

NSW Treasury

Independent Review of icare – Probity and Procurement

16 April 2021

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1. EXECUTIVE SUMMARY

1.1. Engagement Scope

RSM Australia have been engaged by NSW Treasury, under the direction of the Hon Robert McDougall QC, to review and consider the application of probity and procurement related policies and practices (the 'Review') within Insurance and Care NSW ('icare'). Our work performed and this report has been prepared has been to inform the McDougall Review.

The initial scope focused on policies and procedures in place as at November 2020, the time when the RSM Review commenced. However, during our Review it became evident and we were also advised that current policies and procedures were in the process of being revised by icare. It was therefore impractical to carry out the scope of works against an evolving set of stated policies and processes in varying degrees of completion. To do so would result in a lack of certainty to report process or procedural observations and findings.

icare's Probity submission to the McDougall Review stated that "icare's Travel Policy, Gifts and Benefits Policy and Conflicts of Interest Policy are currently under review and revised versions will be considered by the Board of icare for approval within the next six months".¹ icare's Procurement Practices submission to the McDougall Review stated that icare "acknowledges its procurement practices have been inconsistent, and in some cases, deficient, leading to procurement decisions that were inconsistent with icare's obligations as a NSW Government agency".²

Agreement was received from the Hon Robert McDougall QC and NSW Treasury to amend the scope of RSM's Review to examine the robustness of icare's revision processes. That is, icare's:

- own gap-analysis and assessment of existing procurement and probity documents;
- detailed action plans for the implementation of the Procurement Improvement Program³; and
- risk management procedures for the period of the Action Plan.

1.2. Summary of Engagement Scope Key Themes

The Review has identified gaps in comparison to better practice in procurement and probity for entities that operate within the public sector landscape, and we have made recommendations to support icare in reviewing and updating its policies and procedures to meet procurement and probity better practice.

RSM observed these key themes and observations during our Review

- There is a trend of improvement in probity and procurement over time, and specifically when we reviewed more recent transactions.
- icare is working towards organisational transformation and improvement. We observed that there is a deeper and broader change agenda across the organisation which may not be evident if we solely focus on the artefacts we reviewed alone.
- icare's philosophy is "Commercial Mind, Social heart". The "Commercial Mind" imprimatur appears to have been interpreted and applied, at least by some people, to mean minimal, if any, "red tape" and manifesting as value for money not being adequately assessed and a lack of detailed and documented processes resulting in poor record-keeping.
- There is a need for reduced reliance on external consultants and advisors to conduct or support procurement activities. More recently, more specific processes have been established to bring responsibility for procurement and oversight of these activities to the Procurement team. However, the support, reach and effectiveness of the Procurement team remains unclear.
- Board sponsorship of the procurement and probity transformation program is required, with strong "C" level leadership to initiate change and ensure it permeates throughout the organisation. We therefore recommend a Chief Procurement Office be appointed.
- Consistent and regular messaging of the organisations governance approach and cultural expectations must be reinforced, with all employees encouraged to be active participants in icare's governance processes and to take their governance responsibilities seriously.

¹ icare and Workers' Compensation Independent Review – Submission by Insurance and Care NSW, Terms of Reference 1(i): Management of Probity matters such as Gifts, Travel and Conflicts of Interest

² icare and Workers' Compensation Independent Review – Submission by Insurance and Care NSW, Terms of Reference 1(h): Procurement Practices

³ This is how icare refers to the process and program to improve its procurement and related practices

2. EXECUTIVE SUMMARY (CONT.)

1.2. Summary of Engagement Scope Key Themes (Cont.)

- The probity and procurement gap analyses and action plans provide sound platforms for further work to be done, but will need significant effort invested in them to ensure the necessary scope and commensurate resources are allocated to ensure the successful organisation wide implementation of the improvements and cultural shift.

1.3. Summary of Observations

Our review focussed on assessing the operational effectiveness of icare's policies and procedures with respect to probity and procurement. Detailed observations and recommendations to address the gaps identified as a result of this review have been summarised below and are further detailed in **Section 3**:

Scope Item	Observations
Probity	<ul style="list-style-type: none"> ▪ Probity gap analysis is conducted for conflict of interest policy only, but has not included gifts and benefits, or travel policies. ▪ Conflict of Interest attestation should be made by senior or key individuals on a quarterly basis or if there has been a material change in circumstances, with positive declarations reviewed and escalated in line with the governance structure. ▪ The Public Service Commissioner's Managing Gifts and Benefits: Minimum Standards do not apply to icare. It is recommended that consideration be given to requesting the Public Service Commissioner to make those Standards mandatory for icare. ▪ All employees should annually sign-off and acknowledge the icare Code of Conduct which should be recorded in a register. The register should be regularly reviewed for completeness and considered in employees annual performance review and appraisal processes.
Procurement	<ul style="list-style-type: none"> ▪ icare's Procurement Improvement Program ('PIP / the Program') describes itself as a "live" document, therefore it is anticipated there will be amendments to it as it is refined, and implementation of actions commences. ▪ The PIP is a high-level overview plan and is sufficient for communicating the current purpose of implementation across the organisation. ▪ Specific details, resources, activities and risks need to be identified and documented and updated progressively as the program proceeds, including for effective change management through the organisation. ▪ Additional information is needed on how generally accepted probity requirements and objectives are integrated the PIP, specifically the following probity principles: <ul style="list-style-type: none"> – value for money; – market equality; – integrity and impartiality; – consistency and transparency; – confidentiality and security; and – conflict management. ▪ The PIP document focuses on procurement, and requires more information regarding program management such as: <ul style="list-style-type: none"> – stakeholder management and communication; – interfaces and dependencies with related projects; – budget and expenditure and use of other resources; – constraints and assumptions; – organisational change management; – program change management; – issues management; – quality management plan; – outcome realisation; and – program evaluation.

Scope Item	Observations	
Procurement Deep Dives	Capgemini / Guidewire (Legacy Transaction)	<ul style="list-style-type: none"> Material concern regarding the approach to market (inadequate time). This fundamentally compromises the probity and integrity of the transaction and ability for icare to obtain a value for money outcome. The procurement is not consider to have been conducted in a competitive manner. Inadequate documentation around how the conflicts were managed. Lack of procurement and overall process documentation.
	EML (Legacy Transaction)	<ul style="list-style-type: none"> Whilst records were maintained of key procurement activities, these records were not at the level that would be expected for transactions of this value and nature. This creates a lack of transparency and defensibility of the transaction to confirm it was conducted appropriately and resulted in a value for money outcome. From interviews with and presentations from icare personnel, anecdotally, it would appear the procurement was not conducted in an unreasonable manner. However, the material lack of process information prevents any positive conclusions from being reached on an audit evidentiary basis. There remains a material absence of mature procurement processes being applied that we would anticipate for an entity where procurements of this materiality are carried out.
	IVE Group (Legacy Transaction)	<ul style="list-style-type: none"> Material concern regarding the way the contract has been utilised. The impact of the contract's basis being extended to the extent it was, does not align to the contract's original intent. Therefore the value for money outcome is compromised and unproven for the overall expenditure under this contract. Absence of controls that should be in place for direct negotiation. The application of the Nominal Insurer exemption for procurement has led to a lack of open competition and not delivered a demonstrable commercial outcome. Lack of process documentation
	Enabler (Recent Transaction)	<ul style="list-style-type: none"> More recently, there appears to be increased evidence of procurement processes being in place for transactions conducted with the involvement of the Procurement group. However, instances were identified where applicable procurement policies were not applied and/or documentation was not maintained to the level expected.
	Tata (Recent Transaction)	<ul style="list-style-type: none"> Overall, we noted a transition in the maturing application of processes.
PwC (Recent Transaction)		
Other relevant matters	<ul style="list-style-type: none"> Issues and risks were identified regarding the historical application of the Nominal Insurer exemption from procurement (Part 11 of the Public Works and Procurement Act 1912). Issues and risks were also identified regarding the application of the Nominal Insurer exemption for record-keeping (State Records Act 1988), which translated to a lack of robust and adequate transaction documentation to provide transparency of process. As noted above, significant effort is required to address the procurement and probity gaps identified. Appropriate resource will need to be methodically identified and mobilised to ensure the success of the transformation program. Board sponsorship of the procurement and probity transformation programs is required, with strong "C" level leadership to initiate change and to ensure it permeates through the organisation and hence, we recommend the appointment of a Chief Procurement Officer. "Commercial" imprimatur appears to have been understood to mean no red tape and manifesting as a lack of stewardship and accountability. The materiality and complexity of procurements carried out across icare support appointment of a Chief Procurement Officer. 	

1.4. Acknowledgement

We would like to take this opportunity to thank all icare staff members, the McDougall Review Team and NSW Treasury for their assistance in the completion of this review.



M SHATTER

Director

RSM Australia Pty Ltd

16 April 2021

2. READING THIS REPORT

Set out below are explanatory notes on how the report is structured and explanation of what the different subsections aim to cover.

Section	Structure and Content
Section 2 Engagement Scope	Provides detail of the scope of the engagement, scope qualifications, limitations and disclaimer.
Section 3 Review Approach	Provides detail of the review approach for each Scope Item: <ul style="list-style-type: none"> ▪ Scope Item A and B: Probity and Procurement Review ▪ Scope Item C: Procurement Deep Dive (Legacy Transactions) ▪ Scope Item C: Procurement Deep Dive (Current Transactions)
Section 4 Key Themes	Brings together the key themes identified during our review.
Section 5 Detailed Findings	<p>The detailed findings in this report are structured to be consistent with the structure of the revised scope as set out in Appendix A.</p> <p>Detailed Findings are structured to examine the following scope items:</p> <ul style="list-style-type: none"> ▪ Probity ▪ Procurement ▪ Procurement deep dive ▪ Other information, observations, or recommendations <p>The Probity and Procurement scope items are structured as:</p> <ul style="list-style-type: none"> ▪ Background: relevant excerpt from the terms of reference. ▪ Findings: a description and evaluation of the documentation, interviews, etc ▪ Conclusion: RSMs assessment of the documentation interviews etc, in the context of the terms of reference <p>The Deep Dive transaction items are structured as:</p> <ul style="list-style-type: none"> ▪ Background ▪ Media and/or parliamentary coverage ▪ Chronology⁴ ▪ Observations: an assessment of the transaction in the context of relevant procurement and probity objectives <p>Lessons learnt brings together an overview of the observations made for the Deep Dive transaction items.</p> <p>Other information, observations and recommendations provides observations for consideration by other parts of the review.</p>

⁴ Timelines and activities have been drawn from documentation provided, including chronology documents provided to the icare Board. Due to a lack of process documentation, RSM are unable to validate some of the activities and the dates referenced.

