panel Contract Manager or Electronic Vendor Management System, once implemented)                               |
| <b>Agency Billing Summary</b><br><b>Quarterly</b><br>Service Providers must provide a Report containing summary Transactional Data for each Agency incorporating all matters billed during the quarter or as otherwise required by the Panel Contract Manager.   | Panel Contract Manager<br>(Using template provided by Panel Contract Manager or Electronic Vendor Management System, once implemented)                                |
| <b>Legal Advice Database Report</b><br><b>Quarterly (Transport portfolio only)</b><br>Service Providers must provide a Report containing a list of advices provided to each Agency within the Transport Cluster on a quarterly basis and include an OCR searchable PDF version of each Transport Cluster advice. | Each Agency Contract Manager in the Transport Cluster<br>(Using template provided by Panel Contract Manager or Electronic Vendor Management System, once implemented) |

| Reports to be provided by Panel Firms  | To  |
|--|---|
|  | once implemented)   |
| <b>Volume Discount Report for All Eligible Billings from NSW Government Panels, Schemes and Contracts</b><br><b>Quarterly</b><br>Service Providers must provide a Report containing cumulative eligible billings to Government Agencies/Entities (including all NSW Government Panels, Schemes and Contracts to monitor Volume Discount Threshold, Volume Discount Activation and Volume Discount Application.   | Panel Contract Manager<br>(Using template provided by Panel Contract Manager or Electronic Vendor Management System, once implemented)      |
| <b>Counsel Briefed</b><br><b>Annually</b><br>Service Providers must provide a Report to the Panel Contract Manager on Counsel briefed annually. The Report must include the names of barristers briefed and: <ul style="list-style-type: none"> <li>• Name of barrister</li> <li>• Gender</li> <li>• Level of barrister (junior or QC/SC)</li> <li>• Area of Law involved (by reference to the table provided with this template)</li> <li>• Number of matters briefed to Counsel</li> <li>• Type of Brief (Judicial, Non-Judicial or Advisory)</li> <li>• Attorney General's prior approval (for senior counsel only)</li> <li>• Total amount paid in Counsel's Fees</li> </ul> To be provided annually or as otherwise required by the Panel Contract Manager. | Panel Contract Manager<br>(Using template provided by Panel Contract Manager)   |
| <b>Value Adds</b><br><b>Annually</b><br>Service Providers must provide a Report on value added Services provided in accordance with the Panel Deed during the year including: <ul style="list-style-type: none"> <li>• The Agency and name of the contact to whom the advice or Service was provided;</li> <li>• The date;</li> <li>• The Sub-Panel and Area of Law;</li> <li>• The nature of the value added service.</li> </ul> Note that no details sufficient to identify the issue or the advice given should be provided.<br>To be provided quarterly or as otherwise required by the Panel Deed or Panel Contract Manager.  | Panel Contract Manager<br>(Using template provided by Panel Contract Manager)   |
| <b>Assurance of compliance</b><br><b>Annually</b><br>Service Providers must provide a report on compliance with the Panel Deed requirements in relation to: <ul style="list-style-type: none"> <li>• conflict of interest</li> <li>• Incidents, Probity Events</li> <li>• Adherence to Government policies</li> <li>• Monitoring and reporting of costs</li> <li>• Currency of insurance</li> </ul>  | Panel Contract Manager<br>(By completing the Assurance of Compliance Report and / or Electronic Vendor Management System, once implemented) |
| <b>Pro Bono Services</b><br><b>Annually</b><br>Service Providers must provide a Report on the <b>Pro Bono Services</b>   | Panel Contract Manager<br>(Using template   |

| Reports to be provided by Panel Firms  | To   |
|--|--|
| provided in accordance with the Panel Deed in each Contract Year and any Financial Year following the final Contract Year  | provided by Panel Contract Manager or Electronic Vendor Management System, once implemented)   |
| <b>Social Outcomes Reports</b><br><b>Annually</b><br>Service Providers must provide a report on social outcomes in the template provided including: <ul style="list-style-type: none"> <li>• Aboriginal Procurement Policy;</li> <li>• Gender Diversity</li> <li>• Small and Medium Enterprise and Regional Procurement Policy</li> <li>• Australian Disability Enterprises</li> <li>• Sustainability</li> </ul> | Panel Contract Manager<br>(Using template provided by Panel Contract Manager or Electronic Vendor Management System, once implemented) |

Note: All reports for the first Contract Year must cover the period from the Commencement Date to the end of the first Contract Year.

| Report to be provided to Service Providers   | By                                   |
|--|--------------------------------------|
| <b>Firm Specific Annual Report</b><br><b>Annually</b><br>Specific for each individual Panel Firm, this Report provides an overview of the Panel Firm's billings by Sub-Panel and Area Of Law, including the Panel Firm's ranking, share of spend and the gap between it and other Firms in relation to billings.<br><br>It also includes a breakdown of the Panel Firm's Client Satisfaction Survey results if a sufficient number of survey responses were provided during the year.<br><br>This Report is to be provided by 15 December in each Contract Year and in the year following the final Contract Year (except that where a Panel Deed is terminated by the Lead Agency under clause 24.1 of the Panel Deed, the Panel Contract Manager will have no obligation to provide further reports specified in the Service Level Agreement, item 3.2.1 to the Panel Firm under that Panel Deed). | Panel Contract Manager<br>(By email) |

## 8.2 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.

## 9 Panel Administration

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

## 10 Variation of Panel Rules

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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 [Panel Firm Supplier List](#)

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

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Link to [Agency Contract Manager List](#)

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

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Link to [Off-Panel Engagements Guideline](#).

## **Schedule 4 – NSW Government Legal Services Panel Conflict Management Guideline**

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Link to [Conflict Management Guideline](#).