



ASIC
Australian Securities &
Investments Commission

Committee	Joint Committee of Public Accounts of Audit
Inquiry	Inquiry into probity and ethics
Question No.	001
Topic	Right and proper
Reference	Written
Committee member	Julian Hill MP

Question

According to the Department of Finance, probity is evidence of ethical behaviour, and can be defined as complete and confirmed integrity, uprightness and honesty in a particular process. While agencies can often demonstrate the absence of fraud, corruption, illegal activity or conflicts of interest, does a mere absence of illegality, fraud, conflicts or corruption actually indicate probity? How does ASIC assess whether it is acting in a way that is right and proper, not just in a way that is technically and legally correct?

Answer

Upholding high standards of probity is fundamental to ASIC's ability to effectively deliver upon its strategic priorities and regulatory mandate. ASIC actively manages probity risks through a robust and fit for purpose integrity management framework, overseen by an executive integrity committee.

The [ANAO's report](#) (ANAO Audit) concluded that probity management at ASIC was largely effective (summary finding).

ASIC agrees with the In the [ANAO's Audit Insights: Probity Management: Lessons from audits of Financial Regulators](#) (Insights Report) which identified seven lessons for ensuring effective oversight and management of probity across the public sector.

1. **Promote a culture that supports probity** – the Insights Report specifically referred to ASIC's Integrity Committee which oversees our Integrity Framework
2. **Identify the probity requirements that apply to your organisation and assess probity risks** – the ANAO Audit found that ASIC has developed an [ASIC Code of Conduct](#) and [ASIC Values](#) as required by its enabling legislation. ASIC has also identified key probity risks relating to conflict of interest; key regulatory functions (including regulatory capture risk and financial trading); senior executive remuneration; procurement; corporate credit card expenditure; gifts, benefits and hospitality; fraud; and public interest disclosures (paragraph 2.2).
3. **Develop policies and procedures to manage probity risks** – the ANAO Audit found that ASIC had policies, procedures and arrangements to manage its identified risks (paragraph 2.2)
4. **Inform personnel of probity requirements** – the ANAO Audit found that ASIC has effectively informed its personnel of probity requirements. ASIC has adopted a combination of training, making information on policies, procedures, and arrangements easily accessible on its intranet, and messaging from senior officials to reinforce knowledge of probity requirements



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and promote compliance. Completion of mandatory training is monitored and reported to senior management (paragraph 2.113)

5. **Check that internal controls for managing probity risks are effective** – the ANAO Audit found ASIC has a framework and arrangements for monitoring the effectiveness of internal controls and compliance with probity requirements, and for providing assurance to the accountable authority in relation to probity. The framework includes regular compliance monitoring, reporting to management and high-level governance committees, and arrangements for following up on identified instances of non-compliance. Key activities are overseen by a Central Compliance function (paragraph 3).
6. **Promote, check and follow up compliance with probity requirements** – the ANAO Audit found that ASIC fully or largely complied with most of the probity related requirements examined (paragraph 4)
7. **Keep records to demonstrate probity**



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Committee	Joint Committee of Public Accounts of Audit
Inquiry	Inquiry into probity and ethics
Question No.	002
Topic	Demonstration of probity
Reference	Written
Committee member	Julian Hill MP

Question

The ANAO has found evidence the Australian public sector regularly fails to comply with both the intent and the requirements of its regulatory frameworks. How does ASIC evaluate how it is positively acting according to the intent of the law and thus demonstrating probity?

Answer

This is addressed in QoN 001.



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Committee	Joint Committee of Public Accounts of Audit
Inquiry	Inquiry into probity and ethics
Question No.	003
Topic	Performance management system
Reference	Written
Committee member	Julian Hill MP

Question

Does ASIC have an outcomes-based performance management system? How does ASIC balance the focus on outcomes with the risk this brings for compliance with the intent of the law?

