



**TRANSPORT FOR NSW CBD SOUTH EAST LIGHT RAIL
SMALL BUSINESS FINANCIAL ASSISTANCE PROGRAM
NSW LEGISLATIVE COUNCIL PUBLIC ACCOUNTABILITY COMMITTEE
INQUIRY INTO THE IMPACT OF THE CBD AND SOUTH EAST LIGHT RAIL PROJECT
INDEPENDENT PROBITY ADVISOR'S COMMENTARY**

4 June 2018

PART A: PROBITY OVERVIEW

1. In September 2017, we were engaged by Transport for NSW (**TfNSW**) as probity advisors for the Small Business Financial Assistance (**SBFA**) Program associated with the construction of the CBD South East Light Rail.
2. TfNSW had established the SBFA Program and the framework for financial assistance in the period prior to our engagement and had commenced accepting applications for assistance in August 2017.
3. We understand the SBFA Program to be an assistance program under which the Minister for Transport and Infrastructure (**Minister**) determines whether to exercise his power to make *ex gratia* payments by way of financial assistance to those who have applied for such assistance.
4. As regards the scope of our engagement, we note that it relates to providing probity advice up to that stage of the assessment process where a recommendation is made by the SBFA Program financial advisor. Our engagement scope does not encompass the final stage of the process which relates to recommendations made to the Minister and the Minister determining whether to exercise his power to make *ex gratia* payments by way of financial assistance.
5. Based on observations since our engagement, we understand that under the SBFA Program:
 - (a) financial assistance is provided to eligible small businesses that have experienced a downturn during the overstay of construction of the CBD South East Light Rail;
 - (b) to be eligible for financial assistance, small businesses are required to meet criteria including being located on or in close proximity to the light rail alignment; and
 - (c) the underlying aim is for eligible small businesses to be provided with financial assistance for their rent and bills to help them remain in their location during the construction period.
6. We understand that the SBFA Program is not a broad compensation scheme intended to compensate businesses for their losses.
7. In our capacity as probity advisor for the SBFA Program, our role is process-related and encompasses:
 - (a) process review;
 - (b) probity issue identification;
 - (c) preparing a probity plan;
 - (d) providing probity training;

- (e) monitoring compliance with the probity principles;
 - (f) providing probity advice; and
 - (g) reporting.
8. During the initial period (September and October 2017) of our engagement we:
- (a) considered the briefing documentation provided by TfNSW and met with TfNSW and the SBFA Program financial advisor, Ernst&Young (**EY**);
 - (b) reviewed the assessment process, made suggestions for enhancements to that process from a probity perspective and converted the narrative assessment process into a diagram;
 - (c) prepared a probity plan;
 - (d) reviewed documents relating to confidentiality and conflicts declarations;
 - (e) developed the form of probity confirmation; and
 - (f) provided probity training for SBFA Program team members.
9. Following the initial period (from November 2017 to date) our continuing role under the SBFA Program has been to:
- (a) randomly select to attend (as an observer) a number of the meetings between TfNSW, EY and applicants for financial assistance;
 - (b) participate in meetings of the SBFA Program's Project Working Group (**PWG**) and Steering Committee (**SC**);
 - (c) review compliance with the assessment process utilised in the recommendations made by EY;
 - (d) issue probity confirmations for recommendations made by EY;
 - (e) monitor conflicts of interest declarations;
 - (f) address probity queries as they arise;
 - (g) respond to applicants who may contact us, either by phone or through the Whispli facility (a secure platform enabling disclosures to be made on an anonymous basis) we have established for the SBFA Program; and
 - (h) provide periodic probity reports.
10. Overall, during the period of our involvement in advising up to that stage of the assessment process where a recommendation is made by EY, we have observed that:
- (a) the SBFA Program team members to be responsive to suggestions for process improvement and probity risk mitigation;
 - (b) the SBFA Program being implemented in accordance with the probity principles set out in the probity plan;
 - (c) the SBFA Program team members' commitment to and respect for the probity principles; and
 - (d) that activities associated with the SBFA Program have adhered to appropriate standards of probity.

PART B: LEGISLATIVE COUNCIL INQUIRY TERMS OF REFERENCE

11. We understand that the NSW Legislative Council Public Accountability Committee is holding an inquiry titled *Inquiry into the impact of the CBD and South East Light Rail Project (the Inquiry)* and have received the Terms of Reference (TOR) for that Inquiry.
12. In the following sections, we have replicated each of the TOR and provided comments (noting that for some of the TOR we have no comments to make).

TOR 1 a): the adequacy of the government's response to the financial impact and diminution in social amenity caused by the project on residents and businesses including access to financial compensation and business support services

APAC Probitary comments

13. We are unable to comment as regards that component in TOR 1 a) relating to the ***“adequacy of the government's response”*** as:
 - (a) TfNSW had established the SBFA Program and the framework for financial assistance and had commenced accepting applications for assistance in August 2017; and
 - (b) our engagement does not relate either to the processes that led to the establishment of the SBFA program or to creating the eligibility criteria under the framework.
14. As regards that component of TOR 1 a) relating to ***“access to financial compensation”***, we refer to paragraphs 3, 4 and 5 in Part A. Additionally, we note that:
 - (a) the early steps in the assessment process include TfNSW and EY meeting with applicants for financial assistance;
 - (b) we have attended a number of those meetings as an observer and listened to the discussions; and
 - (c) we have observed that, at each such meeting we have attended, the applicant has been informed about the nature of the financial assistance program and that the program is not a compensation scheme.
15. As regards that component of TOR 1 a) relating to the ***“diminution in social amenity caused by the project on residents”***, we note that our engagement relates to the SBFA Program and we have not been engaged to provide probity services for any resident-related matters that may arise from the construction of the CBD South East Light Rail.

TOR 1 b): the appropriateness and adequacy of the financial compensation process established by the assessment process and consistency of outcomes

APAC Probitary comments

16. As regards that component of TOR 1 b) relating to ***“financial compensation”***, we refer to paragraphs 3, 4 and 5 in Part A and paragraph 14 in Part B.
17. As regards the components of TOR 1 b) relating to the ***“appropriateness and adequacy”*** of the ***“assessment process”***, we make the following observations:
 - (a) the assessment process is well structured and has clearly articulated steps;
 - (b) the assessment process has been implemented consistently;

- (c) the eligibility criteria for financial assistance have been applied with an appropriate level of consistency;
- (d) there has been a balance between following the assessment process to ensure appropriate use of taxpayers' funds and recognising the urgency of providing financial assistance; and
- (e) appropriate processes for identifying and managing conflicts of interest and for maintaining confidentiality have been established.

TOR 1 c): the effectiveness of the government's communication with residents and businesses concerning project delays and financial compensation

APAC Probitry comments

- 18. As regards the component of TOR 1 c) relating to "**residents**", we note that our engagement relates to the SBFA Program and we have not been engaged to provide probity services for any resident-related matters that may arise from the construction of the CBD South East Light Rail.
- 19. As regards the component of TOR 1 c) relating to "**financial compensation**", we refer to paragraphs 3, 4 and 5 in Part A and paragraph 14 in Part B.
- 20. As regards the component of TOR 1 c) relating to "**communication with residents and businesses**", we note that the scope of our engagement does not relate to communications to residents or businesses concerning project delays and we do not have sufficient knowledge of such communications to comment on whether communications were effective.

TOR 1 d): any other related matters

APAC Probitry comments

- 21. We have no comments as regards TOR 1 d).

Prepared by:



Irene Lomis
Principal Consultant



Kaye Mahoney
Senior Consultant

Authorised by:



Jason Masters
Managing Director