

Probity Guidelines March 2020

D14



Probity Guidelines

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1. INTRODUCTION

Probity means that decisions are made with integrity, honesty and fairness while observing due process as necessary in the pursuit of value for money.

The foundations of probity are accountability and those of dignity, equitability, prudence, openness and honesty and goodwill. Stakeholders must be confident that commitments are made carefully and on their merits alone. Any undertaking involving a decision with significant risk warrants some level of probity assurance.

Probity is most often considered in relation to procurement but should be considered as a normal part of any significant decision making. Good decision making can be explained, defended and substantiated and is an essential quality of good governance giving confidence to stakeholders.

Probity is important for:

- Avoidance of conflicts and/or problems
- Avoidance of corrupt practices
- Improvement in integrity
- Reassurance to stakeholders, the community and other potential organisations thinking of doing business with the public sector in the future
- Provision of objective and independent review on probity of the process
- Minimisation of potential litigation

2. PROBITY PRINCIPLES

When operating effectively probity in decision making will have observable and desirable conditions namely:

- **Impartiality and Fairness**
 - Bias can jeopardize integrity
 - To avoid delays caused by withdrawal, withholding of ideas or decline in responses in the future from dissatisfied participants
 - To avoid potential legal action by dissatisfied participants who believe process may have been prejudiced
 - Avoid delay, financial and reputation costs
- **Removal of improper influence from conflicts of interest**
 - Many probity complaints originate from conflict of interest issues, whether real, potential or perceived
 - These need to be managed
 - Potential and perceived conflicts can be as damaging as actual conflicts
 - Arise when a person with an official role could be influenced, or appear to be influenced by private interests
 - Other parties such as advisers and proponents themselves may also have conflicts
 - Lobbyists must be registered and abide by the Lobbyists' Code of Conduct
- **Accountability and transparency**
 - Accountability means being able to justify the use of their resources
 - This means being responsible for past and future performance, involving a management trail through keeping records

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- Transparency means willingness to open decision making to scrutiny and providing relevant stakeholders with reasons for all decisions
- Accountability and transparency give stakeholders confidence in decisions
- Reduces opportunity for corrupt conduct, fraud and omission
- **Value for money** – involves the consideration of all relevant factors in achieving the defined objective, not just monetary value
 - Encourage an open and competitive environment
 - Result in best value
 - If one supplier have adequate comparative information or justification
 - Not just about procurement
 - Includes performance, quality and risk
- **Confidentiality and Security**
 - While considering transparency some information needs to remain confidential
 - Often this includes proponents proposals, intellectual property, pricing and profit structures, details of assessments, deliberations of evaluations and negotiation and submissions and reports
- **Development of a Probity Plan where appropriate** (VGPB advises over \$10,000,000)

3. PROBITY AT THE VICTORIAN PLANNING AUTHORITY

The Board of the Victorian Planning Authority (VPA) mandates the adoption and application of probity principles in all business dealings by VPA.

PROBITY DEFINED

Probity may be defined as uprightness in one's dealings; integrity; firm adherence to an ethical code of values. In common use, the term 'probity' includes concepts of uprightness, honesty, proper and ethical conduct and propriety in dealings. It is based on a foundation of respect for all those involved or affected by a decision. Probity is often also used in government in a general sense to mean good process.

The behaviours and actions on which this policy is based are consistent with those detailed in the *Public Administration Act 2004* and the Public Sector Code of Conduct.

All VPA staff are responsible for applying probity by:

- being honest, open and transparent in their dealings
- using powers responsibly
- reporting improper conduct
- avoiding and reporting any real or apparent conflicts of interest
- being aware of the ethical framework for public sector employees
- striving to earn and sustain a high level of public trust
- being familiar with the organisational and administrative policies and procedures of the VPA
- developing probity plans where required

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ETHICAL FRAMEWORK

Ethics refers to the judgements that people make and the process of arriving at those judgements. It is the process by which people make decisions based on evidence and government policy, and informed by public sector values.