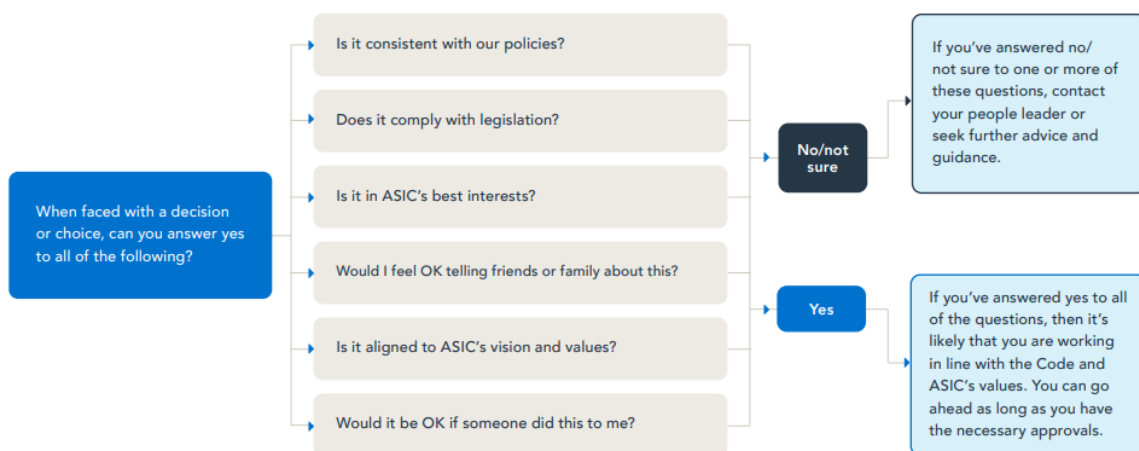
Answer

ASIC's performance management system places a strong emphasis on accountability, professionalism, and teamwork. ASIC's [Code of Conduct](#) includes a requirement for staff members to comply with applicable laws.

When ASIC staff are faced with a decision or choice they must answer yes to the following questions outlined in diagram below.¹

Guidance on using the Code

Every day, team members make decisions while performing their roles at ASIC. Our stakeholders expect us to exercise good judgement. Using this matrix may help team members make the right decisions.



¹ [ASIC Code of Conduct](#) – page 7



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Committee	Joint Committee of Public Accounts of Audit
Inquiry	Inquiry into probity and ethics
Question No.	004
Topic	Acting in good faith
Reference	Written
Committee member	Julian Hill MP

Question

What is ASIC's view on how acting in 'good faith' mitigates the probity concerns that might arise from contraventions of the law?

Answer

Honesty and integrity are essential to ASIC's role as a conduct regulator, and our standing in the communities we serve. [ASIC's Code of Conduct](#) (Code) sets out the standards of behaviour that ASIC expects for how we act, solve problems, and make decisions at work and when making a decision that may impact ASIC and our standing in the community.

Page six of the Code provides a matrix to help staff make the right decision (in 'good faith'), with the first two items to be considered related to the Code's 2nd element: 'At all times comply with law and policies' as detailed on page seven.



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Committee	Joint Committee of Public Accounts of Audit
Inquiry	Inquiry into probity and ethics
Question No.	005
Topic	ANAO opportunity for improvement
Reference	Written
Committee member	Julian Hill MP

Question

Further to the evidence provided at the public hearing on 8 September 2023, please detail how ASIC has progressed each of the ‘opportunities for improvement’ identified by the ANAO.

Answer

ASIC agreed with, and actioned the recommendation and opportunities for improvement identified by the ANAO by 30 September 2023.

The ANAO Report’s only recommendation to ASIC was aimed at managing risks, associated with accepting gifts, benefits, and hospitality from regulated entities. In August 2023, ASIC updated its Disclosure Obligations of ASIC Commissioners Policy to require all hospitality accepted by Commissioners to be recorded in ASIC’s internal register (other than routine working lunches or external meetings over coffee). Formerly the policy set a reporting threshold of \$100, which was based on the Australian Public Service Commission’s guidance for agency heads on gifts and benefits.

ASIC also agreed with and has actioned all opportunities for improvement identified in the ANAO’s report.

- In August ASIC amended the reporting requirements for gifts, benefits and hospitality in the internal register to include a timeframe for reporting gifts, and to require the staff member to record the basis for their assessment of whether the acceptance of the gift, benefit or hospitality would result in a conflict of interest.
- In August 2023 ASIC’s 2023-2027 Corporate Plan included how ASIC manages risks related to regulatory capture.
- In September 2023, the 2022-23 annual attestation process included people leaders and senior executives receiving notifications where their team members had not completed the attestation two and one week prior to the close of the process, enabling them to follow up and maximise completion rates.
- In May 2023, ASIC’s internal guidance material for the management of procurement-related probity risks was updated to identify where exceptions to the guidance may apply and how the risks are to be managed in those circumstances.