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The Institute of Internal Auditors Australia

Whitepaper

Auditing Transparency

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Auditing Transparency

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Background

Purpose

The purpose of this White Paper is to bring clarity and provide guidance on auditing transparency.

Internal auditors are frequently asked to undertake probity audits and reviews and provide probity advice. Transparency is core to probity and is often a poorly understood area. Although the focus of this paper is on auditing, it is also applicable to providing advice and designing transparency into operational and compliance systems.

Background

The focus of an internal auditor's involvement with probity has changed from purely historic audits and investigations to include real-time audits, consulting (advisory services) and advice. This has increased the importance of auditing and advising on transparency.

The complexity and relevance of the concept of transparency has increased with the number of Royal Commissions, compliance agency and regulatory body reports and examinations dealing with transparency.

The demands of the public and media for transparency have increased significantly, as have resources allocated to activities where transparency is crucial, such as corporate social responsibility, sustainability, environmental preservation and performance, responsible procurement and many similar undertakings. Transparency is essential to meet legislative and regulatory requirements affecting supply chain management, anti-money laundering, anti-corruption and other similar endeavours.

Transparency can have a substantial effect on an organisation's brand and reputation, and breaches can destroy value instantaneously. Historically transparency was seen as primarily a public sector issue, whereas it is now viewed as applying to entities in all sectors.

If an organisation wants to build and retain the trust of its stakeholders and the broader community it must enhance transparency. An ancillary benefit is that transparency often leads to improved quality, additional care and an enriched culture.

Discussion

Issue

Transparency is core to building and retaining trust. It is increasingly an area of internal audit focus.

History

Transparency is an old concept whose importance has increased in recent years due to legislation and regulation. An example is the requirements for audit transparency reports as set out in Sections 332–332G of the 'Corporations Act 2001'. Examples of the legislative push for transparency in Australia include freedom of information legislation, the proposed 'Data Availability and Transparency' legislation, whistleblower protection laws, the 'Aged Care Legislation Amendment (Financial Transparency) Bill 2020', the 'Foreign Influence Transparency Scheme Act 2018' and the 'Water Management Amendment (Water Rights Transparency) Bill 2020'. The States have also introduced legislation emphasising transparency, for example the 'Health Transparency Act 2019' in Queensland and the 'Planning, Development and Infrastructure (Transparency) Amendment Bill 2019' in South Australia.

The 'Core Principles for the Professional Practice of Internal Auditing' issued by the Institute of Internal Auditors

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(IIA) which articulates internal audit effectiveness, has three principles that deal with demonstrating various things (integrity, competence and due professional care, quality and continuous improvement) and one that deals with objectivity and freedom from undue influence. These are all transparency issues.

International bodies such as the World Trade Organisation, International Monetary Fund, Organisation for Economic Co-operation and Development (OECD), the World Bank and others have dealt with transparency in their publications. International attention has focused on transparency through anti-money laundering, anti-corruption, anti-slavery and a range of other issues. In recent years the non-legislative focus on transparency in the private sector has also increased significantly as customers, investors and the media have demanded improved transparency.

The IIA-Australia issued Factsheet 'Tender Transparency' which was updated in 2020.

Discussion

What is transparency?

'Transparency' is typically defined along the lines of 'the characteristic of being easy to see through'. 'Transparency' is sometimes used to indicate that actions are scrupulous enough to withstand scrutiny.

'Transparency' and 'accountability' are sometimes regarded as interchangeable terms. This arises from the typical double definition of 'accountability' as being responsible for one's actions and being able to give a satisfactory account of them. It is more useful and adds clarity to refer to accountability as being responsible for the activities and actions and 'transparency' as showing that one has done the right thing.

What is transparency in the probity context?

Probity is evidence of ethical behaviour in a process. It is defined as complete and confirmed integrity, uprightness and honesty. It contributes to sound procurement processes that give equal opportunities for all participants. Probity in decision-making facilitates observable and highly desirable conditions (a) Value-for-money (b) Impartiality (c) Removal of improper influence (d) Accountability and transparency (e) Confidentiality.

