Probity and Governance

This information sheet defines probity and outlines its relationship to the good governance of Boards of Management (Boards) and organisations, as well as strategies to enable probity practices.

Definition

The Oxford Dictionary[1] defines probity as *"the quality or condition of having strong moral principles, integrity, good character, honesty, decency".* It is the act of adhering to the highest principles and ideals rather than avoiding corrupt or dishonest conduct. It balances service to the community against the self-interest of individuals.

What is probity?

Probity has been described as a risk management approach ensuring procedural integrity. It is concerned with procedures, processes and systems rather than outcomes. The best probity processes do not however guarantee a Board will be immune from problems or criticism. It requires that Boards act ethically, impartially, honestly and with fairness.

Why is it important?

Organisations receiving public funding are accountable and subject to audit and scrutiny. Standards of acceptable conduct cannot be compromised. Organisations need to be able to assure funding bodies and the broader community that they can be trusted. Good governance includes the avoidance of conflicts of interest and corrupt practices, and acting in ways that minimise the potential for litigation.

Probity Principles

There is no standard list of probity principles however they generally include:

Accountability – Organisations and Boards have an obligation to explain or account for the way duties are performed and resources expended. Accountability involves aligning decision-making processes with the appropriate delegated authority and being responsible for past and expected performance. It involves maintaining good records that leave an audit trail.

Transparency – This is the willingness to open an organisation and its processes to scrutiny and possible criticism, enabling all stakeholders to have confidence in the outcome. It may involve providing reasons for decisions along with relevant information to stakeholders. Transparent processes minimise the opportunity for, and risk of, fraud and corruption.

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[1] *Oxford English Dictionary* 3rd Ed,2007;online version Sep 2011. http://0-www.oed.com.library.sl.nsw.gov.au/view/Entry/151725;

Impartiality – Individuals and organisations interacting with an organisation (eg recruitment) are entitled to expect impartial treatment at every stage of the process. If they do not believe the process is honest, fair and impartial, or that a form of bias is acting against them, it could damage the reputation of the organisation.

Confidentiality – Transparency and accountability needs to be balanced against privacy and confidentiality considerations. Confidential material must be stored in a manner that protects the rights, interests and reputation of all involved.

Conflict of interest – This is where the public duty and private interests of a Board or staff member may be in conflict, resulting in their personal interest improperly influencing their official duties and responsibilities. Stakeholders have the right to expect that Board and staff members will only make decisions in the best interest of the organisation. Perceived and potential conflicts can be as damaging as actual conflicts. Conflicts of interest must be disclosed so procedures can be implemented to manage them effectively and mitigate the impacts.

Probity in Recruitment

The NSW Ombudsman's Report *Improving probity standards for funded organisations[2]* highlighted the need for a consistent and rigorous approach to screening prospective employees within health and human services. The report noted that inadequate checking can result in vulnerable clients being placed in potentially unsafe situations and an organisation's decision-making and governance being compromised or undermined.

Probity checking is the process of assessing the integrity, character and honesty of prospective staff, as well as volunteers, including Boards members.

The Board's role is to understand the requirements and good practice underpinning probity checking and ensure the checks occur. The Board also needs to develop a robust policy supported by guidelines which promote good practice and protects both the organisation and its clients.

Depending on the services an organisation provides there may be legislation requiring certain checks be completed before employment (eg organisations providing children's services are required under Child Protection legislation to complete *Working with Children Checks*; aged care services receiving Commonwealth funding require new staff and volunteers to have a current National Police Check). Some funding agreements also include mandatory/optional probity checks.

Additional checks for senior paid positions may be deemed necessary (eg reports from previous employers who were not nominated as referees, having first sought the applicant's permission; reports from professional bodies relevant to the industry). Privacy may be an issue where a reference has been requested from a previous employer who was not nominated as a referee. Provision of information in this situation could lead to a breach of the privacy legislation. An organisation should seek permission from the

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[2] NSW Ombudsman, 2010 *Improving probity standards for funded organisations* Sydney

applicant before approaching anyone who was not listed as a referee. Information sought should be based on the role of the position either to clarify or confirm anything raised in the interview or application.