3. ENGAGEMENT SCOPE

On 4 August 2020, the NSW Treasurer the Hon. Dominic Perrottet and Minister for Customer Service the Hon. Victor Dominello announced that the scheduled five-year review into the workers compensation scheme, Insurance and Care NSW ('icare'), would be brought forward. The review is being headed by retired Supreme Court Judge, the Hon Robert McDougall QC.

RSM Australia have been engaged by NSW Treasury, under the direction of the Hon Robert McDougall QC, to review and consider the application of probity and procurement related policies and practices within icare.

3.1. Engagement Scope

The scope of this report relates to:

- the robustness of icare's revision processes. That is, icare's:
 - own assessment of procurement and probity documents;
 - detailed action plans for improvement and implementation; and
 - risk management procedures for the period of the action plan; and
- examination of a specified set of procurements.

icare's Probity submission to the McDougall Review stated that "icare's Travel Policy, Gifts and Benefits Policy and Conflicts of Interest Policy are currently under review and revised versions will be considered by the Board of icare for approval within the next six months".⁵

icare's Procurement Practices submission to the McDougall Review stated that icare "acknowledges its procurement practices have been inconsistent, and in some cases, deficient, leading to procurement decisions that were inconsistent with icare's obligations as a NSW Government agency".⁶

The initial scope of our review focused on policies and procedures in place at icare as at November 2020. During our review we identified that current policies were in the process of being significantly revised and approved by the Board of icare. This resulted in the revised scope being developed and agreed with the Hon Robert McDougall QC.

Refer to **Appendix A** for the initial and revised scope.

3.2. Scope Qualification

During our review, RSM has been provided with over 1,900 documents to examine. The scope of the review and resources applied could not have anticipated this volume of information would be provided and the effort required to assess and analyse each piece of information as it was a review rather than a detailed investigation. Due to timing constraints and the extensive volume of documents provided, we have not been able to review every document.

Due to key employees involved in some of the legacy transactions no longer being employed by icare, RSM have had to interview delegates (as nominated by icare) who were not directly involved in the Project but had knowledge of it.

A review consists of making enquiries, primarily of persons responsible for ensuring the effectiveness of controls and applying analytical review and other testing procedures. A review is substantially less in scope than an audit conducted in accordance with Australian Auditing Standards and consequently does not enable us to obtain assurance that we would become aware of all significant matters that might be identified in an audit. Accordingly, we do not express an audit opinion.

3.3. Inherent Limitations

As part of our work, RSM was not required to search specifically for irregularities, including fraud and other illegal acts, and our review should not be relied upon to disclose them. However, if we found any, we would report them to you. No such findings have been made during the review.

⁵ icare and Workers' Compensation Independent Review – Submission by Insurance and Care NSW, Terms of Reference 1(i): Management of Probity matters such as Gifts, Travel and Conflicts of Interest

⁶ icare and Workers' Compensation Independent Review – Submission by Insurance and Care NSW, Terms of Reference 1(h): Procurement Practices

3. ENGAGEMENT SCOPE (CONT.)

3.3 Inherent Limitations (Cont.)

The review is not totally exhaustive to detect all weaknesses in control procedures as it is not performed continuously throughout the period, and the tests performed on the control procedures are on a sample basis.

Any application of the evaluation of control procedures to future periods is subject to the risk that the procedures may become inadequate because of changes in conditions, or the degree of compliance with them may deteriorate or they may not be implemented in full or at all.

Our findings and observations are based on the probity review work performed, sample testing of the Project files, relevant records of proceedings and interviews with icare employees. Observations and recommendations in this report has been formed on this basis.

3.4 Disclaimer

NSW Treasury and the Hon Robert McDougall QC can rely on the observations set out in this report. However, you agree to hold our Firm, its partners, and employees harmless from any liabilities, costs and expenses relating to, or arising from, this engagement (including, without limitation, legal fees and the time of our personnel involved) incurred by reason of any action we take in good faith (unless we are negligent) including but not limited to losses which are due to the provision of false, misleading or incomplete information or documentation or due to the acts or omissions of any person other than RSM.

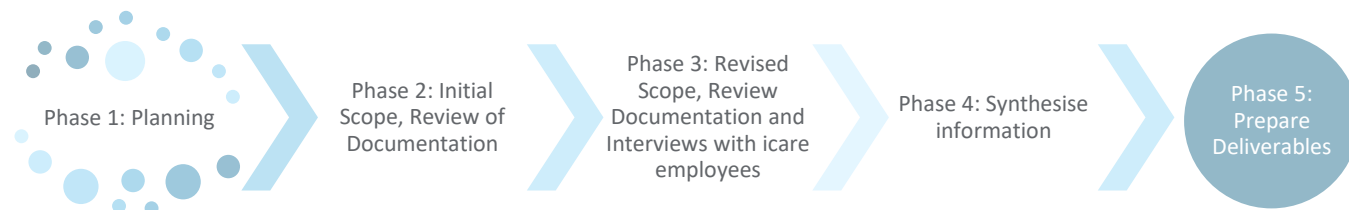
The contents of this report are confidential. This report has been prepared solely for NSW Treasury and the Hon Robert McDougall QC and we do not accept responsibility or liability for its use outside this purpose. In accordance with our normal practice, we hereby expressly disclaim liability to any persons other than to NSW Treasury and the Hon Robert McDougall QC.

The information contained in this report may not be used or relied upon by anyone other than the above parties, in any manner whatsoever, without the prior written consent of RSM.

Approval must be provided by RSM prior to our report, or excerpts of our report, being made publicly available.

4. REVIEW APPROACH

The review was delivered utilising the below five-stage approach:



Refer to **Appendix B** for our detailed review approach and work performed.

Scope Item A and B: Probity and Procurement Review

RSM was requested to and has performed an assessment of icare's probity and procurement gap analyses and improvement plans. Please refer to **Appendix A** for the scope item details.

Scope Item C: Procurement Deep Dive (Legacy Transactions)

RSM was requested to carry out a deep-dive examination of the following five procurements that had featured in recent media and Parliamentary coverage:

- Perceptive – Development of NPS Framework;
- Guidewire – Nominal Insurer system platform;
- CapGemini – Implementation of the Guidewire system;
- EML – Nominal Insurer claims management; and
- IVE Group – Nominal Insurer communications services.

During our review:

- The Perceptive Contract was removed from the scope of the procurement deep dives because the Independent Commission Against Corruption ('ICAC') had carried out a detailed investigation and review of the transaction and had previously reported on the procurement; and
- icare confirmed that the Guidewire and CapGemini transactions, while engaged under separate contracts, were part of the same procurement activity.

On this basis, this review examined the following transactions:

- Guidewire / CapGemini;
- EML; and
- IVE Group.

For the purposes of the deep dive procurement reviews, RSM has focussed solely on the NSW Government Procurement objective of the achievement of value for money, as the basis of the compliance assessment. An excerpt from NSW Government Procurement objectives is included in **Appendix C**. The transactions examined were all undertaken for the Nominal Insurer, which is exempt from complying with the statutory provisions for the procurement of goods and services by government agencies. It is our opinion that the primary consideration of any procurement, whether the NI exemption applies or not, should be achieving value for money in an appropriate and defensible manner.

Scope Item C: Procurement Deep Dive (Current Transactions)

In addition to the transactions above, RSM was requested to conduct a deep dive procurement review of a sample of recent transactions, to examine how icare had recently been complying with law, policy and better practice. The following contracts were selected by RSM from the Contract Register, on the basis that they demonstrated a range of different service offerings and contract values.

4. REVIEW APPROACH (CONT.)

Scope Item C: Procurement Deep Dive (Current Transactions) (Cont.)

Supplier	Contract Services	Contract Start Date	Contract Value
Enabler Interactive Pty Ltd ('Enabler')	3D Training Services	14 September 2020	\$208,182
Tata Consultancy Services Limited ('TCS')	Testing Services	7 October 2020	\$6,800,000
Adactin Group Pty Ltd ('Adactin')	Testing Services	1 October 2020	\$6,800,000
PricewaterhouseCoopers Consulting ('PwC')	Culture, Governance & Accountability Review	23 October 2020	\$810,087

Confirmation was provided by icare that the TCS and Adactin transactions, while engaged under separate contracts, were part of the same procurement transaction and have been reported on in this manner.

For the purposes of the deep dive procurement reviews, RSM has considered the following applicable laws with respect to examination of compliance with the law:

- *Public Works and Procurement Act 1912 ('PWP Act')*
RSM has not reviewed each procurement for compliance with the PWP Act, noting Section 3 of the Procurement Guidelines states that:
"icare excepting the Nominal Insurer, is required by the Public Works and Procurement Act 1912 (the Act) to follow the directions of the NSW Procurement Board. icare's Procurement Policy and these Guidelines are aligned to the Act and the NSW Government Procurement Framework."
We have consulted the PWP Act to support our observations and findings, where required.
- *Government Information (Public Access) Act 2009 ('GIPA Act')*
RSM notes the Information Commissioner's icare – GIPA – Compliance Report Phase 1 issued in October 2020⁷ which examined the compliance of icare which the mandatory requirement to keep the contract register and the systems and processes in place to ensure compliance with the relevant provisions of the GIPA Act.
To avoid duplication RSM has not made reference to compliance with the GIPA Act.

For the purposes of compliance with better practice, RSM has considered application of the icare Procurement Policy and Procurement Guidelines, noting that icare's Procurement Guidelines state that "icare's procurement lifecycle is based on the NSW Government three-stage approach to Sourcing – PLAN / SOURCE / MANAGE".

As stated by the NSW Audit Office, in its report dated 19 May 2019, there are no prescribed probity principles in the New South Wales public sector⁸. RSM has therefore used the five common probity principles used by the Commonwealth and other jurisdictions as a guide for better practice:

- Value for Money;
- Fairness and Impartiality;
- Confidentiality;
- Accountability and Transparency; and
- Dealing with Conflicts of Interest.

⁷ https://www.ipc.nsw.gov.au/sites/default/files/2020-10/Final_icare_Phase_1_Compliance_Report_October_2020.pdf

⁸ Audit Office of NSW, Engagement of probity advisors and probity auditors, <https://www.audit.nsw.gov.au/our-work/reports/engagement-of-probity-advisors-and-probity-auditors#:~:text=Probity%20is%20defined%20as%20the,while%20attaining%20value%20for%20money>.

5. KEY THEMES

The review has identified gaps in comparison to better practice and made recommendations to support icare in reviewing and updating their policies, procedures and procedures to meet procurement and probity better practice.