In this context transparency means showing that probity requirements or principles have been followed. Generally this means you show that the requirements of fairness, accountability and attention to objectives have been applied.

'Fairness' means that entities have been treated equitably. This refers to all entities involved. For example, in a council considering the use or expansion of a caravan park they would need to be fair to that particular caravan park, other caravan parks in the area, the local community and other key stakeholders. In a tendering process fairness does not only apply to tenderers, but also potential tenderers and possibly other entities. A broad, rather than a narrow view should be taken of fairness when auditing transparency.

'Accountability' means responsibility is accepted for actions taken. In practice this includes following the rules and taking account of key risks. If rules are blindly followed that do not take account of significant risks it cannot be said that requirements of accountability have been met.

'Objectives' refers to taking actions that will achieve the relevant aims and reasons for undertaking the activity. The most important objective in procurement is often regarded as value-for-money. Value-for-money can be thought of as the relationship between costs and outcomes. Outcomes are usually not just short-term but all of short-term, medium-term and long-term. For government entities and operations, objectives also include public sector values and government objectives.

Transparency for probity matters is thus showing:

- All parties are treated fairly,
- Rules are followed and risk addressed, and
- Objectives are properly considered.

Who is transparency for?

The beneficiaries of transparency are both internal and external entities. Transparency is obviously for participants in the process, for example entities competing for grants or other benefits in a corporate or government program. It also extends to potential participants, who are affected by eligibility rules and assessment criteria. In addition it applies to regulators, the media and public with an interest.

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As transparency enhances an organisation's brand and reputation and lack of transparency has the potential to damage them, often substantially, transparency is of concern to the organisation's owners, potential investors and management. It can have an effect on staff morale and reputations and may therefore be relevant to staff beyond the area undertaking the project or operations.

When does transparency start?

Transparency is understood by some people as being able to withstand the scrutiny of an audit or investigation. With this understanding there may be the tendency to concentrate on putting in transparency measures mostly towards the end of the activity. As transparency is a broader concept it should be applied at every stage of the activity.

Transparency should not be an add-on or a last minute thought. It needs to be part of the design of the strategy, operations or project. Commencing transparency even at the start of operational or other activities may be too late as it then has a tendency to become an add-on.

What is the essence of transparency?

Transparency is sometimes summarised as:

- Tell people what you are going to do.
- Do what you told them you would do.
- Show them you have done what you said you would do.
- Openly deal with complaints and appeals that you did not do what you said you would do.

What transparency is required at the planning stage?

In planning the process and activities, transparency includes designing them so:

- They will be fair to all participants, potential participants and other parties.
- The process will take into account the key risks that might hamper achievement of objectives and the key opportunities to achieve those objectives.
- The rules are set so key guidance is formulated that is clear and opportunities for opacity in providing advice and decision-making are appropriately limited.
- The objectives are well-defined and guidance is provided internally if necessary on how to handle competing objectives and other issues.

Once these issues are documented and approved, information relevant to external identities should be disclosed to them. This would usually include publishing prominently on the organisation's website as well as notifications to entities that have expressed an interest in participating. The way information is provided to all parties is an element of transparency.

It is when participants, potential participants and others are not given adequate information up-front that they may view the process as a black-box potentially subject to arbitrariness, unfairness and in a worst-case scenario, corruption.

When these matters are only decided later in the process, particularly after submissions or other information have been obtained, there may be a suspicion the process or activities were set to favour certain entities and disadvantage other entities.

Transparency also includes the selection of staff, consultants and advisors to participate in the process or activities for the organisation. A clean process with dirty players is likely to be viewed with suspicion. Transparency may also fail if the players do not have the adequate skills, knowledge and experience to undertake the process and activities in a manner that is in accordance with transparency and other probity requirements. Adequate due diligence should be undertaken to ensure staff, consultants, advisors and other entities meet probity and competency requirements.

