
MINISTRY OF HEALTH

**Request For Solution Outline (RFSO)
Social Bonds Pilot Scheme**

STAGE PROBITY REPORT

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1. PROBITY SIGN OFF

The Ministry of Health (Ministry), has engaged TressCox Lawyers to provide probity advice and to conduct a stage probity audit (**Probity Audit**) and report for the Request For Solution Outline (**RFSO**) and subsequent initial negotiations for the Social Bonds Pilot Scheme (**Project**).

This sign-off covers the period from the RFSO evaluation up to and including 22 June 2016. The period covered in this review is prior to, and does not include, the finalising of negotiations under a Joint Development Deed (**JDD**) or the stage of a recommendation of a Social Bond to Government. The Project is ongoing and this report will be reviewed and updated following further stages.

The probity engagement included an audit of the process to date. We have previously provided probity sign-off of the RFSO evaluation (**Attachment A** of the Probity Audit Report). To ensure a sound basis for sign off this audit included a review of prior stages including:

- (a) Preliminary planning and initial market engagement;
- (b) Phase 1 Registration of Interest for the Request For Proposal (**RFP**) to assess and recommend a shortlist of service outcomes and associated providers; and
- (c) Phase 2 Registration of Interest to assess and recommend a shortlist of financial partners and intermediaries.

As Probity Adviser for the RFSO stage of the Project, we endorse that, in our opinion and from our observations of the process (**Process**):

- (a) The initial market engagement activities and RFP were compliant with probity requirements, including the requirement for fairness, consistency and clarity in the RFSO documentation, Evaluation document and recommendation reports;
- (b) The RFSO documentation and Evaluation Plan were compliant with probity, including in their requirement for consistency and clarity;
- (c) All relevant personnel and participants received probity briefings and were made properly aware of their responsibilities in respect to probity;
- (d) All relevant personnel completed adequate conflict of interest and confidentiality declarations. Any and all concerns arising from these declarations were subsequently dealt with by the Ministry, with the advice of the Probity Adviser when requested;

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- (e) Registers of probity issues for Phase 3, of the RFSO were maintained by the Probity Adviser. All issues raised were assessed, managed and monitored. No breaches of probity occurred;
- (f) The RFSO evaluation was carried out in a proper competitive manner. The Evaluation Report was consistent with the evaluation;
- (g) The RFSO evaluation process was consistent and transparent;
- (h) Negotiations have been conducted consistent with the RFSO documentation;
- (i) There have been no breaches of confidentiality or probity that would render the evaluation process indefensible, improper or unfair;
- (j) The Process has been conducted in a proper and sufficient manner to achieve value for money through encouraging competition, accountability and fair and open decision making;
- (k) The Project has in place appropriate governance and probity documentation and procedures suitable for a project of the nature of the Social Bonds Pilot Scheme. We are satisfied that regard has been had to these requirements in the conduct of the Project and the requirements have been complied with; and
- (l) the Project maintains adequate documentation and records to provide an effective audit trail of the conduct and compliance of the Project.

We have not identified and we are not aware of any probity breaches during the evaluation process or any breaches involving the requirements under the Government Rules of Sourcing, Project documentation or the Probity Plan.

The following probity issues have been addressed in consultation with the Ministry in the course of the Project:

- (a) Confidentiality Agreement and Phase 3;
- (b) changes to the Project Structure;
- (c) extension of RFSO Closing Date;
- (d) withdrawal of Social Intermediaries from Project and notification to Service Providers on 18 December 2014;
- (e) proposed discussions between Government and [REDACTED];

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- (f) [REDACTED];
- (g) fast tracking of Proponent to Contract Negotiation ;
- (h) Conflict of Interest management for [REDACTED];
- (i) [REDACTED];
- (j) [REDACTED];
- (k) Conflict of Interest Management for [REDACTED]; and
- (l) Proposed Process Change for Social Bond 1 (draft).