The key themes from the review are summarised below:

- There is a trend of improvement in probity and procurement over time. This came from comparing how more recent procurement transactions are being conducted compared to the legacy transactions considered as part of the deep dive procurement reviews.
- icare was established on 1 September 2015. Various insurance and care schemes were brought together in the new entity. icare established its philosophy” as “Commercial Mind, Social heart”. In establishing icare as a new entity, and transforming its culture and purpose, the “Commercial Mind” imprimatur appears to have been interpreted and applied, at least by some people, to mean minimal , if any, “red tape” and manifesting as value for money not being adequately assessed and a lack of maintaining robust record-keeping to ensure the transactions could be defended if scrutinised.
- Previous evidence of over-reliance on external consultants and advisors to conduct or support and, in some instances, be delegated core responsibility to drive and provide decision-making over procurement activities. This was evidenced during the IVE Group procurement, which was managed, at least initially, by Capgemini and ITNewcom. RSM found no evidence that icare personnel responsible and accountable for the NISP were engaged in the initial discussions with IVE Group.
- More recently, more deliberate processes have been established to bring responsibility for procurement and oversight of these activities into the Procurement team.
- icare is working towards organisational change. We observed that there is a deeper and broader change across the organisation which may not be visible if we look at the artefacts alone. As a broad change, icare has recently appointed a number of new directors, new Chair, a new Chief Executive Officer (‘CEO’) and have seconded the Chief Procurement Officer (‘CPO’), NSW Department of Communities and Justice, to provide support and direction throughout the journey.
- There is considerable positive momentum with icare for improving procurement processes and culture. However, sustained change will only be successful if it is part and parcel of the culture of the organisation. It needs to be actively upheld and implemented by every person in the organisation across all levels, starting with the ‘tone from the top’.
- Strong leadership will be critical. Board sponsorship of the procurement and probity transformation program is required, with strong “C” level leadership to initiate change and to ensure it permeates through the organisation. The Executive Team must be responsible for modelling good governance behaviours and demonstrating their commitment to achieving Government objectives through accountable processes. To this end, we recommend a Chief Procurement Officer is appointed. This is considered justifiable given the materiality of spend on goods and services as well as to support in the medium to long term, the organisational shift in better procurement practices across the organisation.
- Consistent and regular messaging of the organisations governance approach and cultural expectations must be reinforced, with all employees encouraged to be active participants in icare’s governance processes and take their governance responsibilities seriously.
- The probity and procurement gap analyses and action plans provide sound platforms for further work to be done. Current state gap analyses refer to findings from various advisor reports, specifically to elements of procurement practices as they stood at the time of the respective reviews, rather than where they are today and where they desire to be. Further work needs to be performed, to ensure icare understands what they need to solve and how to integrate procurement into the rest of the organisation. Consultation and buy in from the Procurement team and key users will be critical in ensuring success.

6. DETAILED FINDINGS

6.1 Scope Item A: Probity

6.1.1 Background

The scope of work considers icare's reform program of their probity policies and practices and seeks to determine whether:

- internal policies to manage probity matters such as conflicts of interest, gifts, international travel and other benefits exist; or
- to the extent that such policies have been identified by icare as inadequate, that assessment activities have been conducted to ensure the policy(ies) have been (or will be) introduced or updated to ensure consistency with better practice, NSW Government standards and public expectations generally;
- where policies have been recently introduced, that:
 - the 'gap analysis' and other supporting material for the change is robust and detailed so the new or reformed policy is well-founded.
 - implementation and project plans are in place and of the commensurate quality to ensure the effective implementation and future operation of the policies and development of detailed supporting processes and procedures across icare; and
 - effective risk management plans are in place for the interim period, while the new policy(ies) is/are being implemented.
- probity matters are properly identified, documented and escalated to the Chief Risk Officer, Audit and Risk Committee and Board (where required).

6.1.2 Findings

Conflict of Interest Policy

The policy applies to Board directors; part-time, temporary and permanent employees; graduates; contingent workers; independent contractors; sub-contractors; consultants; interns; secondees; students and volunteers.

The policy was approved by the icare board on 23 November 2020.

The policy addresses, in summary:

- The concept of conflict of interest between personal interest and public duty;
- An explanation of public duty;
- An explanation of personal interests;
- An explanation of the three key types of conflict of interest; being actual, perceived and potential;
- The processes for identifying and managing conflicts of interest. The policy notes that it principally relies on self-identification. However, it also states that "and anyone who reasonably suspects a breach of this policy must report the matter to their People leader or in accordance with the Reporting Wrongdoing Policy;
- Requirements for higher risk activities, being procurement and recruitment;
- Requirements specific to designated senior executives (as defined in the Fit and Proper Policy);
- Requirements specific to the board of directors;
- Monitoring and Reporting, which includes:
 - the compliance team ensuring that conflicts of interest that have been declared are being managed in accordance with the agreed strategies;
 - where possible conducting activities to detect conflicts of interest which have not been declared (including those under the gifts and benefits policy);
 - instances of non-compliance being reported to the Chief Risk Officer;
 - the Chief Risk Officer escalating to the Chief Executive Officer and Managing Director material conflicts of interest which are not being appropriately managed;
 - reporting information on the conflict of interest register to the Group Executive Team and the Audit and Risk Committee on an exception basis; and
 - reviewing the effectiveness of the policy on an annual basis and recommending any changes to the policy to the Board.

6. DETAILED FINDINGS (CONT.)

6.1 Scope Item A: Probity (Cont.)

6.1.2 Findings (Cont.)

In its 27 August 2020 meeting the Audit and Risk Committee were advised of the results of an assessment of the operational effectiveness of the November 2019 Conflict of Interest Policy. Findings of the assessment included:

- that the concept of personal interest was found challenging;
- difficulties in understanding the difference between apparent and potential conflicts of interest; and
- process weaknesses in declaring and recording conflicts of interest during procurement activities.

In its 20 November 2020 meeting the Audit and Risk Committee were advised of proposed changes to the conflicts of interest policy that provided better guidance on the definition of “personal interests” and the different types of conflicts of interest; and ensuring that all procurement and recruitment procedures highlighted the requirement to comply with the policy. Details of the policy implementation process were also provided. These cover the following areas:

- staff awareness;
- training; and
- monitoring activities.

The change is effective immediately, with ongoing training and awareness activities. This timeframe reduces risk across the period of change. In RSMs opinion, this is appropriate and feasible.

Observation	Recommendation
<p>The Policy is inconsistent with the requirements of the Conflict of Interest Guidelines and Procedure (2020) that provide for “quarterly attestations for staff with delegations and people in higher risk roles”.</p> <p>RSM considers that attestation made annually may not be sufficiently current to address changes to conflicts of interest</p>	<p>Amend both the Policy and Guidelines and Procedure (2020) to require Senior or Key Individuals to make attestations on a quarterly basis or if there has been a material change in circumstances, with positive declarations reviewed and escalated in line with the governance structure.</p>

Gifts and Benefits Policy

The policy applies to Board directors, employees (temporary and on-going), contractor’s, consultants and others who may temporarily be assigned to perform work or services for icare.

icare has advised RSM that the Gifts and Benefits Policy is being updated and will be consistent with the requirements of the Public Service Commissioner Direction No.1 of 2014, made under section 13 of Government Sector Employment Act 2013:

- This Direction requires the implementation of Managing Gifts and Benefits: Minimum Standards. While section 13 of the GSE Act may apply broadly to icare, it states that the Commissioner is able to give a direction to the head of a government sector agency on specific matters in relation to employees of that agency.
- Direction No.1 of 2014 specifically refers to each head of a government sector agency that the Direction applies to. This list does not include icare.

Therefore, the Direction does not apply to icare. However, icare will. establish a policy that is consistent with Managing Gifts and Benefits: Minimum Standards.

RSM has not seen an assessment or “gap analysis” prepared by icare showing whether the policy being currently updated will be consistent with better practice, NSW government standards and public expectations generally.

RSM was advised that the updated policy is expected to be approved by the Board in February 2021.

6. DETAILED FINDINGS (CONT.)

6.1 Scope Item A: Probity (Cont.)

6.1.2 Findings (Cont.)

Observation	Recommendation
The policy makes no requirements for designated senior executives to make an annual attestation.	That designated senior executives make quarterly statements or if a material change of circumstances has arisen.
icare has indicated that they will be establishing a policy that is consistent with Managing Gifts and Benefits: Minimum Standards. That is, icare is doing so voluntarily. However, it could at some time choose to revert to a lower standard.	Consideration should be given to requesting the Public Service Commissioner to direct icare to comply with Managing Gifts and Benefits: Minimum Standards.

Travel Policy

The travel policy covers both international and domestic travel. It applies to Board directors, employees (temporary and on-going), contractor's, consultants and others who may temporarily be assigned to perform work more services for icare.

In summary, the Policy states that:

- employees should consider alternative means of communication, such as teleconferencing;
- the code of conduct and ethics applies for travelling;
- approval requirements;
- conflict of interest disclosures may be required, such as if payments are made by other parties; and
- various administrative procedures for example use of purchase cards.

The icare travel policy indicates that it was last reviewed on 24 February 2017 with the next review date of 24 May 2018. We have been advised that this review did not occur. In addition, there is no indication who is responsible for developing, implementing maintaining or issuing the policy.

icare advised RSM that the travel policy is currently being updated and will go to the Audit and Risk Committee and the Board in February 2021 for approval. RSM has not seen an assessment or "gap analysis" by icare showing whether the policy currently being updated will be consistent with better practice, NSW government standards and public expectations generally.

Observation	Recommendation
That policies have not until recently been reviewed and updated on a regular basis.	The Audit & Risk Committee are held accountable for reviewing and updating policies on a regular basis.

Linkages to the Code of Conduct and Ethics Policy

icare's Code of Conduct and Ethics Policy provides guidance on the behaviours and responsibilities expected at icare. It addresses a range of areas including conflict of interest and gifts and benefits, and the potential consequences of breaching the policy.

The Policy was approved on 25 November 2019.

6. DETAILED FINDINGS (CONT.)

6.2 Scope Item A: Probity (Cont.)

6.1.2 Findings (Cont.)

Observation	Recommendation
The conflict of interest policy has been updated and the gifts and benefits policy and the travel policy are in the process of being updated, after the Code of Conduct and Ethics Policy was approved.	The Code of Conduct and Ethics Policy should be reviewed to ensure that it is consistent with the conflict of interest policy gifts and benefits policy and the travel policy.
There is no ongoing or regular process requiring employees to acknowledge their awareness of the code of conduct and acknowledge their responsibilities in accordance with it. (If a breach of the policy does occur, a defense could be raised that there was inadequate notice of the policy.)	Each employee should be required to annually sign-off acknowledgement of the code of conduct and this acknowledgment should be recorded in a register. The register should be regularly reviewed for completeness and compliance with the code be considered in an employees' annual appraisal processes.