If other entities are involved, an assurance framework is usually applicable to ensure the entities have appropriate structures, systems and cultures in place to ensure relevant activities will be transparent. Opacity may result from a failure to review the assurance framework.

In auditing transparency of the planning stage, the internal auditor should examine both the design of the process and activities and the training, qualifications and experience of the staff, managers and others carrying out the process and activities.

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How should the people aspects of transparency be dealt with at the planning stage and at every stage thereafter?

There are barriers to transparency that are relevant to all stages and need to be addressed including:

- Conflicts of interests.
- Gifts, benefits and hospitality.
- Favoured access and lobbying.
- Perceptions of bias and conflicts of duties.

Good practice is for the organisation to cover these issues in a code of ethics for the project or a similar document that is made available to entities participating in the process. It should be included with other program or project information. Staff, managers, advisors and others should be given a copy of the code and asked to sign an acknowledgement they will comply with it.

Conflicts of interest

A conflict of interest exists when a reasonable person might perceive that an official's personal interest could be favoured over their duties to the organisation .

The NSW Independent Commission Against Corruption (ICAC) has identified six categories of personal interest that could conflict with duties to the organisation :

- Pecuniary interests including direct and indirect assets, liabilities, earnings and costs.
- People who are more than acquaintances.
- Connections to people and entities that have provided or may provide income.
- Organisations and clubs and people connected to them.
- Connections to people and entities who have given benefits or favours.
- Other people or matters that are closely connected to the official.

To be transparent all staff, managers, advisors, consultants and others involved in carrying out the process and activities must declare their conflicts of interest or declare they have no conflicts of interest. It is good practice for this to be done:

- by filling out a conflicts of interest form before they start their involvement; and
- by each person declaring the existence of a conflict of interest or that they have no conflict at each meeting where discretions are exercised about the process and activities, for example setting criteria for assessing the successful entities

Gifts, benefits and hospitality

The default should be that people working on the process or activities should not accept any gifts, benefits or hospitality at all. Exceptions may be made for example for coffee and biscuits at meetings at the other entity, but not for any non-token gifts.

Favoured access and lobbying

Transparency fails when there is a suspicion that an entity or entities are being given greater access or allowed to lobby when others are not. Typically rules should be established to cover access and lobbying and distributed to external entities. It is better practice to advise incumbent contractors that they may not discuss their tenders or the tendering process with staff other than through the established channels in the same manner as all tenderers.

Perceptions of bias and conflicts of duties

Where there is a risk of perceptions of bias and conflicts of duties by decision-makers and advisors, information on how the risks will be addressed should be provided.

Ethics walls

Where an ethics wall (formerly known as a Chinese wall) is appropriate, its operation should be documented, people affected by the wall instructed on its operation, and other entities generally informed of the existence of the ethics wall. The operation of the wall should be monitored to ensure compliance with prescribed requirements.

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What transparency is required once the process or activities have commenced?

Internal transparency

There should be adequate transparency to ensure those within the organisation are seen to be taking due care. This includes:

- Adequate resources.
- Absence of undue influence by management, colleagues and others.
- Supervision.
- Advice and consultation.
- Documentation.
- Monitoring and reporting.
- Assurance framework operating properly.

Resources allocated to staff and others should be adequate to ensure probity will be followed. One of the key resources is time. For example, if a person is allocated the task of ensuring ecological sustainability for a major environmentally sensitive project and they are expected to do this in addition to their normal workload, transparency may fail as they may not or may be perceive as not having adequate time to undertake requisite work on the project.

There should not only be an absence of undue influence by management, colleagues and others, but those to whom they report on the project or in their normal work should not be seen as having vested interests that contradict the probity objectives.

Depending on the level of experience, training and skills of the people or entities, it may be appropriate for them to have access to training, advice and consultation.

Documentation is key to transparency as it evidences key meetings, discussions, decisions, etc. Documentation is enhanced by including not just a decision made, but the reasons for the decision.

