

Probity and managing procurement: How to Avoid Corrupting the Process

James E Box, Michael W Forde DCJ

By Karen Christopher, Commercial Division, Solicitor for the Northern Territory

Chapter one of this book - "The Ethics Environment" - had me fooled. I thought it was going to be a boring repeat of so many texts, with a lot of broad information that I knew from experience. That kind of information is singularly unhelpful in the "real" world.

However, by the end of Chapter two, the authors were forgiven. That chapter dealt with probity in government, and whilst still containing broad principles, was much more detailed. By half way through the book I was plotting as to how I could get it onto the desks of the upper management of every department in government.

Ultimately, using enough plain English and brevity to be suitable for non-lawyer readers, the book still manages to refer in considerable detail to all relevant law, making it a potentially valuable resource for any lawyer, junior or senior, working with their organisation (government or private) to ensure it pays the requisite attention to probity issues.

A very broad range of topics is covered, all loosely or closely relevant to the overall concept of probity - integrity, uprightness, honesty; uncompromising adherence to the highest principles and ideals - no wonder it is like picking through a minefield!

Many of the concepts dealt with in the book are very modern, and the book sneaks into the corners of procurement instead of glossing over the top, dealing in some detail with:

- Process contracting (i.e. before tender is let), and contract management (i.e. after a tender is



accepted);

- The implied term of "good faith" in contracting;
- Use of Chinese walls;
- Role of Ombudsman/Whistleblower legislation/Privacy legislation;

And the vagaries of such beasts as:

- Public private partnerships; and
- Government-owned corporations.

There isn't necessarily a tome on each, and some of these topics appear in different places throughout the book, but there is enough to give the reader a thorough understanding of the issues inherent in these areas, and a good kick start to the state of the law, with all relevant references to cases and legislation (both Commonwealth and State/Territory).

Other essential reading revolves around dealing with conflicts of

interest/confidentiality issues and the problems of doing probity auditing "in-house". Probity in the international sphere is dealt with, as well as a really good chapter dealing with all the old administrative law principles that we wrack our brains recalling when we suspect that our procurement process has gone a bit awry, together with really good sections on how those principles are applied in the context of providing relief in the procurement context. The book deals effectively with the basis for accountability in procurement both at general law and historically (by examining the changing expectations of governments and the wider community), and then applying modern legislative principles and general law administrative principles to those accountability expectations.

Case law cited is very modern - mostly within the last 10 years or so, other than relevant older leading cases. This book has all the answers, from probity basics like:

- What should be in a probity plan and why?
- What actually are probity principles?
- How do you set weightings and assess tenders?
- What does the Whistleblower legislation do?

I particularly liked the abundance of "case study" examples to illustrate various points. Why weren't my old law school texts written that way?!

Continued page 40

Probity and managing procurement: How to Avoid Corrupting the Process...cont.

From what I have heard from lawyers in other jurisdictions about the general state of procurement Acts, Regulations, Procedures and

Policies it seems that everyone, public and private, grapples with the intricacies of procurement. This book will be a desktop tool

for all but the most seasoned procurement lawyer or trained probity auditor, and even they can probably learn something from it.

Faces in the law

FACES IN THE LAW ASKS PRACTITIONERS TO PROVIDE INFORMATION ABOUT THEMSELVES, THEIR CAREERS AND THEIR LIFE OUTSIDE THE LAW.

Tony Whitelum, Morgan Buckley Alice Springs

Brief career history

Adelaide University 1975-78. Articles 1979 Adelaide. Transfer to Whyalla SA 1980. Practised in the Magistrates Court, District Court and Supreme Court of SA and Family Court and Industrial Court of SA. Common Law damages claims at work and motor vehicle accident injuries formed a large portion of my civil work.

What motivated you to start working in the legal profession?

Studying the film 'A Man for all Seasons' in matriculation English in 1974.

How long have you been in the Territory and what brought you up here?

I arrived in November 1992 to start a new life.

What is the best, and the worst, thing about living and working in the Territory?

We have a very strong profession with great work. City slickers treat us as B-graders, BUT we show them regularly.

If you had the power to change one thing in the world, what would it be?

Poverty.

What is your greatest achievement?

Meeting every challenge whether self-created or not, and overcoming and learning from them.

What are your hobbies?

Camping, general fitness, golf and gardening.

Describe your perfect weekend.

Saturday morning golf (equalling/exceeding handicap); Saturday afternoon footy / cricket (watching); Sunday Church for reflection and then gardening.

What are you most passionate about?

That everyone has an equal right to access justice and ensuring legislation is fair and is applied fairly. The environment.

What was the last book you read?

'The Last Explorer' (about Hubert Wilkins)

What is your favourite movie?

'One Flew Over the Cuckoo's Nest'.

What was the last CD you bought?

Neil Young - Prairie Wind.

What is your favourite holiday destination and why?

Broome. Jo-Anne and I were married there and it is very relaxing. I have applied for the



Tony Whitelum

job of Mayor.

Describe your perfect meal.

Italian risotto, preferably with seafood.

After a long week at work it is finally Friday, you walk up to the bar and order a...?

Keg.

Three words that describe who you are?

Anthony Ross Whitelum.