The benefits of probity checking include managing risk, particularly financial, protecting vulnerable clients and treating all candidates fairly and reasonably, ensuring their skills and ability are matched to the position. Information acquired during probity checking should only be used to assess whether a candidate has the ability to fulfil the requirements of the position or could pose a risk to the organisation.

In some instances probity checks are also needed for volunteers, contractors and student placements, particularly if they have unsupervised contact with vulnerable clients or specific financial responsibilities.

Conflicts of interest can occur during the recruitment process if a member of a selection panel knows, or has had an association, with an applicant. The panel member may not be required to exclude themselves, disclosure to the panel may be sufficient to ensure an impartial decision can be made. Conflicts of interest should be managed on their merits, however both the conflict and the decision should be documented and be in line with the organisation's Conflict of Interest policy.

Tendering to receive services or products

Tendering is the procuring of services or products through a bidding process usually involving one-off expenditure above an amount specified in a Delegations Chart. The required product or service is usually publically advertised and interested bidders are provided with an information package.

It is the Board's responsibility to direct that policies and procedures ensure:

- The process is transparent and open, where bids are assessed on their merits. eg Specifications are clearly outlined in the information package reflecting predetermined evaluation criteria, including expected outcomes, skills and expertise.
- Potential and actual bidders are treated equally and impartially. Perceived or actual bias can jeopardise a project and the organisation's reputation. eg Bidders should receive the same package and access to further information if confirming or clarifying details; same timeframe to complete a bid; all bids assessed on the same criteria.
- Actual, potential or perceived conflicts of interests are identified and managed. eg Where a bidder is a family member or friend of anyone who influences the evaluation of bids.
- The process is documented, in particular decision-making processes and conflict of interest management. eg Outline why a bid was successful with reference to the criteria.
- The process includes strategies that protect confidential or sensitive information provided by bidders. eg Content of proposals, intellectual property, pricing/profit structures).
- The winning bid is value for money, based on price and variables such as quality of service, time structures and capacity.

Personal Conduct of Board Members

The conduct of individuals on a Board can raise a number of probity issues. Unless managed effectively, probity issues, whether perceived, potential or actual can damage the reputation of an organisation and reflect poorly on individuals or the entire Board.

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A range of strategies can be employed to avoid problems or manage actual, perceived and potential concerns. These include the development of a:

Conflict of interest Policy – This identifies what could constitute a conflict of interest and applies to all who influence decisions. Its purpose is to ensure that decision-making is independent and in the best interests of the organisation.

Declaration of Interest Form – Board members complete the form annually, identifying commercial interests, membership of, or employment by, organisations where potential competing interests could exist.

Code of Conduct – This set of standards describes behaviour and ethics reasonably expected of Board members, staff and volunteers. It relates to personal behaviour, use of the organisation's information and documents, fraudulent and corrupt actions. The code would be signed by all Board members, staff and volunteers on joining the organisation.

Delegations Chart – Delegations of authority establish who is empowered to make decisions or take action on behalf of an organisation. Delegations must be supported by policy and can be rescinded if necessary.

Resources

NCOSS Sector Support
- Templates and Resources
  - Ethical Frameworks: Codes of ethics and conduct
  - A Guide to Ethical Decision Making
  - Managing Conflicts of Interest

NSW Family and Community Services (FACS)
- Probity in employment Chapter 8 in Good Governance: It's your business

Information on developing a Delegations Chart
- Guide to financial management and delegations policy template Community Door
- Delegations Policy Our Community

Other Resources
- Working with Children Checks Office of the Children's Guardian
- Criminal Records Section NSW Police Force
  Information on how to conduct criminal records checks
- Criminal Record Check Request Form NSW BusinessLink Pty Ltd
- National Police Check Frequently Asked Questions Network of Alcohol and Other Drug Agencies (NADA)

NB: The above websites were accessible on 17 August 2015. If the links do not work search on the title of the document or go directly to the organisation's website.