There should be adequate internal reporting and monitoring for management to obtain assurance and visibility that things have been done correctly.

If other entities are undertaking contributing activities, then it is usually appropriate for the organisation to obtain evidence the entities' assurance frameworks are operating effectively. The organisation should usually also obtain its own assurance that key activities of the entities are properly undertaken.

Depending on the area of activity, other measures may be appropriate to be able to show that management is ensuring its own oversight. The list above is not meant to be comprehensive.

External transparency

This includes all measures to show outsiders the activities are being properly undertaken in accordance with probity principles.

It includes reporting to key stakeholders on activities and results so stakeholders can see for themselves that things are being done properly. Transparency also covers that reports contain essential information, the information is presented so that it is easy to assess and understand, reports are made at all appropriate stages of the activities and not only at the end, that the reports do not violate confidentiality and privacy obligations, that the reports honestly reflect the results, etc.

There should be mechanisms for participants to make complaints, especially about perceived unethical conduct. Transparency includes the way with which complaints are dealt and the feedback provided to complainants.

Depending on the nature of the activities, external transparency could include consultation, briefings and other communications with external stakeholders. It could also include, especially in multi-phase projects the ability for participants to object and appeal decisions at various stages in the process, not only after it has concluded.

What transparency is required after the process is completed?

There should generally be a formal appeals and complaints process.

Feedback should be provided to participants and the feedback documented. It may also be appropriate for feedback to be provided to stakeholders.

Internal reports and monitoring should be completed so senior management is satisfied that probity has been observed. Typically, the report on the activities, such

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as tendering or sustainability, should contain a section dealing with probity. Good practice is for the report to include probity issues, concerns and breaches that arose and how they were dealt with.

It may be appropriate to issue a report to participants and stakeholders.

Quality control is enhanced by undertaking a lessons learned evaluation at the end of the project for use in future projects.

Conclusion

Summary

Transparency is core to building and maintaining trust. It should be undertaken at all stages of relevant projects or activities.

Conclusion

Internal audit has a significant role to play in an organisation's transparency activities, from providing advice to acting as a third line of assurance by undertaking audits of transparency processes generally and transparency in specific projects. Best results are often achieved through real-time audits.

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Purpose of White Papers

A White Paper is a report authored and peer reviewed by experienced practitioners to provide guidance on a particular subject related to governance, risk management or control. It seeks to inform readers about an issue and present ideas and options on how it might be managed. It does not necessarily represent the position or philosophy of the Institute of Internal Auditors–Global and the Institute of Internal Auditors–Australia.

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Barry has over 20 years' experience in internal audit, fraud and corruption control, investigations, governance and compliance. He has contributed to books on fraud control, computer fraud, communications and sociology. He co-authored IIA-Australia White Papers on 'Fraud Risk Indicators', 'Corruption Indicators in Internal Audit', 'Corruption-Related Risks in Decision-Making' and 'Conflicts of Interest: A Framework'.

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About the Institute of Internal Auditors–Australia

The Institute of Internal Auditors (IIA) is the global professional association for Internal Auditors, with global headquarters in the USA and affiliated Institutes and Chapters throughout the world including Australia.

As the chief advocate of the Internal Audit profession, the IIA serves as the profession's international standard-setter, sole provider of globally accepted internal auditing certifications, and principal researcher and educator.

The IIA sets the bar for Internal Audit integrity and professionalism around the world with its 'International Professional Practices Framework' (IPPF), a collection of guidance that includes the 'International Standards for the Professional Practice of Internal Auditing' and the 'Code of Ethics'.

The IIA-Australia ensures its members and the profession as a whole are well-represented with decision-makers and influencers, and is extensively represented on a number of global committees and prominent working groups in Australia and internationally.

The IIA was established in 1941 and now has more than 200,000 members from 190 countries with hundreds of local area Chapters. Generally, members work in internal auditing, risk management, governance, internal control, information technology audit, education, and security.

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