6.1.3 Probity Conclusion in Respect to Probity Scope Item

It is RSMs assessment that:

- Internal policies for conflicts of interest, gifts and benefits, and travel exist (refer to below for further information).
- Conflict of Interest Policy
 - icare has completed an assessment of the conflicts of interest policy and to the extent that policy was identified by icare as inadequate, assessment activities have been conducted to update the policy to ensure consistency with better practice, NSW Government standards and public expectations generally;
 - For the conflict of interest policy assessment and update process:
 - the 'gap analysis' and other supporting material for the change was robust and detailed so that the updated policy is well-founded;
 - implementation and project plans are in place and of the commensurate quality to ensure the effective implementation and future operation of the policy and development of detailed supporting processes and procedures; and
 - effective risk management plans are in place for the interim period, while the new policy(ies) is/are being implemented.
 - The policy provides for conflict of interest matters to be properly identified, documented, and escalated (where required) to the Chief Risk Officer, Audit and Risk Committee, as a sub-committee of the Board.
- Gifts and Benefits Policy and Travel Policy
 - RSM has not seen an assessment by icare of the gifts and benefits policy or the travel policy and accordingly is unable to form an opinion on these policies.
 - The approach undertaken by icare for its assessment of its conflicts of interest policy provides a sound basis for review of its Gifts and Benefits Policy and its Travel Policy.

Observation	Recommendation
RSM has not seen a recent and updated assessment by icare of the Gifts and Benefits Policy or Travel Policy.	icare should complete its assessment of its Gifts and Benefits Policy and its Travel Policy without delay and ensure it is implemented across the organisation in a comprehensive and effective manner.

6. DETAILED FINDINGS (CONT.)

6.2 Scope Item B: Procurement

6.2.1 Background

The scope of work will consider icare's reform of their procurement policies and practices and seek to determine whether:

- icare's recently updated Procurement Policy is consistent with better practice, NSW Government standards and public expectations generally.
- the 'gap analysis' and other supporting material for the reform activities are robust and the new or reformed policy is well-founded;
- implementation and project plans are in place and of the commensurate quality to ensure the effective future implementation and operation of the policies and development of detailed processes and procedures across icare; and
- effective risk management plans are in place for the interim period, while the new policy(ies) is/are being implemented (which will include the review of a small sample of recent transactions).

[Note to reader: :The 1st bullet point is addressed below at 5.2.2 Updated Procurement Policy.

*The 2nd, 3rd and 4th bullet points are addressed below at **Gap Analysis, Implementation and Risk Management Plans.**]*

6.2.2 Findings

Updated Procurement Policy

A procurement policy sets out an authoritative position on the organisation's procurement objectives and commitments to principles. Value for money, ethical behaviour, and supporting local businesses are common examples in the Australian public sector.

Authoritative Position

icare's Audit and Risk Committee approved the updated procurement policy on 20 November 2020, during the course of this review.

Procurement Objectives and Commitments

icare's procurement policy objectives and commitments are:

- value-for-money
- fair and open competition
- easy to do business.
- innovation
- economic development social outcomes and sustainability.

These objectives and commitments are the same as for the NSW Government Procurement Policy Framework.

Legal Requirements

The Policy cites the following requirements:

- Public Works and Procurement Act 1912
- Government Sector Finance Act 2018
- Independent Commission Against Corruption Act 1988
- Government Information (Public Access) Act 2009
- Various other procurement-related legislation and policies.

6. DETAILED FINDINGS (CONT.)

6.2 Scope Item B: Procurement (Cont.)

Legal Requirements (Cont.)

The Policy:

- notes that icare and each of the statutory schemes must comply with the Public Works and Procurement Act 1912 and notes that the Nominal Insurer is not subject⁹ to Part 11 (Procurement of Goods and Services) of the Public Works and Procurement Act 1912.
- requires that all procurement for the Nominal Insurer must be conducted as if it was subject to Part 11 Public Works and Procurement Act 1912. Board approval is required for any exemption from this element of the Policy.

NSW Government Standards

The policy establishes a procurement process of:

- plan
- source
- manage.

These are consistent with the NSW Government Procurement Policy Framework¹⁰.

Linkage of the Policy to Detailed Procedures and Guidance

Policies are high-level documents that are usually supported by detailed procedures and guidance. These supporting documents define items such as roles and responsibilities, and often include examples. This ensures accountability for decisions is with the right people, helps to guide decision making, and reduces conflict and uncertainty. The icare policy states that accountability is a core component of icare's procurement framework which, in effect, links the policy to the detailed procedures and guidance.

6.2.3 Updated Procurement Policy - Observations and Recommendations

Observation	Recommendation
The Policy requires that all procurement for the Nominal Insurer must be conducted as if it was subject to Part 11 Public Works and Procurement Act 1912. Board approval is required for any exemption from this element of the Policy.	RSM recommends an explicit process is established where Board approval for the application of an exemption is sought. This process should include as a minimum: <ul style="list-style-type: none"> details of the proposed procurement process;; analysis demonstrating that the proposed procurement approach provides a superior outcome to icare than one that complies with Part 11 of the Public Works and Procurement Act 1912;and A comprehensive market sounding and procurement strategy document that has been signed off by the most senior Procurement Manager (or CPO).
The procurement polices provide a statement of leadership commitment to the policy by those who are responsible for governance. This commitment ensures the procurement governance function, and its performance, continues to address icare's objectives and	That the icare Board make a statement of leadership and commitment and continuous improvement to the policy. Below is an example: ¹¹ <i>"We act with integrity, honesty, transparency and place the public interest above personal interests at all times. We are committed to building a diverse supply base to support businesses of all types, which includes small and</i>

⁹ Refer to s154A (4) of [Workers Compensation Act 1987 No 70 - NSW Legislation](#)

¹⁰ [NSW Government Procurement Policy Framework](#)

¹¹ Transport for NSW Procurement Policy by the Secretary, December 2020 (except only).

Observation	Recommendation
<p>ensures that investments to address gaps and improvement opportunities are made.</p> <p>This statement of leadership commitment to continuous improvement also helps drive effective change management to ensure buy-in for compliance and managing procurement risks.</p> <p>The statement should also make a formal commitment to continuous improvement.</p>	<p><i>medium sized businesses, Aboriginal-owned businesses, regional businesses and disability enterprises.</i></p> <p><i>We focus on spending public money efficiently, economically and ethically to deliver value for money on a whole of life basis. We consider benefits and risks to Transport, the community, the economy and impacts on the environment in our value assessment."</i></p>

6.2.4 Updated Procurement Policy – Conclusion

RSM considers that icare’s updated Procurement Policy is consistent with better practice, NSW Government standards and public expectations generally.

6.2.5 Gap Analysis, Implementation and Risk Management Plans

On 16 January 2021, icare provided RSM with a working document titled Procurement Improvement Program (‘PIP document’), dated 12 January 2021.

The PIP document:

- states that its goal is to identify and address gaps or issues in the icare’s procurement function;
- acknowledges that icare’s procurement practices have been inconsistent and require significant improvement;
- states that strengthening icare’s procurement practices continues to be a key priority;
- sets out a current state gap analysis. This summarises the findings and recommendations from various internal and external reviews mapped to the desired future state, at a high level. These reviews date back to 2016;
- sets out a desired future state;
 - It states that “Importantly, the desired future state as articulated here is intended to be a ‘live’ document providing ‘in principle’ guidance for first horizon as icare embarks on a maturity process. Ongoing guidance and oversight from the executive steering committee will help to progressively shape the specifics of the outcomes and continuous improvement”.
 - Further input will be obtained from a procurement consultancy, review of mandatory legislative requirements and stakeholder interviews.
 - The desired future state has been analysed in the following key areas:
 - The organisation and set-up;
 - Systems and framework;
 - Procurement planning; and
 - Contract management.

Under each key area are sub-elements. For each sub-element are specific actions and deliverables, and a specific description of the desired future state.
- sets out a governance and oversight structure. In summary, the hierarchy is:
 - Board;
 - Group Executive Team;
 - Procurement Improvement Executive Steering Committee; and
 - Procurement Team.
- states that the icare procurement framework aligns to the NSW procurement policy framework, including its plan-source-manage elements;
- sets out the phases of the procurement improvement program:
 - Phase 1: GIPA remediation foundations;
 - Phase 2: “plan” and “source” improvement; and
 - Phase 3: “manage” improvement.
- sets out action plans for each of the above phases of the procurement improvement program. Tasks, due dates and responsible person are specified;
- provide a risk management assessment for the improvement program; and
- includes various appendices.

6.2.6 Gap Analysis, Implementation and Risk Management Plans – Observation and Analysis

Observation	Recommendation
<p>The PIP document is a high-level overview plan for the program and is sufficient for communicating that current purpose.</p>	<p>More specific details, activities and risks will need to be identified, documented, and managed as the program proceeds.</p> <p>It is critical that as the program is implemented across the organisation it is project managed at a detailed level. Specific details, resources, activities, and risks will need to be identified and documented and updated progressively as the program proceeds, including for effective change management through the organisation.</p> <p>Progress should be reported to and monitored by, say, the Group Executive Team with regular updates provided to the Board.</p>
<p>The PIP document focuses on procurement, with some information regarding program management.</p>	<p>To enhance program management, the PIP document should be further developed to include information such as:</p> <ul style="list-style-type: none"> • stakeholder management and communication; • interfaces and dependencies with related projects; • budget and expenditure and use of other resources; • constraints and assumptions; • organisational and program change management; • issues management; • quality management plan; • organisational change management; • outcome realisation; and • program evaluation.
<p>There are a series of statements for what the desired future state is at the sub-element level. (for example for Systems and Data the desired future state is described as “customer centric IT systems, that work and are easy to use, at a cost we can afford”) There is no statement regarding the desired future state of procurement</p>	<p>There should be a statement regarding the desired future state for the program overall and how it contributes to corporate objectives.</p>
<p>There are limited references to probity overall.</p>	<p>The future state should consider probity in procurement; for example, specifically regarding:</p> <ul style="list-style-type: none"> ▪ Value for Money; ▪ Fairness and Impartiality; ▪ Confidentiality; ▪ Accountability and Transparency; and ▪ Dealing with Conflicts of Interest.
<p>The Desired Future State section of the PIP, Action 2.3.2 states the intention to “develop further compliance improvements and management to improve compliance with NSW procurement policy framework and legislative requirements”.</p>	<p>icare should develop:</p> <ul style="list-style-type: none"> • Key performance indicators that focus on procurement outcomes and commitments at the highest level, and then cascading them through teams and to individuals based on their role in the value and procurement chain. • Measures that also include internal client satisfaction between operational staff, procurement staff, and other supporting groups (e.g. legal and Risk and Compliance). Performance indicators should address short term and longer-term performance and provide evidence of improvement trends. • Better approaches to detect non-compliance and developing techniques to prevent recurrence.

