

Supplementary Guidelines: Nominee Directors for the Insurance and Care NSW Board

TPG23-22

20 October 2023

Acknowledgement of Country

We acknowledge that Aboriginal and Torres Strait Islander peoples are the First Peoples and Traditional Custodians of Australia, and the oldest continuing culture in human history.

We pay respect to Elders past and present and commit to respecting the lands we walk on, and the communities we walk with.

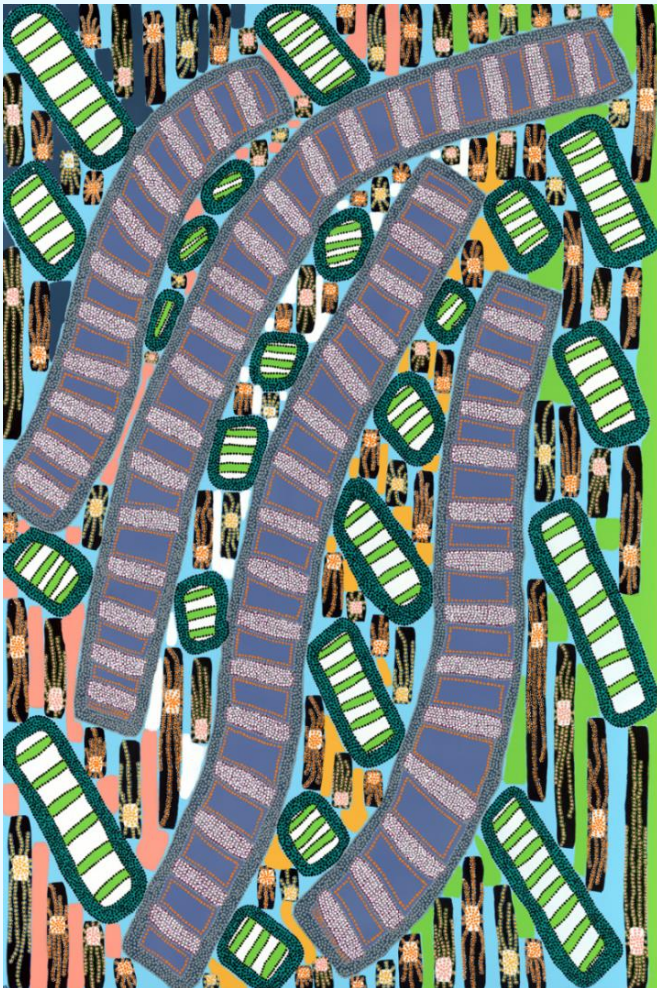
We celebrate the deep and enduring connection of Aboriginal and Torres Strait Islander peoples to Country and acknowledge their continuing custodianship of the land, seas and sky.

We acknowledge the ongoing stewardship of Aboriginal and Torres Strait Islander peoples, and the important contribution they make to our communities and economies.

We reflect on the continuing impact of government policies and practices, and recognise our responsibility to work together with and for Aboriginal and Torres Strait Islander peoples, families and communities, towards improved economic, social and cultural outcomes.

Artwork:

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Key information	
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<input checked="" type="checkbox"/> GUIDANCE/ADDITIONAL INFORMATION to provide clarity or explain requirements in detail.	

Revision history				
Document version number	Approval Date	Author	Approver	Description
Version 1.0	20 October 2023	Commercial Assets / icare	Secretary	This guideline provides further guidance on the nomination and appointment process for Nominee Directors for the icare Board including required skills and experience for the role.

Guideline for icare Board Nominee Directors

Purpose

This guideline outlines the process for employee and employer bodies when selecting candidates for nomination to the icare Board. These guidelines provide additional information applicable to Nominee Directors of the icare Board.

The guideline seeks to provide clarity, consistency, and fairness in the selection process to nominating employee and employer bodies as well as nominees.

Nominating bodies will be provided with this guideline at the commencement of the board appointment process for a Nominee Director.

Background

On 11 August 2023, the *State Insurance and Care Governance Amendment (ICNSW Board) Bill 2023* was assented by the Governor. This amendment to the *State Insurance and Care Governance Act 2015* (SICG Act) provides for the appointment of two directors nominated by employee and employer bodies to the Insurance and Care NSW (icare) Board.