The Probity Adviser's advice in relation to these issues was obtained and is attached at **Attachment B** of the Probity Audit Report. Details of all probity issues addressed by the Probity Adviser is at **Attachment C**.

Based on the information provided in the course of the audit this Probity Audit did not identify any significant issues or omissions in the Project Process to date that require recommendations for attention or remediation.

In summary, and based on our observation of the process, the Probity Adviser has no adverse findings in relation to the Project.

Yours faithfully

TressCox



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2. INTRODUCTION

2.1. Background

The Ministry of Health (**Ministry**), has engaged TressCox Lawyers to provide probity advisory services for the Social Bonds Pilot Scheme (**Project**). The engagement of TressCox commenced in November 2014 coinciding with the drafting of the Request For Solution Outline (**RFSO**) documentation. Prior to the engagement of TressCox probity services were provided by the McHale Group during the preliminary and Registration Of Interest (**ROI**) stages. The Ministry has requested that TressCox conduct a Probity Audit of the process up to 20 June 2016.

The Social Bonds Pilot Scheme is a project to develop a pilot to test the viability and value of social bonds in New Zealand. Social bonds seek private organisations to partner to fund and deliver services to improve social outcomes. If they achieve agreed results, Government will pay back the investors their investment plus a return. Investor returns depend on class of investor and the level of results, up to an agreed maximum.

The Project consists of the following groups of activities or phases:

- (a) Preliminary planning and market briefing;
- (b) Phase 1 ROI to shortlist service outcomes and associated providers;
- (c) Phase 2 ROI to shortlist financial and intermediary partners; and
- (d) Phase 3 to introduce prospective partners, obtain solution outlines and shortlist outlines for further development through negotiation.

At present solution outlines have been evaluated and negotiations have been underway with preferred suppliers. Following completion of negotiations the Ministry may recommend to Government a preferred Social Bond proposal or proposal(s).

Subsequent to the completion of Stage 2 RFSO and Government approval the following phases are planned:

- (a) Phase 4 Contract Negotiation; and
- (b) Phase 5 Implementation.

2.2. Scope of this probity Audit

This Probity Audit focuses on Phase 3 RFSO up to the current status. As yet no negotiations are complete.

In order to provide probity sign off and health check for the current phase prior activities and phases have also been reviewed as part of this Probity Audit. This is to ensure the audit advice is comprehensive and complete and does not lead to a misleading conclusion in isolation. (i.e. if there was a previous flaw in the process this would need to be identified in the Probity Audit, otherwise the Probity Audit, looking at that phase only, may conclude or infer that probity and process requirements are met, even though there are issues from previous phases that have not been addressed and potentially put the project at risk.)

The inclusion of prior phases in the audit also reviews the adequacy of document retention and audit trails.

The scope of this Report is to review documentation relevant to the Project up to and including activities to date for the Phase 3 RFSO (where the process has progressed to thus far) from a probity point of view in order to provide recommendations on the following:

- (a) probity compliance;
- (b) probity issues, if any;
- (c) probity risks, if any; and
- (d) probity related processes.

The review will result in an opinion and recommendation to the Ministry regarding:

- (a) compliance of the process to the Government Rules of Sourcing;
- (b) whether the Project has been conducted in accordance with the Project documentation, including evaluation plans and solicitation documentation; and
- (c) the defensibility of the process.

Where required this Report will outline our recommended course of action.

This Probity Audit Report is only to the current stage and is therefore only a partial review of the entire process and, as such, is not sufficiently comprehensive to satisfy any requirement for a full probity review of the entire procurement process or for the purposes

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of providing a probity sign off of the entire process. Additional Probity sign off will be required for subsequent stages.

This is a Probity Audit and review. We have not conducted a review from a legal perspective.

2.3. Audit Process

What we have done

We have conducted a probity audit up to the current stage of Phase 3 RFSO. This audit was conducted by a desktop review of Project documents provided by the Ministry.

The Audit was conducted both offsite at TressCox offices and at the Ministry offices in Wellington.