Observation	Recommendation
<p>The Desired Future State section of the PIP, Action 2.3.4 Probity, states the intention of: “strengthened probity practices including alignment with icare policies i.e. Conflicts of Interest and Gifts and Benefits”.</p>	<p>Integrating probity into the procurement processes by ensuring the following principles are adequately addressed by process and required documentation, for example, the development of probity conduct plans”:</p> <ul style="list-style-type: none"> ▪ Value for Money; ▪ Fairness and Impartiality; ▪ Confidentiality; ▪ Accountability and Transparency; and ▪ Dealing with Conflicts of Interest.

6.2.7 Gap Analysis, Implementation and Risk Management Plans – Conclusion

RSM has examined icare’s reform program of their procurement policies and practices and considers that after the above recommendations have been considered and implemented by icare then:

- the ‘gap analysis’ and other supporting material for the reform activities should be robust and the new or reformed policy be well-founded;
- implementation and project plans developed and implemented are of the commensurate quality to ensure the effective future application and operation of the updated policies and development of detailed processes and procedures across icare; and
- effective risk management plans can be developed for the interim period, while the new policy(ies) is/are being implemented.

6. DETAILED FINDINGS (CONT.)

6.3 Scope Item C: Procurement Deep Dive (Legacy) - Capgemini / Guidewire

6.3.1 Background

Safety Return to Work and Support (“**SRWS**”) which was a legacy entity that under the State Insurance and Care Governance Act 2015 No 19, became part of the new entity icare. SRWS commenced the operating model and broader systems enhancement strategy. SRWS had been incorporated into icare after project RFP responses were received for the systems project and the final contract award was approved under the newly formed icare.

For clarity, it should be noted that Capgemini were engaged by icare under a pre-existing contract with SRWS to deliver the following consulting services:

- assess the costs and benefits of future technology options to resolve the current IT challenges and support its transformation strategy; and
- develop the Business Case and further investigate the current technology state, identify functional requirements for the future state and conduct a Request for Information identify suitable vendors and assess potential solution options, with the best fit for the SRWS requirements.

Additional external advisers were engaged to support the Project, including appointment of PwC’s Strategy&, to prepare a draft Solution Vendor Selection / Procurement Strategy, which included a market scan of vendors with a single insurance platform that supports workers compensation.

The Invitation to Respond (‘**ITR**’) was published on NSW Government eTender website, with interested parties provided 5 days to respond. The Request for Proposal (‘**RFP**’) was issued to four Respondents shortlisted from the ITR phase, with an initial RFP period of 14 days, subsequently extended to 17 days.

A joint bid from Capgemini / Guidewire was the only proponent to submit a response, with all other shortlisted respondents withdrawing from the process. Capgemini / Guidewire were awarded the contract.

Media coverage

On 2 November 2020 the Sydney Morning Herald published an article regarding icare’s contract with Guidewire/Capgemini. In summary, allegations in the article stated that:

- The timeframe for the contract award was so short that alternative credible vendors pulled out ahead of the deadline, leaving the Guidewire/Capgemini consortium the only valid candidate;
- In August 2015, just before the deadline, one of the bidders for the lucrative contract, FINEOS, wrote to icare’s then acting CEO Don Ferguson to advise him they were withdrawing because the timeline was “extremely aggressive” and “unrealistic” for such a complex, high-value project.
- Days later a second vendor, SBC IT, pulled out after conducting a risk assessment of the RFP
- The Capgemini/Guidewire’s proposal attracted a series of savage ratings from PwC in a vendor evaluation study, PwC giving the consortium proposal an overall score of 61 out of 100 with non-compliance in three essential areas.
- A Health Check of the Procurement Process, undertaken by Procure Group in September 2015 raised several concerns regarding timeframe and governance.
- Overall costs are estimated to have blown out to \$360 million.¹²

¹² RSM has not validated the overall costs that the Project has incurred.
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6. DETAILED FINDINGS (CONT.)

6.3 Scope Item C: Procurement Deep Dive (Legacy) - Capgemini / Guidewire (Cont.)

6.3.1 Background (Cont.)

Chronology

High level overview of key activities of the process:

Date	Activity
2014	The legacy entity SRWS commenced the SRWS operating model and broader systems enhancement strategy. Capgemini were engaged to assess the costs and benefits of future technology options to resolve the current IT challenges and support its transformation strategy.
March 2015	Capgemini were engaged to develop the Business Case and further investigate the current technology state, identify functional requirements for the future state and conduct a Request for Information process to identify suitable vendors and assess potential solution options, with the best fit for the SRWS requirements. Board approval for commencement of RFP process.
June 2015	PwC's Strategy& prepared a draft Solution Vendor Selection / Procurement Strategy, which included a market scan of vendors with a single insurance platform that supports workers compensation. Evaluation Criteria, (Invitation to Register Interest ("ITR")) and RFP timelines established. Additional external advisers engaged to support the Project: <ul style="list-style-type: none"> - Oakton (probity advice) - Minter Ellison (legal advice) - KPMG (ongoing independent advice on the procurement process); and - Procure Group (review of tender related activities).
10 July 2015	ITR published on NSW Government eTender website. 5 days were provided for interested parties to respond.
24 July 2015	RFP issued to the four shortlisted Respondents from the ITR. Initial RFP Period was 14 days, subsequently extended to 17 days.
August 2015	ProcureGroup requested to carry out a "health check" of the procurement documentation to assist it in the balance of its procurement activities.
13 August 2015	RFP closed. Only 1 submission received, from Capgemini / Guidewire. All other respondents had withdrawn from the process.
31 August 2015	SRWS Board provided an update on the process, which noted that following engagement of external advisors and a two-stage approach, the RFP was currently in the evaluation process.
1 September 2015	SWRS abolished and icare created.
2 September 2015	Procure Group Report finalised, raising several risks and matters to consider. The Report indicates the following activities prior to release of final report. <ul style="list-style-type: none"> - 7 August 2015, initial observations provided to the Nominal Insurer ("NI") by phone; - 12 August 2015, draft report prepared and provided to the NI; and - 17 August 2015, meeting with the NI to discuss the draft report.
28 September 2015	icare Chairman and Deputy Chairman provided with a briefing regarding NISP. Full Board had not yet been constituted.
26 October 2015	icare Board approves the Insurance Technology Platform Business Case, including a rolling approval for each phase of the program. Indication provided from the Executive Director, Insurance Operations that the Board were aware icare was proceeding with the proposal from Capgemini and Guidewire.
6 November 2015	KPMG provided a Final Report, highlighting several risks and issues identified while involved in the Project

30 November 2015	Technology and Innovation Committee informed of the process. The Executive Director, Insurance Operations provided overview of the process. CEO advised that because of negotiations they had achieved a reduction in contract value for licencing and support of <29%.
31 January 2016	Master Information Technology Services Agreement with Capgemini signed

6.3.2 Observation

Law

Procurement

RSM understands the procurement was initiated by SRWS and that SRWS was abolished and icare formed after the RFP response had been received and evaluations were underway¹³. RSM were advised and documentary evidence confirms the Guidewire / Capgemini procurement was undertaken utilising the Nominal Insurer exemption.

- s154A of the Workers Compensation Act 1987 provides that “(4) For the avoidance of doubt, the Nominal Insurer is not a government agency for the purposes of Part 11 of the Public Works and Procurement Act 1912.”
- Part 11 of the Public Workers and Procurement Act 1912 sets out the statutory provisions for the procurement of goods and services by government agencies (s 163 of the PWP Act). This part does not apply to the NI.

Record-Keeping

RSM notes that section 3 of the State Records Act 1988 specifically excludes the Workers Compensation Nominal Insurer from the definition of public office. Accordingly, the requirements of that Act do not apply to the Nominal Insurer.

RSM found very limited procurement processes and records were maintained for the Guidewire/Capgemini procurement. While unsatisfactory from a procurement transparency and accountability perspective, this would appear to be in accordance with the law assuming the exemption was correctly applied.

Policy

As noted above, the procurement was conducted by SRWS and icare was formed after the RFP response had been received and evaluations were underway. RSM has not confirmed the policies and frameworks in place at SRWS at the time the procurement was initiated.

RSM requested icare to provide a range of documents to enable RSM to undertake the review. Many of the documents requested were not provided which has limited RSMs ability to undertake the review.

Probity

Date	Activity
Value for Money	RSM has confirmed that best value for money was one of the objectives of the RFP evaluation. RSM has been advised that icare negotiated with Guidewire / Capgemini to receive a substantial discount. However, the baseline or starting value was never market tested due to the lack of alternative submissions, nor has evidence been provided of a business case or pre-tender estimate being developed that the submission could be benchmarked against. Notwithstanding the negotiations, RSM does not consider the procurement activity was conducted in a competitive manner and consequently we are unable to determine whether the procurement achieved value for money.
Fairness and Impartiality	RSM has material concerns regarding the approach to market and application of the principle of fairness and impartiality. RSM has been unable to confirm that adequate measures were adopted to mitigate the advantage Capgemini received from its early involvement in the process. We have been

¹³ RSM has not explored what law was applicable to SRWS at the time.
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advised there was a significant change to the system requirements from what was initially identified in the Business Case to what was released in the RFP. However, we have not been able to validate this claim.

RSM considers the time in the market was exceptionally short compared to other procurements of complex IT systems. We would expect such a procurement would be in the market for at least 4 weeks. This process issue was raised in a Procurement Process Health Check, performed by the Procure Group, in September 2015, that stated:

- “the period is very short (two weeks) when compared to other procurements of complex systems of high value”; and
- “vendors commented to the NI that the tender period was challenging”.

Due to a lack of documentary evidence, RSM has not been able to conclude that:

- The Procure Group Report and matters identified were raised with the Steering Committee for consideration; or
- That all Suppliers were provided with the same information during the clarification and one on one briefing sessions.

Confidentiality

RSM has identified that:

- The requirement for confidentiality was contained within the Evaluation Governance Framework document; and
- Some individuals involved in the process completed a Deed of Confidentiality, Confidentiality Undertaking or a Tender Evaluation Committee Code of Conduct.

Due to a lack of documentary evidence RSM has been unable to determine whether all persons involved in the procurement activity completed the necessary Confidentiality declarations or were made aware of the processes to maintain confidentiality and security of Project documents.

This extends to the Capgemini consultants who were involved in the initial consulting phase of the project as part of the business case development.

Accountability and Transparency

RSM was advised and the documentary evidence supports that:

- The SRWS Board approved the commencement of the RFP process;
- The Governance Framework established roles and responsibilities of the Evaluation Committee, Steering Committee, CEO, Probity Advisor and Probity Auditor;
- External advisers were engaged to support the Project:
 - Strategy& (procurement support);
 - Oakton (probity advice);
 - Minter Ellison (legal advice);
 - KPMG (ongoing independent advice on the procurement process); and
 - Procure Group (review of tender related activities).
- Strategy& prepared the RFP Evaluation Strategy and Evaluation Committee Briefing;
- KPMG provided a “Single System” Procurement Advice: Final Report, dated 6 November 2015; and
- ProcureGroup provided a Health Check of the Procurement Process Report, in September 2015.