Related legal obligations

Part 2 of the SICG Act provides for the Ministerial appointment of one director nominated by an employee body (Unions NSW) and one director to be nominated by an employer body (section 5(2)(b) SICG Act¹).

The SICG Act requires that all appointed directors to the icare Board are “*to be in the opinion of the Minister, together have skills and experience relevant to the administration of State insurance and care schemes that will assist ICNSW in exercising its functions*”². As an appointed director this includes Nominee Directors. The SICG Act also sets out the roles and responsibilities of all directors on icare Board and their legal duties and obligations³. Accordingly, “*In exercising his or her functions as a director of the ICNSW Board, the director is to exercise the degree of care and diligence that a reasonable person in a like position would exercise in the circumstances.*” Common law directors' duties also apply.

This guideline is to be read in conjunction with *TPG23-06 Policy and Guidelines: Board Appointments for State Owned Corporations and Other Commercial Government Businesses*, Premier's Memorandum 2012-18 and related instruments issued by the Public Sector Commissioner and The Cabinet Office.

¹ The *State Insurance and Care Governance Amendment (ICNSW Board) Act 2023* commences on a day or days to be appointed by proclamation.

² SICG Act section 5(3).

³ SICG Act section 5(5), (6) and schedule 1.

Application

The guideline applies to appointments to the icare Board and nominating bodies as defined in section 5(2)(b)(i)-(ii) of the SICG Act⁴. See section 1.4 of this policy.

Treasury manages icare's board appointment processes on behalf of the appointing Minister in accordance with the SICG Act.

This guideline supplements Treasury's policy TPG23-06 for these specific Nominee Director appointments to ensure they align with government expectations for a transparent board appointments process and ensures the expected skills and expertise of nominee directors are clearly communicated.

⁴ The *State Insurance and Care Governance Amendment (ICNSW Board) Act 2023* commences on a day or days to be appointed by proclamation.

1 Selection and nomination of Nominee Directors to the icare Board

Recommendations

1. Nominating bodies are to follow the guidelines in the selection and nomination of Nominee Directors for the appointing Minister's consideration.
2. Consideration is to be given to board gender diversity targets in accordance with TPG23-06.

1.1 Nominee Directors and obligations

The icare Board is to comprise two directors appointed by the Minister on the nomination of an employee body and an employer body (**Nominee Directors**).

The inclusion of two directors nominated by employee and employer bodies on the icare Board ensures alternative perspectives are incorporated into board deliberations with the potential to lift the robustness of board decision-making in ways that reflect employee and employer views.

At the same time, Nominee Directors must possess skills and expertise relevant to the administration of the State's insurance and care schemes and assist the organisation in the exercise of its functions outlined in section 10 of the SICG Act.

Box 1. Directors of icare

The appointed directors are to be persons who, in the opinion of the Minister, together have skills and experience relevant to the administration of State insurance and care schemes and that will assist icare in exercising its functions: **section 5(3) of the SICG Act**.

1.2 General criteria

Nominating bodies should have regard to the following general criteria in identifying a Nominee Director for the icare board. All candidates will be assessed upon these criteria as part of any recruitment and appointment process to ensure that the appointing Minister is acting in accordance with his or her legal obligations set out in the SICG Act. These general criteria include:

- Business or executive leadership experience
- Board governance experience or *clear potential to develop*
- Cultural fit with the board and business
- Awareness of issues facing the business and sector
- Awareness of government ownership context
- Capacity to take on the role
- No unmanageable conflicts of interest
- Critical thinking, proven judgment, and objectivity.

1.3 The icare Board skills matrix

Nominating bodies will also be provided with the icare Board skills matrix current at the time of nomination.

This is relevant in providing nominating bodies with some insight into those professional skills, technical areas, and industry sectors with which icare Board members are required to engage to fulfil their roles and obligations set out in the SICG Act.

Candidates to be appointed as a Nominee Director *will not* be assessed in accordance with the Board skills matrix, but the Board skills matrix can be utilised to assess multiple nominees from a nominating body.

The icare Board skills matrix is updated upon each new appointment to the icare Board and will include Nominee and Non-Executive Directors going forward. It includes the following:

- Customer focus
- Community
- Financial performance/accounting
- Corporate governance
- Risk and audit
- Executive management
- Investment and asset management
- Technical/digital
- Strategy/transformation
- Law/regulation
- People and Work Health and Safety
- Health
- General insurance
- Lifetime care schemes
- Construction schemes.