At the VPA, the Public Sector Code of Conduct and the VPA values and behaviours provide the ethical framework for decision making. The VPA values and behaviours are:

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|-------------------------|---|
| Leadership: | We provide clarity and certainty, develop new and innovative solutions to problems, provide authoritative advice and lead by example to get things done and make a positive difference. |
| Partnership: | We work in collaboration with our stakeholders through genuine consultation, sharing of information, and harnessing their expertise and resources. |
| Professionalism: | We act with honesty and openness, are accountable for our actions, are respected for our expertise and high quality and balanced advice. |
| Responsiveness: | We are aware of the needs of our stakeholders and strive to provide a high level of service and advice at all times. |

POTENTIAL CONFLICTS OF INTEREST

It is important to avoid both the substance and the perception of any conflict. Employees must keep in mind potential conflicts of interest that might arise and must not use their position to accept, gain, or seek to gain a benefit for themselves or any benefit for any person or party with whom they have an association. Refer to the Conflict of Interest Policy for Staff for further information.

4. PROBITY FOR PROCUREMENT

In order to ensure that procurement activities meet probity requirements, it is essential to follow the procurement process outlined in the Procurement Policy and Procedures. This includes:

- Obtaining the required approval before proceeding with any procurement activity;
- Ensuring the correct process (e.g. Request for Quote, tender, etc.) is followed depending on the value of the procurement;
- Preparing a Procurement Conduct Plan if required (e.g. for all tenders);
- Declaring and managing any conflicts of interest;
- Ensuring confidentiality is maintained throughout the procurement process;
- Evaluating tenders or quotes based solely on the stated evaluation criteria; and
- Completing all necessary documentation and saving it in TRIM.

5. PROBITY FOR PLANNING ACTIVITIES

POTENTIAL CONFLICTS OF INTEREST

Planning decisions can have a significant impact on land and property values, and so it is crucial that decisions are made in the best interests of the State as a whole, and are not inappropriately influenced by personal or commercial interests. To minimise the potential for decisions to be influenced by individual conflicts of interest, planning decisions are the outcome of team discussions and team decision making wherever possible. The VPA Board provides an independent review of planning decisions to ensure they are evidence based and reflect the optimal balance of policy objectives.

All VPA employees should declare the following circumstances as potential conflicts of interest (note these are examples only and this list is not exhaustive):

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- Owning property in an area where the VPA is undertaking planning (i.e. on the VPA work program)
- Family member or close friend owns property in an area where the VPA is undertaking planning
- Owning shares in a company that is a developer or landowner in an area where the VPA is undertaking planning
- Family member or close friend works for a developer or planning consultant in an area where the VPA is undertaking planning
- Being offered or receiving income, gifts, or other benefits from a landowner, developer, or their representative in an area where the VPA is undertaking planning

Generally, the VPA will manage these conflicts by ensuring that staff with a potential conflict are not allocated to work on that project.

Consultants who provide technical or professional advice on a planning project must complete a conflict of interest declaration. This forms part of the Request for Quotation (RFQ) document. If any conflicts are declared, the VPA needs to be satisfied that these will not influence the advice provided. The Project Manager should discuss any potential conflicts with the financial delegate (Director or Executive Director) who is approving the consultant's engagement, and the financial delegate is responsible for deciding if the conflict is material.

When meeting with external parties to discuss a planning project, it is good practice to begin the meeting by asking everyone to declare if they have a conflict of interest. If a conflict is declared (e.g. a council officer or an employee of another government agency), then the VPA needs to be satisfied that this is being managed appropriately.

In some cases landowners or developers may be represented by lobbyists. Lobbyists are required to register on the Victorian Register of Lobbyists, and adhere to the Victorian Government Professional Lobbyist Code of Conduct. If you are dealing with a lobbyist, please ensure they are aware of, and are abiding by, these requirements.

GIFTS, BENEFITS AND HOSPITALITY

Acceptance of gifts, benefits or hospitality from developers, landowners or their representatives can create a conflict of interest or a perception of bias. While working on a planning project, any offers from affected developers, landowners or their representatives should be refused. Refer to the Gifts, Benefits and Hospitality Policy for further information.

INFORMATION SHARING

In undertaking our planning activities, the VPA must ensure that information is shared equitably with affected landowners and other interested parties, so that no party gains an advantage from information that has not been publicly released. The VPA should be as open and transparent as possible, and should only keep information confidential where there is a legitimate requirement to do so. Legitimate requirements for confidentiality include where information is commercially sensitive, where release of the information would unfairly advantage or disadvantage a third party, or where confidentiality is required to protect proper public or government decision making processes. Where information is made available, it should be available to all materially affected parties at the same time.