RSM has not identified any evidence that these Reports or matters raised by the External Advisors were discussed with the Steering Committee, CEO or Board, nor is there any indication they were acted on.

Due to a lack of documentary evidence RSM has been unable to conclude whether the procurement activity followed the processes identified in the market facing documents.

Adequate records have not been maintained that allow for adequate review and verification of the process. We have been advised this was due to the lack of materials brought across during the merger and the heavy reliance on External Advisors.

Dealing with conflicts of interest

RSM has identified that:

- A process for the consideration and disclosure of conflicts of interest was included in the Evaluation Governance Framework document, with all Evaluation Panel members required to complete a 'Declaration of Interest' to declare any actual or perceived conflicts of interest or to declare no conflicts of interest exist; and
- Some individuals involved in the process completed a Tender Evaluation Committee Code of Conduct, with direction that these be disclosed in writing to the Committee Chairperson.

Due to a lack of documentary evidence RSM has been unable to conclude whether any conflicts were declared or recorded or if declared how they were managed.

6. DETAILED FINDINGS (CONT.)

6.4 Scope Item C: Procurement Deed Dive (Legacy) - EML

6.4.1 Background

In 2016/2017 icare commenced a closed market selection process to reduce the number of Scheme Agents retained on new contractual arrangements, to deliver upon a new Workers Insurance Claims operating model, which was under development. The intention of the change was to ensure the delivery of services complied with the NI's strategic imperatives related to the embedding of customer centre values, beliefs and cultures. At the time, icare had five Scheme Agents delivering services against the existing model.

Separate to the procurement activity, McKinsey and Company were engaged to validate and challenge the design of the model.

The following external advisors were engaged to support the procurement process:

- ProcureGroup (External Probity Advisor)
- Ernst & Young (Independent Facilitator)

All five Scheme Agents were invited to participate in the selection process.

Responses were received from four of the five Scheme Agents:

- Allianz
- EML
- GIO
- QBE

icare entered a single contract with EML for new claims, that started on the 1 January 2018. icare entered into contracts with both GIO and EML for old claims.

Media coverage

On 29 August 2020, The Sydney Morning Herald published an article regarding icare's contract with EML. In summary the key issues in the article were:

- That Scheme Agents were not advised that the tender was for a single agent; and
- There were concerns regarding EML's policies, procedures and lack of workers compensation experience.

We note that in February 2019, the SIRA Chief Executive commissioned the *Independent Compliance and Performance Review of the workers compensation Nominal Insurer (NI) managed by icare*¹⁴. RSM has not reviewed or considered the issues raised with respect to EML's performance and management of these matters throughout the term of their contract, rather our focus has been on the procurement activity.

Chronology

High level overview, key activities:

Date	Activity
7 December 2016	Issues Paper released to all Scheme Agents
15 December 2016	Probity Training delivered
20 December 2016	Probity Training delivered

¹⁴ <https://www.sira.nsw.gov.au/resources-library/workers-compensation-resources/publications/workers-compensation-policies/sira-response-to-the-review-of-the-nsw-workers-compensation-nominal-insurer-scheme>
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Date	Activity
21 December 2016	Business Partner Selection criteria document sent to Scheme Agents
24 January 2017	Scheme Agent Forum (Attended by Allianz, EML, GIO, QBE and CGU)
30 January 2017	Business Case Lite prepared
27 February 2017	Project Plan, Governance Framework, Probity Plan and Evaluation Plan document prepared
27 February 2017	Board Paper tabled providing a summary of the process
28 February 2017	Submissions due
10 March 2017	Advisory Committee meet to arrive at consensus, recommending that: <i>“3. EML and GIO are assessed as most likely able to meet future service model requirements and recommend retaining”</i> and <i>“4. Recommendations 1 to 3 subject to pricing negotiations”.</i>
15 March 2017	ProcureGroup Update Report
17 March 2017	The Selection Committee met, with the minutes of the meeting indicating that: <i>“All of the Selection Committee agreed to the Advisory Committee’s recommendations contained within the EY Report following icare Advisory Committee consensus meeting on 10 March 2017”</i> and <i>“There was discussion on the risk regarding the ability of GIO and EML to scale up their business. It was noted that both businesses have a broader insurance offerings across Australia and there have been instances where both have scaled up their business in the past”.</i>
22 March 2017	Procure Group Probity Report
27 March 2017	Board meeting, with a Board Briefing tabled, with a recommendation and action to: <i>“for the CEO or his delegate to commence contractual negotiations with EML as the preferred ‘NewClaimsOrg’ partner, and subsequently with EML, GIO and Allianz for ‘OldClaimsOrg’ services.”</i> The minutes of the meeting state that <i>“the Board discussed options outlined in the papers, including the optimum number of partners, complexity and type of partner.”</i> The Board considered and discussed a range of factors, including the outcome of the selection process, the risks of disruption and operational complexity in appointing multiple partners for the NewClaimsOrg and recommendations of the proposed model made by McKinsey and Company. The Board approved the recommendation.
24 April 2017	Board meeting, with a Board Briefing tabled, with a recommendation and action to: <i>“Note the agreement between the Nominal Insurer and EML that ‘NewClaimsOrg’ will commence on 1 January 2018 with EML”</i>

6.4.2 Observation

Law

Procurement

RSM was advised and documentary evidence confirms the procurement was made utilising the NI exemption.

- s154A of the Workers Compensation Act 1987 provides that “(4) For the avoidance of doubt, the Nominal Insurer is not a government agency for the purposes of Part 11 of the Public Works and Procurement Act 1912.”
- Part 11 of the Public Workers and Procurement Act 1912 sets out the statutory provisions for the procurement of goods and services by government agencies (s 163 of the PWP Act).

6. DETAILED FINDINGS (CONT.)

6.4 Scope Item C: Procurement Deed Dive (Legacy) – EML (Cont.)

6.4.2 Observation (Cont.)

Record-Keeping

RSM notes that section 3 of the State Records Act 1988 specifically excludes the Workers Compensation Nominal Insurer from the definition of public office. Accordingly, the requirements of that Act do not apply to the Nominal Insurer.

RSM found *that whilst records were maintained of key procurement documents and activities, records were not maintained to the level that would be expected for a transaction of this size and significance.* While unsatisfactory from a transparency and accountability perspective, it would appear to be in accordance with the law assuming the exemption was correctly applied.

Policy

RSM requested icare to provide a range of documents to enable RSM to undertake the review. *RSM were not provided with the procurement policy as at the time of the activity.* This lack of documentation has limited RSMs ability to undertake this review.

Probity

Principle	Observation
Value for Money	RSM was advised and the documentary evidence supports that the procurement and evaluation was conducted with a value for money objective, with a factual summary of pricing submissions received prepared by Ernst & Young.
Fairness and Impartiality	RSM was advised and the documentary evidence supports that: <ul style="list-style-type: none"> ▪ All Scheme Agents were invited to submit a response to the Business Partner Selection criteria document. ▪ All Scheme Agents were invited to attend and did attend the Scheme Agent Forum on 24 January 2017.
Confidentiality	RSM was advised and the documentary evidence supports that: <ul style="list-style-type: none"> ▪ Processes were established to maintain confidentiality and security of Project documents and the Scheme Agent responses; and ▪ Those involved in the process were required to sign a Scheme Agent Selection Project Undertaking, which included an acknowledgement of confidentiality. <p>Due to a lack of documentary evidence RSM has been unable to conclude whether all persons involved in the procurement activity completed a Selection Project Undertaking.</p>
Accountability and Transparency	RSM was advised and the documentary evidence supports that: <ul style="list-style-type: none"> • A Business Case was developed; • A Project Plan, Governance Framework, Probity Plan and Evaluation Plan document was prepared that established roles and responsibilities of team members and the evaluation process to be followed; • The evaluation assessment was carried out in accordance with the pre-defined and disclosed evaluation criteria; • Board approval of the recommendation to appoint EML as the single scheme agent, was made following consideration of a range of factors, including the outcome of the procurement activity and the proposed model recommendations made by McKinsey and Company; and • Procurement were not involved in the negotiations, with these being led by the Executive General Manager, Workers Insurance. <p>RSM notes the Business Case and Project Plan, Governance Framework, Probity Plan and Evaluation Plan were finalised after documentation had been issued to the Scheme Agents.</p>

Principle	Observation
	<p>The Selection Document was transparent and provided information regarding the purpose of the process, stating that:</p> <p><i>“the Nominal Insurer wishes to significantly alter the service delivery model currently provided by Scheme Agents under the 2015 Scheme Agent Deed (2015 Deed), thereby leading to the consolidation of services and cessation of some, or all, Scheme Agents.”</i></p>
<p>Dealing with conflicts of interest</p>	<p>RSM was advised and the documentary evidence supports that:</p> <ul style="list-style-type: none"> ▪ A process for consideration and disclosure of conflicts of interest was developed, with the external Probity Advisor reviewing declarations; and ▪ Those involved in the process were required to sign a Scheme Agent Selection Project Undertaking, which included a declaration of conflicts. ▪ The External Probity Advisor has stated in their report, dated 22 March 2017 that: <ul style="list-style-type: none"> <i>“Reviewed through the course of the Project Conflict of Interest Declarations as signed by all members of the Transaction Team, Advisory Committee Selection Committee and the external facilitator. Advised as to issues to consider them. Noted that no association was declaration that may be perceived to create an actual conflict of interest.”</i> <p>Due to a lack of documentary evidence RSM has been unable to conclude on the advice that was provided on positive declarations received</p>

6. DETAILED FINDINGS (CONT.)

6.5 Scope Item C: Procurement Deep Dive (Legacy) – IVE Group

6.5.1 Background

IVE Group provides marketing and communications services. icare engaged IVE Group to distribute various communications through multiple channels including by mail and email for the Nominal Insurer. For the period July 2015 to June 2020 the Nominal Insurer spent \$18,194,932.22 and icare itself spent \$2,757,812.51 on services under this contract.

This procurement was undertaken as part of the Nominal Insurer Single Platform project (“NISP”). Therefore, the procurement was conducted for the Nominal Insurer, not icare.

The procurement is structured under a Master Services Agreement with various statements of works.

Media coverage

On 7 September 2020, the Sydney Morning Herald published an article regarding icare's contracts with IVE Group. In summary the article stated that:

- IVE Group has links to the NSW Liberal Party in that the head of IVE Group is a former NSW Liberal Party president. IVE Group has donated almost \$100,000 to the NSW Liberal Party and \$55,500 in 2018 to the federal Liberal Party;
- An icare director is also an IVE Group director;
- IVE Group was awarded millions of dollars in contracts by icare without going to open tender;
- icare has spent more than \$18.3 million with IVE Group; and
- The NSW tendering website discloses contracts for about \$10,000,000.

