

The background features abstract, overlapping green geometric shapes in various shades of green, creating a modern and dynamic look. The shapes are primarily located on the left and right sides of the slide, framing the central text.

Funding for Community Transport Providers in New South Wales

Andrew Mackenzie - Roe Mackenzie Lawyers

Roe Mackenzie Lawyers

Our firm specialises in a number of areas areas of law:

1. Community Transport Issues
2. Business Law
3. Retail and Commercial Leasing
4. Residential and Commercial Conveyancing
5. Strata Law
6. Litigation and Alternative Dispute Resolution
7. Wills and Estates
8. Contested Wills
9. Notary Public

Roe Mackenzie Lawyers

We advise:

1. Community Transport Providers
2. small and medium businesses
3. landlords of shopping centres, tenants of commercial and retail property
4. high net worth individuals
5. strata managers
6. executors and administrators of deceased estates and beneficiaries and relatives of a deceased
7. Pro bono work

Our relationship with the CT Sector

- ▶ We negotiated with TfNSW on behalf of the CTO regarding the terms and conditions of the *Community Transport Service Contract 2016*
(2016 Funding Contract)

Our relationship with the CT Sector

- ▶ History of acting for Community Transport Providers
 - ▶ With others - acting on behalf of CT Providers in their relationships with the community
 - ▶ Confidential advice on internal functioning of organisations - mergers, restructures, meetings, votes, constitutions, insurances, funding...

Funding Contract

- ▶ The 2016 Community Transport Service Contract (**Funding Contract**) is an agreement between:
 - ▶ Transport for NSW (ABN 18 804 239 602)
 - ▶ Service Provider

Funding Contract

- ▶ The Funding Contract is actually 12 documents:
 - ▶ **Standard Terms and Conditions (56 pages)**
 - ▶ Contract Details
 - ▶ General Services Schedule
 - ▶ COMMUNITY CARE SUPPORTS PROGRAM Services Schedule
 - ▶ COMMONWEALTH HOME SUPPORT PROGRAM Services Schedule
 - ▶ Annual Compliance Return
 - ▶ Asset Register
 - ▶ Community Transport Program Services Schedule
 - ▶ Insurance Schedule
 - ▶ KPI Schedule
 - ▶ Reporting Schedule
 - ▶ Travel Training Services Schedule

Funding Contract

- ▶ Funding:

- ▶ **Clause 8.2 of the Standard Terms and Conditions** provides that payments are made as set out in the Schedules to the Funding Contract. This means funding varies between service providers.
- ▶ **Clause 8.3 of the Standard Terms and Conditions** provides that “You must use the Funding and the Fees only as provided in this Service Contract to deliver the Services, make payments in accordance with clause 8.5(b) or purchase or provide for the purchase of Contract Assets in accordance with clause 10.”

Funding Contract

- ▶ Funding:
 - ▶ **Clause 8.7 provides that** “You acknowledge that our payment of any part of the Funding set out in the Funding Tables is conditional upon contractual arrangements with the Commonwealth, Commonwealth and State parliamentary appropriations and budget allocations, and the continuation of the Programs. You acknowledge and agree that we may change the level and allocation of Funding to reflect any changes to these matters.”
 - ▶ If Commonwealth money stops, State money stops.

Funding Contract

- ▶ Under clause 21.1 of the standard terms, if TfNSW overpays any amount “you must notify us immediately and repay us that amount of the Funding (or any lesser amount of which we notify you in writing)”.
- ▶ Harder to keep additional monies.

Funding Contract

- ▶ How long will the Funding Contract go for?
 - ▶ **Term** means the period from the Commencement Date to the Termination Date.
 - ▶ **Commencement Date** means the date on which this Service Contract is signed by the last party to do so or the date specified in Item 4 of the Service Contract Details, whichever is the later.
 - ▶ Item 4 specifies 1 October 2016
 - ▶ **Termination Date** means the effective date of termination of this Service Contract set out in a valid Termination Notice or the Completion Date, whichever is applicable.
 - ▶ **Completion Date** means the date specified in Item 5 of the Service Contract Details or any other extended date agreed to by the parties in writing. Item 5 specifies **30 June 2018**

Funding Contract

- ▶ How long will the Funding Contract go for?

24. END OF SERVICE CONTRACT TRANSFER PROVISIONS

24.1 We may appoint a successor

“You acknowledge that we may, on or before the end of the Term, invite any person to perform all or any part of the Services after the end of the Term.”

- ▶ So there may be holding over.

Key obligations in general

- ▶ Clause 1.1 of the General Services Schedule provides some key obligations on Service Providers:
 - ▶ to ensure the efficient, effective and transparent use of the Funding; (c) to provide safe, clean and reliable transport services that meet the needs of Eligible Customers under each Program
 - ▶ to provide Services that are socially and culturally appropriate, free of discrimination and might be accessed by all Eligible Customers

Requirements for Boards

- ▶ Clause 2.4 of the General Services Schedule provides some key obligations on Service Providers regarding their **Boards**:
 - ▶ ensure that the Board is comprised of people with the necessary skills, experience and training so as to comply with your obligations under this Service Contract, and make strategic decisions
 - ▶ have a written statement (no formal requirements as to form) setting out the roles and responsibilities of your CEO and / or senior manager and their obligations to provide reports to your Board regarding the planning and delivery of the Services

Insurances

- ▶ There is an entire Insurance Schedule
- ▶ TfNSW requires that Service Providers have and maintain current and adequate insurances

Insurances including...

- ▶ **Public liability** - \$10 million minimum cover
- ▶ **Workers compensation** - against any common law or statutory liability
- ▶ **Third party property damage** - \$10 million per incident

Insurances

- ▶ Clause 2(b) of the Insurance Schedule states *“If we ask, you must provide us with acceptable proof of currency and coverage of any insurance held by you.”*
- ▶ Usually:
 - ▶ certificates of currency, policies and policy schedules
 - ▶ a warranty from your insurer that any policy extends to and will cover potential liability arising under the Service Contract

Q&A

With Compliments

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