Key documents such as background reports should be published on the VPA website once finalised. If it is considered desirable to provide all or part of a draft report to a landowner, developer or other non-government party, then that content should also be made available to other materially affected parties at the same time.

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WORKING WITH DEVELOPERS, LANDOWNERS AND THEIR REPRESENTATIVES

It is critical that the VPA is seen as impartial in our planning work. While it is important that we engage with developers and landowners, we must not be inappropriately influenced by any particular developer, landowner or stakeholder group.

When meeting with developers, landowners, or their representatives:

- Ensure that appropriately senior VPA staff attend the meeting (usually the relevant project manager or above)
- Ensure there is at least one other government or council employee present at the meeting (this could be another VPA staff member, or someone from council or another government agency)
- Keep records of meetings, including any decisions or actions, and the general subject of discussions. Records could be in the form of an email summary of the meeting, a file note, or minutes, and must be saved in HPE Content Manager.
- Ask whether there are any lobbyists present, and if so, ask them whether they are on the Victorian Register of Lobbyists (see below)

Be aware that lobbyists are required to register on the Victorian Register of Lobbyists, and follow the Victorian Government Lobbyist Code of Conduct. If you are meeting with a lobbyist, they should identify themselves as such. A record of contact with registered lobbyists is maintained in HPE Content Manager at D/17/5181. The register of lobbyists is available online at www.lobbyistsregister.vic.gov.au. If a lobbyist is not on the register, you must not meet with them.

Most planning projects will have a Steering Committee comprised of representatives from council and government agencies. Developers and landowners should not be represented on the Steering Committee unless there are exceptional circumstances. In some cases it may be appropriate to establish a Reference Group consisting of developer and landowner representatives. Such a group must be open to all affected landowners and developers, and must be for consultative purposes only. This is to ensure that there is no perception of particular landowners or developers having undue influence over the planning process.

Community engagement activities must follow the VPA Public Participation and Community Engagement Policy and Protocol. In particular, engagement should be designed to reach the community as a whole.

RECORDS MANAGEMENT

Good record keeping ensures accountability and transparency and protects against perceptions of inappropriate influence. Comprehensive records should be kept of planning activities. These include:

- Records of any discussions with external parties, including developers, landowners or their representatives
- Records of any advice or recommendations received from external parties such as consultants, council and government agencies
- Draft documents circulated externally for comment, and any comments received
- Meeting notes, minutes and agendas
- Reasons for any decisions or recommendations

Records must be saved in the appropriate folder in HPE Content Manager in accordance with the standard Document Naming Conventions, as outlined in the Corporate Information Management Policy and Procedures.

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THIRD PARTY FUNDING

Where a planning project is funded by third parties such as landowners and developers, it is essential to be able to demonstrate that the funding parties have not had undue influence over the planning process.

When third party funding is being sought, all landowners and developers in the subject area should be provided with the opportunity to contribute funding. It should be made clear that third party funding enables the planning project to proceed, but does not guarantee any particular result, and does not give funding parties any more influence over the plan than they would otherwise have as affected landowners or developers.

A funding agreement template is available (D/14/224 where VPA is the planning authority, or TEM/18/9 where VPA is not the planning authority). The template includes several clauses that are designed to protect the integrity of the planning process, and so changes to the template should be avoided wherever possible.

Third party funding arrangements should be transparent. Details of funding parties and amounts of contributions should be provided on request to interested parties. Funding parties should be informed that details of their contributions are not confidential.

Funding parties should be provided with updates as the project progresses, and in some cases it may be appropriate to establish a reference group of the funding parties that meets as required. It is important that the role of such groups is limited to discussing project expenditure and timing, rather than substantive planning issues.

6. FURTHER INFORMATION

Further information can be found in the following documentation:

- D/14/11405 – Conflict of Interest Policy for Staff
- D/08/3957[v2] – Gifts, Benefits and Hospitality Policy
- D/13/4469 – Procurement Policy and Procedures
- D/11/1968 – Internal Corporate Procurement process approvals required
- D/11/2052 – Guidelines for meeting notes
- D/07/4708 – Appointment of External Probity Advisor
- D/09/5706 – Australian Standard HB 325-2008 Assuring Probity in Decision-making