

Nominations Committee – Determining the Eligibility and Suitability of Candidates

It is important that Boards are comprised of Directors with a variety of skills and experience, which act in the best interests of the organisation as a whole. A Nominations Committee operating as a sub-committee of the Board plays a critical role in ensuring the Board has an appropriate mix of skills, attributes and perspectives to facilitate more considered decision-making and oversee the achievement of strategic goals.

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While the specific functions and powers of a Nominations Committee can vary depending on Constitutional requirements or its duties as defined in the Nominations Committee terms of reference (or [Charter](#)), a thorough process to assess board nominees and identify eligible and suitable candidates is required. When discharging its power and duties to determine the eligibility and suitability of candidates, there are a number of important matters a Nominations Committee should consider. The process undertaken to assess the eligibility and suitability of candidates can also influence how a Nominations Committee communicates and presents its recommendations to the Board and voting members.

How to determine the eligibility of candidates and the power of the Nominations Committee to assess candidate suitability

In determining the eligibility and suitability of candidates, a sporting organisation must first refer to its Constitution and, in particular, the clauses relating to Director eligibility and the power and role of a Nominations Committee.

The Sport Australia Model NSO Constitution provides the following clauses and commentary as a best practice example for Director eligibility and the role and operations of a Nominations Committee:

Clause 14.3 Eligibility

- (a) *For the period from the date of this Constitution a person that:*
- (i) *is an employee of the Company, a Member State, Club or an Affiliate Member; or*
 - (ii) *holds an Official Position with a Member State, Club or an Affiliate Member; or*
 - (iii) *was a Director of the Company and clause 14.9 applies; or*
 - (iv) *was CEO of the Company at any time within the period beginning three years prior to the date of his/her proposed appointment or election as a Director,*

(each a disqualifying position) may not hold office as a Director.

While it is best practice to exclude any individuals holding Official Positions with Clubs (even where Clubs are not Voting Members), smaller organisations may need to consider whether including Clubs and/or Affiliate Members in clause 14.3(a)(ii) may unreasonably dilute an already small Director pool.

- (b) *A Director that accepts a disqualifying position must notify the other Directors of this fact immediately and is deemed to have vacated office as a Director.*
- (c) *A person elected or appointed as a Director at the time of holding a disqualifying position must resign from that disqualifying position within 30 days.*
- (d) *No person shall be eligible to stand for an Elected Director position if, during the proposed term of office, they would be in breach of clause 14.9.*
- (e) *The Directors may determine position or role descriptions or necessary qualifications for Director positions.*



- (f) *The Directors and Nominations Committee must use reasonable endeavours to ensure no one gender constitutes more than 60% of the total number of Directors.*

Clause 14.4 Nominations Committee

- (a) *A Nominations Committee shall be formed, the role of which shall include the task of identifying candidates to fill Director vacancies (including casual vacancies) and assess all nominees for Director vacancies. The Nominations Committee has the power to determine that a nomination is unsuitable for further consideration by the Company, the Directors or the Members (as applicable) but only if this decision is unanimous.*
- (b) *The Nominations Committee shall comprise three persons, all appointed by the Directors including an independent chair, a Member representative and a Director or Director representative. The complete and specific duties, functions and rules of the Nominations Committee are defined in the Nominations Committee terms of reference.*
- (c) *The Nominations Committee must utilise a [skills matrix](#) as part of its assessment of nominees for Director vacancies.*
- (d) *When assessing nominees for Director vacancies, the Nominations Committee must comply with clause 14.3(f).*

In addition to relevant provisions contained in the Constitution, the Nominations Committee terms of reference (or Charter) should establish the purpose and authority of the Committee, detail the role of the Committee, including responsibilities, formalise the membership of the Committee, and set the meeting proceedings for the Committee.

How should a Nominations Committee exercise its power when determining the suitability of candidates?

As part of the Nominations process, nominees should be asked to declare that they are not prohibited from holding a position as Director of the organisation and invited to demonstrate their skills and experience and proven success with respect to skill areas identified through the skills matrix as being important for the Board. In addition, prospective candidates should be asked to declare their willingness and ability, if elected, to act in a manner that fulfils all duties and obligations required of the position.

Once nominations have been received, the Nominations Committee should undertake a process to confirm that the candidates meet all of the requirements for Director nominees outlined in applicable legislation and the Constitution. To undertake appropriate due diligence, the Nominations Committee may gather information about the candidates through interviews, reference checks, or any other means that the Committee deems to be helpful for the evaluation process.

If a Nominations Committee determines that they wish to interview some or all of the nominees, it is beneficial to ask prospective candidates about their motivation in applying for the Board and how they see their skills and experience contributing to the Board. In addition, as part of the interview process, it is appropriate to ask candidates about any perceived or actual interests that may prohibit them from contributing to the Board and detail on other commitments and an indication of the time involved to ensure they will have sufficient time to fulfil their responsibilities as a Director.

A Nominations Committee should establish a meeting schedule, which allows adequate time for the Committee to meet, discuss and evaluate the competencies and skills that the Board considers to be necessary for the Board to possess; the competencies and skills that the Board considers each existing Director to possess; and the competencies and skills each new nominee will bring to the Board.



To form its recommendations, it is also important that a Nominations Committee consider gender balance, geographical location, other candidate skills and experience and the overall balance of skills and experience that the Board may require moving forward.

How should a Nominations Committee present its recommendations?

In line with the Sport Australia Model NSO Constitution, it is considered best practice for a Nominations Committee to have the power to determine whether nominees are *'suitable'* or *'not suitable'* for further consideration by the Board or the Members (as applicable). A Nominations Committee should exercise this power judiciously and ensure that its determination is informed by a thorough evaluation process as outlined above. In presenting its determination to the Board or the Members, a Nominations Committee should also clearly communicate its categorisation of nominees, the evaluation process undertaken and resulting recommendations.

For example, in presenting its recommendations under the power to determine whether nominees are *'suitable'* or *'not suitable'*, a Nominations Committee should clearly communicate its assessment of candidates using the following categories:

- ***Suitable and recommended*** – Meets the identified requirements of a prospective Board member and is presented as the best and recommended candidate as their skills and experience complement the desired composition of the Board and directly align with attributes identified by the Board.
- ***Suitable but not recommended*** – Meets the requirements of a prospective Board member but is not considered the best candidate as their skills and experience do not significantly complement the current composition of the Board by directly aligning with attributes identified by the Board skills matrix; however, the nominee is placed on the ballot for member consideration.
- ***Not suitable*** – The nominee does not meet the eligibility requirement for membership of the Board, and/or the nominees' skills and experience do not sufficiently complement the current composition of the Board and is therefore not placed on the ballot for member consideration.

In determining how to cast their votes, members should be encouraged to give due consideration to the activities of the Nominations Committee and the assessment process that has been undertaken.

For additional information or assistance, please contact the Sport Governance & Organisational Enhancement team of Sport Australia via email at SportsGovernance@sportaus.gov.au.