1.4 Nominating bodies

Section 5(2)(b) of the SICG Act⁵ sets out that the nominating bodies (**Nominating Body**) are:

- i. one director nominated by an employee body.
- ii. one director nominated by an employer body.

An employee body means Unions NSW.

An employer body means a body that represents employers in New South Wales. This may include (but is not limited to):

- Australian Industry Group
- Business NSW.

Consultation with the NSW Small Business Commissioner may also take place to identify possible nominees from the small business community.

Consultation with other employer bodies, as identified from time to time, may also occur as appropriate to identify suitably qualified nominees.

⁵ The *State Insurance and Care Governance Amendment (ICNSW Board) Act 2023* commences on a day or days to be appointed by proclamation.

2 Key governance elements of icare Nominee Director appointment process

Recommendations

3. The appointing Minister of icare must approve the strategy and approach for nominee candidate identification.
4. Nominee candidates submitted by the Nominating Bodies will be assessed in accordance with the general criteria. Where appropriate, an external recruitment partner may be engaged to perform the assessment.
5. The Board Candidate Assessment Committee will assess the suitability of nominee candidates to progress to interview in accordance with the general criteria.
6. Probity checks must be completed by icare before Cabinet consideration of the Minister's proposed nominee appointee, with written confirmation provided on the outcome.
7. Nominee Directors remuneration and appointment terms are the same as other non-executive directors.
8. The appointment process for icare's Nominee Director is to be merit-based, transparent and documented in accordance with the process set out in these guidelines.

2.1 Nomination and appointment process

Practice Guide 1 provides step-by-step guidance on the nomination and appointment process for a Nominee Director.

For upcoming Nominee Director vacancies on the icare Board, Treasury will consult with the Chair on the proposed recruitment approach and requirements to fill the vacancy. A board skills matrix covering all directors will be provided to Treasury at the planning phase of the recruitment process.

Treasury will seek the appointing Minister's approval for the strategy and approach for the Nominee Director vacancy.

Important governance elements that support the assessment of nominated candidates, and the transparency and documentation of the board appointment process are as follows:

- The appointing Minister must approve the Board Candidate Assessment Committee (BCAC)
- As required, a recruitment partner may be engaged to provide external expert support in review of the nominee candidate's experience and skills in accordance with the general criteria. Circumstances may include multiple nominees from different nominating bodies, where expert recruitment support is appropriate.
- The appointing Minister has the power to request alternate nominations if a proposed nominee is considered unsuitable in accordance with section 5 of the SICG Act.

2.2 Board Candidate Assessment Committee

As part of the brief approving the strategy for candidate assessment for all new appointments, the appointing Minister will be asked to approve convening a BCAC. The BCAC is responsible for the merit-based assessment of nominee candidates in accordance with the general criteria.

The BCAC composition for Nominee Director vacancies consists of:

- Executive Director (or delegate), Treasury [chairs the BCAC]
- Chair of icare, or in the absence of, a nominated director of icare [member]
- Treasury, The Cabinet Office or Premier's Department senior executive level officer [member]
- Recruitment Partner [observer].

Treasury provides secretariat support to the BCAC.

Where individual members of the BCAC have not yet been identified at the time of submission of the brief to the appointing Minister, it will identify the position of the proposed panel member (e.g. a senior executive level officer from Treasury).

The BCAC will assess the suitability of nominee candidates to progress to interview.

2.3 Recruitment partner

The BCAC will ordinarily, and in most instances, be responsible for the assessment of nominated candidate(s). This is expected to be the default practice.

A recruitment partner may be engaged to perform a capability assessment of candidates ahead of BCAC consideration in those instances where multiple nominations are made, usually by differing nominating bodies. When this occurs, a recruitment partner may provide external expert support and advice:

- to review each nominee candidate's experience and skills in accordance with the general criteria
- help provide assurance that the nominee candidate meets minimum skills and experience required for the directorship.

External, expert support to the board appointment process can provide significant value to the NSW Government. The engagement of a recruitment partner is consistent with public and private sector best practice.

The recruitment partner is engaged by Treasury through a competitive tender process, consistent with NSW Government Procurement Policy Framework.