Hansard

1645 – IVE GROUP

Shoebridge, David to the Minister for Finance and Small Business, Vice-President of the Executive Council representing the Treasurer.

Question asked on 6 July 2020 (session 57-1) and published in [Questions & Answers Paper No. 289](#)

1. *Was Gavin Bell the deputy chair of icare and also on the IVE Group board at the same time?*
 - a. *If so, when?*
 - b. *Did he receive just over \$100,000 a year in director fees from IVE Group while with icare?*
2. *From 2017-18 to 2018-19 did IVE Group has receive printing contract worth approximately \$9.8 million with icare?*
 - a. *If not this sum, then what was the sum?*
3. *Was any conflict notice placed in ICare records regarding IVE Group?*
 - a. *Did Gavin Bell lodge a conflict declaration?*

Answer received on 27 July 2020 and printed in [Questions & Answers Paper No. 305](#)

1.
 - a. *Mr Bell has been a member of the icare Board since 2015.*
 - b. *This is a matter for the relevant business and as such, icare does not hold this information. Mr Bell made relevant conflict disclosures to icare.*
2.
 - a. *Yes. The services provided by IVE Group Limited to icare and other relevant Authorities is managed under a 'legacy' contract that was transitioned to icare from Safety, Return to Work and Support under Section 3, Schedule 4, Part 2, Division 1 of the State Insurance and Care Governance Act 2015. This permitted icare, on its establishment, to transition current (at the time) contracts to icare and its relevant Authorities.*

6. DETAILED FINDINGS (CONT.)

6.5 Scope Item C: Procurement Deep Dive (Legacy) – IVE Group (Cont.)

6.5.1 Background (Cont.)

The contract with IVE Group Limited was maintained during icare's 'build' phase, which included the relocation of policy management and underwriting services from the managing Scheme agents to icare, where a significant increase in communications from icare was necessary. Transitioning these services in-house saved the Workers Compensation Nominal Insurer approximately \$110 million in Scheme agent remuneration in the 2017-18 financial year.

3. a. Refer to 1b.

RSM comment:

Hansard refers to a “legacy” contract transitioned to icare. RSM understand that the “legacy” contract was not used. Instead, icare developed its own contract with IVE Group. Refer below at “Fairness and Impartiality” for further details.

Chronology

Date	Activity
30 November 2015	Gavin Bell, a board director, notifies icare of an interest in IVE.
14 April 2016 to 27 April 2016	Email chain: <ul style="list-style-type: none"> • IVE Group/ BlueStar Group • IT Newcom (technology advisory, part of Minter Ellison) Document prepared by IVE for icare, based on discussions
14 December 2016	Master services agreement between icare on behalf of the nominal insurer and IVE Group, providing for statements of work as needed by icare. Price and service are to set out in the statements of work
14 December 2016	Statement of Work (“SoW:”) Customer Communications Management Release 1.1 Price \$564k for on-boarding, plus various charges for a time period (e.g. monthly) or volume of transactions
7 July 2017	Statement of Work (“SoW:”) Customer Communications Management Release 1.1
10 December 2018	SoW Claims processing R2.1B
16 January 2018	SoW R2.1 Claims Processing
26 November 2018	SoW Mail Handling
5 April 2019	SoW : PI Claims Project delivery
12 November 2020	Contract Award published on the NSW eTendering register

6.5.2 Observations

Law

Procurement

RSM was advised the IVE Group procurement was made utilising the Nominal Insurer exemption.

- s154A of the *Workers Compensation Act 1987* provides that “(4) For the avoidance of doubt, the Nominal Insurer is not a government agency for the purposes of Part 11 of the *Public Works and Procurement Act 1912*.”
- Part 11 of the *Public Workers and Procurement Act 1912* sets out the statutory provisions for the procurement of goods and services by government agencies (s 163 of the PWP Act). This part does not apply to the NI.

6. DETAILED FINDINGS (CONT.)

6.5 Scope Item C: Procurement Deep Dive (Legacy) – IVE Group (Cont.)

6.5.2 Observations (Cont.)

RSM would expect that some other procurement framework or policy would have been developed or applied, however RSM was advised that the NI exemption was understood, at officer level, to not require this.

Record-Keeping

RSM notes that section 3 of the State Records Act 1988 specifically excludes the Workers Compensation Nominal Insurer from the definition of public office. Accordingly, the requirements of that Act do not apply to the Nominal Insurer.

RSM found that there was very limited procurement processes and records for the IVE Group procurement. This appears to be in accordance with the law. RSM was advised that the NI exemption was understood, at officer level, to not require record-keeping.

Policy

RSM understands that the icare code of conduct in place at the time of this transaction had requirements regarding conflicts of interest and record-keeping.

A board director, Gavin Bell, first notified his interest in IVE by email to the Board Secretary on 30 November 2015. This was recorded in the Board Disclosure of Interest Register in February 2016. The Register states that “if a decision relating to IVE is required to be made at the Board, Mr Bell will not be present in the room or participate in decision-making. Gavin Bell completed a Conflict of Interest form signed on 4 July 2020.

At management level, RSM found no evidence of conflicts of interests being managed (refer “Conflict Management” below).

RSM requested icare to provide a range of documents to enable RSM to undertake each review. Many of the documents requested were not provided, which has limited RSMs ability to undertake this review.

RSM was advised that under icare’s philosophy of “commercial mind, social heart”, people were encouraged to reduce red tape. This was understood at officer level to minimise processes and record-keeping. RSM would expect to see as a minimum, documented evidence of procedures that demonstrate stewardship to funds owners and management accountability for its actions.

Probity

Probity Principle	Observation
Value for Money	<p>RSM was advised, and the documentary evidence supports that:</p> <ul style="list-style-type: none"> ▪ The total value of the procurement was not estimated at the time of commencing the direct negotiation. ▪ No procurement objectives (such as value for money), no probity principles supportive of value for money and no processes were established or considered. The approach appears to have been focused on putting in place a master services agreement for statements of works that would specify services and prices. ▪ There was no evidence of an initial or any subsequent consideration of value for money as distinct from costs. For example, RSM noted, for example, an email referring to an anticipated price increase for the initial statement of work, that would cause the budget to be exceeded and that this might be for referral to the Steering Committee. ▪ The first statement of work had an initial estimate of about \$200k. Over time, the statements of work amounted to a cost to the Nominal Insurer of about \$18.2M for the 5 years (this includes payments prior to establishing the master services agreement

Probity Principle	Observation
	<p>dated 14 December 2016). There is no evidence that there was any consideration or review of the whole of life cost over the period of the contract.</p> <ul style="list-style-type: none"> ▪ There were no processes or advice from specialists to advise on procurement objectives such as value for money. ▪ RSM has not seen any documents to evidence value for money as a consideration for the IVE procurement. <p>RSM considers that direct negotiation utilising the Nominal Insurer exemption for procurement has led to a lack of open competition and not delivered a demonstrable commercial outcome.</p>
<p>Fairness and Impartiality</p>	<p>RSM was advised and the documentary evidence supports that:</p> <ul style="list-style-type: none"> ▪ The IVE Group procurement was a direct negotiation under the NI procurement exemption; and ▪ There was no market testing, no evaluation plan and no evaluation. <p>Direct negotiation is a valid form of procurement. However, the following advice from the Independent Commission Against Corruption’s “Direct Negotiations: Guideline for Managing Risk, August 2018” is pertinent. (The ICAC also issued guidance on direct negotiations in 2006). Below are some excerpts:</p> <p><i>“direct negotiations should generally be avoided. However, there are situations where it may be impossible to test the market or to use a competitive process. In other cases, while a competitive process may be possible, it may be so impractical or expensive that direct negotiations are the most acceptable way to transact.”</i></p> <p><i>“the following ‘probity principles’ should govern decisions about direct negotiations:</i></p> <ul style="list-style-type: none"> ▪ <i>fairness</i> ▪ <i>impartiality</i> ▪ <i>accountability</i> ▪ <i>transparency</i> ▪ <i>value for money”</i> <p><i>“Obtaining value for money is regarded as a probity principle but it is also a sound commercial practice. By their nature, corrupt deals generally confer unearned or undeserved benefits on parties to the deal – usually to the financial detriment of the public sector. Therefore, to the extent that direct negotiations achieve value for money, corrupt conduct can be minimised.</i></p> <p><i>Naturally, value for money is not the same as least upfront cost. The whole-of-life costs and benefits of the transaction should be the agency’s primary consideration.”</i></p> <p><i>The closed nature of direct negotiations can create opportunities for dishonest and partial conduct and is more likely to lead to allegations and perceptions of corrupt conduct. Having to compete for a government contract, in a fair and transparent manner, is a significant obstacle for corrupt individuals. Direct negotiations are highly sought after and many of the investigations undertaken by the NSW Independent Commission Against Corruption (“the Commission”) involve attempts to avoid competition. The corruption risks associated with direct negotiations are significantly higher than those associated with open processes such as tendering and other forms of market testing. Direct negotiations can also be detrimental to the public interest; for example, by undermining the potential for government to realise the full value of public assets. However, direct negotiations are not, by themselves, corrupt. Where it is considered appropriate to engage in direct negotiations, it is critical that greater attention be paid to measures to mitigate the risk of corruption and ensure adequate levels of integrity.”</i></p> <p>RSM found no evidence of consideration by icare of testing the market or any case being made for or against direct negotiation with IVE Group.</p>

Probity Principle	Observation
	<p>Prior to the establishment of icare, IVE Group and Workcover (SRWS) had an agreement, dated 1 July 2015, under which warehouse management /print / brochure distribution services were provided. That agreement was specifically for WorkCover and was not a whole-of-government contract.</p> <p>Following the creation of icare in September 2015, the WorkCover agreement was transitioned to be used in icare. (State Insurance and Care Governance Act 2015, Schedule 4, Section 3 provides: On its abolition the assets, rights and liabilities of the WorkCover Authority ... to the extent they relate to its functions in acting for the Nominal Insurer--transferred to ICNSW (icare).)</p> <p>The master services agreement (between Insurance and Care NSW on behalf of the Workers Compensation Nominal Insurer and IVE Group Australia Pty Ltd - formerly Bluestar Group Australia Pty Ltd) and executed on 14 December 2016 was developed as a direct negotiation with the IVE Group and was not subject to a competitive market approach.</p> <p>RSM was not advised and saw no documentary evidence demonstrating that impartiality was an objective or principle of this procurement, or that the engagement of a probity advisor (internal or external of icare) was considered. There is some evidence of an understanding at icare that procurements made under the NI exemption did not require procurement and probity processes</p>
Confidentiality	<p>RSM was not advised of and saw no documentary evidence demonstrating that confidentiality was an objective or principle of this procurement.</p> <p>RSM found no evidence of Confidentiality Deeds having been completed and is unable to conclude on the adequacy of any security arrangements for the records.</p>
Accountability, Consistency and Transparency	<p>RSM found documentary evidence to suggest that the procurement was managed, at least initially, by Capgemini and ITNewcom (an IT consultancy). RSM found no evidence that icare personnel responsible and accountable for the NISP Project were engaged in the initial discussions with IVE Group.</p> <p>RSM saw no evidence of a clear and transparent process including evaluation and negotiations being conducted fairly. Sufficient records have not been maintained that allows for review and verification of the process.</p>
Dealing with conflicts of interest	<p>RSM found evidence of conflicts of interest being managed at Board level. However, at management level, RSM found no evidence of conflict of interest declarations, or consideration of conflicts of interest. RSM was advised that no declarations were made and were not required because the procurement was made under the NI exemption.</p>

6. DETAILED FINDINGS (CONT.)

6.6 Scope Item C: Procurement Deep Dive (Current) - Enabler Interactive

6.6.1 Background

Following consultation with services providers and the Australian Community Industry Alliance, icare's Sector Development, Care and Community ('SDCC') Business Unit identified the need for training to be delivered to support workers across three high-priority areas, to Professional Boundaries, Challenging Behaviour and Restrictive Practices.