Brian Ambler and Patrick Rodgers of TressCox attended the Ministry offices on 22 and 23 June 2016. Ministry personnel assisted with the provision of requested documentation. During attendance at the Ministry offices interviews were also conducted with Kathryn Karantze-Young.

The detailed audit report checklist showing processes and supporting documents reviewed is at **Attachment D**.

What we have not done

We have not interviewed any other Ministry personnel, any participants in the ROI or RFSO or any other persons as part of this audit process.

2.4. Engagement of Probity Adviser

TressCox was engaged as Probity Adviser to provide probity assurance of the RFSO and Project, including:

- (a) review the Project documentation and make recommendations;
- (b) prepare and conduct probity briefings when required;
- (c) prepare and maintain the Register of Probity Issues Addressed by the Probity Adviser (**Attachment C**);
- (d) provide ad hoc probity advice as directed (**Attachment B**);

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- (e) provide probity advice and review the process and conduct of “match-making” activities following the ROIs;
- (f) review the RFSO Evaluation Report, including any recommendations (**Attachment A**); and
- (g) provide written probity report at the end of each key stage.

All of the above tasks were carried out, except (g) which is pending phase completion, however interim reports, including Attachment A and Attachment E (Gate 1 Probity Sign-off), have been provided where requested and required.

3. PROBITY REQUIREMENTS AND PROCESS

3.1. Probity Requirements

The Government has highlighted the importance of probity requirements for projects and has identified a number of principles to enhance the probity and integrity of procurement, contracting and similar processes. Public sector organisations are expected to have regard to these principles throughout all stages of a project. Relevant guidance is contained in the Government Rules of Sourcing. The importance of managing these issues, and the potential repercussions for not doing so, has been reinforced by the *Problem Gambling Foundation of New Zealand v Attorney-General [2015] NZHC 1701 [23 July 2015] (The problem Gambling Case)* (appeal pending).

The probity objectives for the Project as a whole, are to ensure that:

- (a) the process is open and competitive;
- (b) impartiality and fairness are maintained;
- (c) the process is transparent and accountability is demonstrated;
- (d) confidentiality and security of information is maintained;
- (e) conflicts of interest are identified and managed;
- (f) all legislative and policy requirements are complied with; and
- (g) a clear audit trail is maintained.

- (a) the Government Rules of Sourcing; and
- (b) State Services Commission Standards of Integrity and Conduct.

3.8. Audit trail

Project documentation is extensive and provides a satisfactory record of the process and basis for decisions.

3.9. Probity issues addressed by the Probity Adviser

A full description of the probity issues addressed by the Probity Adviser during the Process is contained in the Register of Probity Issues addressed by the Probity Adviser at **Attachment C** to this Report.

3.10. Probity complaints

As at the date of this Report, to the best knowledge of the Probity Adviser no complaints from respondents have been received with respect to the Process or the Project.

3.11. Documents Maintained and Prepared by TressCox

As the Probity Adviser, TressCox prepared and maintained the following documents:

- (a) Register of Probity Issues addressed by the Probity Adviser (**Attachment A**)

4. CONCLUSION

From our observation of the Process, we are of the view that the Social Bonds Pilot Scheme process up to and including the current stage of Phase 3 Request for Solution Outline, including negotiations up to the current date, which will be ongoing, has complied with the general principles for probity and integrity of procurement processes found in the Government Rules of Sourcing and complied specifically with the Project documentation. In summary, we are satisfied as to the probity and integrity of the processes of the Project.

This report will be reviewed and updated following completion of Phase 3.

Probity Adviser

TressCox



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Attachments:

- A. Social Bonds Pilot Scheme – Interim Probity Report 2 September 2015
- B. Advices provided by the Probity Adviser
- C. Probity Audit Checklist
- D. Register of Probity Issues Addressed by the Probity Adviser
- E. Social Bonds Pilot Scheme – Gate 1 Evaluation Interim Probity Report 31 March 2015