The recruitment partner's services are paid for by icare for each new appointment.

2.4 Minister's discretionary powers

The Minister has discretion to reject a nominee in accordance with section 5 of the SICG Act. Where this occurs, the Nominating Body will be invited to nominate an alternate candidate. Where the Minister rejects a proposed nominee, the Nominating Body has up to ten business days to identify an alternative nominee (section 5(6) of the SICG Act).

If the Minister does not accept the alternate nominee, the Minister has discretion to appoint someone else.

2.5 Director tenure and remuneration

Key terms of appointment such as tenure and remuneration for the Nominee Directors are in line with the other non-executive directors on the icare Board. Appointed directors to the icare board are remunerated in accordance with the NSW Government's Classification and Remuneration Framework for NSW Government Boards and Committees.

This reflects the expectation that Nominee Directors:

- will hold relevant skills and experience which will add value to the icare Board
- bring complementary skills to the board (including providing employer or employee perspectives) and
- contribute to performing the Board's functions set out in section 6 of the SICG Act to oversee icare and the performance of its business functions in accordance with section 10 of the SICG Act.

Guidance

Definitions

Term	Definition
Appointing Minister	Minister(s) responsible for icare Board appointments as specified in the SICG Act.
BCAC	Board Candidate Assessment Committee
Nominating Body	<p>Employee and employer bodies who are eligible to nominate candidates for appointment to the icare Board.</p> <p>An employee body means Unions NSW.</p> <p>An employer body means a body that represents employers in New South Wales. This may include (but is not limited to):</p> <ul style="list-style-type: none"> • Australian Industry Group • Business NSW.
Nominee Director	Director nominated by a nominating body
RP	Recruitment partner
SICG Act	<i>State Insurance and Care Governance Act 2015</i>

Practice Guide 1: New Nominee Director Appointment

This guideline is to be followed where the appointing Minister has approved the vacancy should be filled by a Nominee Director. For other non-executive directors, refer to guidance in TPG23-06.

Stage 1 – Planning : Nominee Director appointment		
Action		Responsibility
1	Treasury reviews all upcoming vacancies within the next eight to twelve months on an ongoing basis.	Treasury
2	Treasury consults with the Chair to inform consideration of the proposed recruitment approach, to fill upcoming vacancy for a Nominee Director.	Treasury / icare
3	Treasury submits a brief to the appointing Minister seeking approval for the proposed strategy and approach to be taken to fill the board vacancy with a Nominee Director, agreement on the composition of the BCAC and other relevant criteria (such as gender diversity targets).	Treasury / appointing Minister
4	Treasury advises the Chair of the appointing Minister's approval for the recruitment strategy and approach, including composition of the BCAC*.	Treasury
5	icare/Treasury will write to the Nominating Body to request nomination(s) for the role providing the candidate assessment general criteria. A copy of the current icare Board skills matrix will also be provided for information purposes only. The Nominating Body is to be given a minimum of twenty business days to respond.	Treasury / icare
6	Nomination(s) received by Treasury and the icare.	Treasury / icare
7	RP prepares a report of candidate(s) suitability based on identified skills and experience in accordance with the general criteria. [This step only applies where a RP has been engaged].	RP
8	Treasury reviews nominated candidate(s) (and RP report where applicable), if candidate(s) does not meet the legal standard set out in the SICG Act Treasury will advise the nominating body to propose alternate(s).	Treasury
9	BCAC shortlists candidate(s) to be interviewed (with consideration to RP report where applicable). Where there is only one candidate nominated, an interview will still be held.	Treasury

*BCAC composition as per section 2.1 in this policy.

Stage 2 – Recruitment: Nominee Director Appointment

Action		Responsibility
10	Treasury confirms timing, interview structure and questions in consultation with BCAC members.	Treasury
11	BCAC conducts interviews to determine suitability of candidates in accordance with the general criteria.	BCAC
12	Treasury Secretariat prepares BCAC report and seeks endorsement from all BCAC members.	Treasury / BCAC
13	Treasury submits brief including BCAC report to the appointing Minister. The appointing Minister provides approval for their proposed appointee to be put forward for Cabinet consideration.	Treasury / Appointing Minister
14	If Minister does not approve the proposed appointee, the Nominating Body will be invited to nominate an alternate.	Treasury / Appointing Minister

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