Enabler Interactive is a provider of a simulation software platform for training and evaluating disability and aged care support workers.

Enabler were approached and subsequently engaged to deliver training services, for a contract term of 12 months, with a total contract value \$208,182 (excluding GST).

The procurement was structured as a Direct Negotiation, supported by the Senior ICT Category Manager.

Chronology

Date	Activity
14 August 2020	Proposal received from Enabler
14 September 2020	Agreement between icare and Enabler executed
9 November 2020	Contract Award published on the NSW eTendering register

6.6.2 Observations

Policy

The icare Procurement Policy, dated November 2018 and the Procurement Guidelines V3.0, dated 7 May 2020, were in place at the time of this procurement.

RSM requested icare to provide a range of documents to enable RSM to undertake the review. Many of the documents requested were not provided. In response to the request for these documents, icare responded such documents were "Not required - ICT Services Scheme, Limited tender, >\$250k". This was reaffirmed during discussions with icare.

RSM confirmed that the:

- NSW Government ICT Services Scheme rules allow for limited tendering to be performed¹⁵; and
- NSW Procurement Board allows an agency to directly engage a single supplier that has accepted the standard commercial framework up to a value of \$250,000 excluding GST for a single engagement¹⁶.

The icare Procurement Policy, dated November 2018, states that:

"Although the Nominal Insurer (NI) is not subject to certain procurement related obligations under the *Public Works and Procurement Act 1912*, this policy and its associated guidelines are applicable to all procurement activities within icare unless an exemption is approved by the relevant Group Leadership Team (GLT) member."

Section A.10 of the icare Procurement Guidelines provides guidance around the process to be applied when conducting a direct negotiation (sole sourcing) procurement:

¹⁵ ICT Services Scheme Rules, Section 14. Limited Tendering Permitted Under EPP Direction, <https://buy.nsw.gov.au/schemes/ict-services-scheme>

¹⁶ PBD-2019-01 Engagement of professional services suppliers, <https://arp.nsw.gov.au/pbd-2019-01-engagement-professional-services-suppliers>

6. DETAILED FINDINGS (CONT.)

6.7 Scope Item C: Procurement Deep Dive (Current) - Enabler Interactive

6.7.2 Observations (Cont.)

“Direct negotiation (also known as sole sourcing) is the direct arrangement with a single supplier to provide goods or services, without first having conducted a competitive process. Direct Negotiations are only permissible under the following conditions:

- a) *Direct negotiation with Small to Medium Enterprise’s (SME’s), Disability Enterprises and Aboriginal Suppliers up to \$250,000.*
- b) *When permissible under NSW Government Pre-qualification quotation requirements or buying from a mandated Whole-of-Government contract.*
- c) *For procurements with a value \$30,000 - \$680,000, approval to the direct engagement is required by the agency head and icare’s Chief Procurement Officer and must:*
 - i) *Comply to ICAC guidelines including Conflicts of Interest declaration*
 - ii) *Approved using the Direct Negotiation checklist “.*

RSM has not seen any documentation to indicate that these requirements have been met.

Probity

Probity Principle	Observation
Value for Money	RSM has not seen any documents to evidence value for money as a consideration for the Enabler procurement. RSM was advised icare had discussions with Enabler to lower the cost of services to a level that the business considered value for money. RSM was however, not provided with documentation to support this assertion.
Fairness and Impartiality	Direct Negotiation is a valid form of procurement. No justification was prepared to support selecting Enabler as the sole supplier. A market analysis document would normally be prepared that sets out a range of options and provides justification for the basis of the market engagement approach, in this case, direct sourcing.
Confidentiality	RSM was not advised and saw no documentary evidence demonstrating that confidentiality was an objective or principle of this procurement. RSM found no evidence of Confidentiality Deeds having been completed and is unable to conclude on the adequacy of any security arrangements for the records.
Accountability and Transparency	Section 6 of the procurement guidelines state that “Where the project is icare Procurement led, accountability for the management and delivery of the procurement activity rests largely with the icare Procurement team and vice versa. It is important to note that any business lead procurements must follow icare’s standard sourcing process including the use of approved procurement templates.” RSM found no evidence to indicate that: <ul style="list-style-type: none"> • An Alternate Procurement Request Form had been completed or approved by the CEO; or • The ICAC Direct Negotiations: Guidelines for Managing Risks were considered and complied with; or • Adequate documentation had been developed or retained to support the basis for selecting Enabler as the sole supplier. RSM was advised by the Senior ICT Category Manager and SDCC Business Unit that the procurement was a Limited Tender, not a Direct Negotiation. Therefore, they did not consider the requirements of a Direct Negotiation to be applicable.
Dealing with conflicts of interest	RSM found no evidence of conflict of interest declarations being completed or consideration of conflicts of interest declared. We therefore cannot conclude that conflict management was satisfactory.

6. DETAILED FINDINGS (CONT.)

6.8 Scope Item C: Procurement Deep Dive (Current) - PwC Consultancy

6.8.1 Background

One of the recommendations in the State Insurance Regulation Authority's ('SIRA') 21 Point Action Plan was that icare should undertake an independent review of culture, governance and accountability of the icare team and agents managing the Nominal Insurer.

The Chief Risk Officer worked with the Procurement Team to determine a shortlist four suppliers from the Performance & Management Scheme ('PMS'), with the capability to deliver the services:

- Deloitte
- Insight Consulting
- Nous Group
- PwC

After responses had been received, the icare Board asked for the scope of the review to be expanded to include all icare and NI's agents. The scope was amended, and a revised RFP was issued to all 4 suppliers. RSM was advised that with the review taking on a greater scope, Ms Christine Bartlett, a Board Member and Chair of the Governance Committee, was asked to be the Review Director and took on an oversight role.

PwC were recommended to deliver the Culture, Governance and Accountability review, for a contract term of 4 months, with a total contract value of \$810,087 (excluding GST). The Agreement between icare and PwC became effective on 19 October 2020.

Chronology

Date	Activity
3 July 2020	RFP released on the NSW eTendering portal
24 July 2020	Closing date for the RFP submissions
21 August 2020	Revised RFP Released
4 September 2020	Closing date for Revised RFP Responses
29 September 2020	Governance Committee Briefing - Recommendation
6 October 2020	PwC Proposal Amendment received
23 October 2020	PwC Revised pricing considerations
27 October 2020	Agreement between icare and PwC executed, with effect from 19 October 2020
20 December 2020	Contract Award published on the NSW eTendering register

6.8.2 Observations

Policy

icare Procurement Policy, dated November 2018 and the Procurement Guidelines V4.0, dated 19 August 2020, were in place at the time of this procurement. The minimum requirements for market engagement, based on respective spend level are summarised below:

6. DETAILED FINDINGS

6.8 Scope Item C: Procurement Deep Dive (Current) - PwC Consultancy

6.8.2 Observations (Cont.)

Requirement	Observation
Develop and finalise the Procurement Strategy. Section E.2 of the Procurement Guidelines states that "Procurement Strategies are required for expenditures above \$250,000".	RSM has confirmed no Procurement Strategy was developed. Documentary evidence confirms the selection and suitability of suppliers was considered by the Chef Risk Officer and the Procurement Team.
Develop an Evaluation Plan, that nominated Panel members consisting of the right business users and technical experts and reflects the key priorities and evaluation criteria.	RSM has confirmed that an Evaluation Plan was developed in accordance with these requirements.
Ensure the RFx documentation is clear, concise and comprehensive and that existing relevant documents and templates are used.	RSM has confirmed this requirement was met, albeit the RFP appeared to be an abridged version of the available templates.
Ensure code of conduct / confidentiality agreements are signed by Evaluation Panel members.	RSM has confirmed that Tender Evaluation Forms were completed by the Evaluation Panel members, prior to the RFP responses being released by the Procurement Team.
Evaluation Committee are to complete and sign an Evaluation Report and have approved by the appropriate icare Financial Delegate.	RSM has confirmed that a Governance Committee Briefing Paper was prepared. However, an Evaluation Report consistent with the procurement templates was not developed.

Probity

Probity Principle	Observation
Value for Money	RSM was advised and documentary evidence supports that value for money was considered during the process, with value for money considerations included in the Evaluation Plan.
Fairness and Impartiality	RSM confirmed that the PMS Scheme rules allow tenders to be issued to a limited number of suppliers (at a minimum 3). ¹⁷ RSM was advised and the documentary evidence supports that all Shortlisted Suppliers were: <ul style="list-style-type: none"> ▪ Invited to submit a response to the original RFP through the tender portal; and ▪ All Shortlisted Suppliers were invited to submit an updated proposal.
Confidentiality	RSM was advised and the documentary evidence supports that: <ul style="list-style-type: none"> ▪ Confidentiality was an objective of this procurement, with processes for completion of a Procurement Evaluation Committee Undertaking established and complied with. ▪ The RFP Document, Revised RFP and Addenda were issued to all Suppliers via the NSW eTendering portal. ▪ Original RFP submissions were received via the tender portal, excepting Deloitte who experienced issues lodging their response. ▪ Revised RFP submissions were received via a dedicated procurement email address.
Accountability and Transparency	RSM was advised and the documentary evidence supports that:

¹⁷ Performance and Management Services Scheme, Section 6, The Procurement List, <https://buy.nsw.gov.au/schemes/performance-and-management-services-scheme>

	<ul style="list-style-type: none"> ▪ The RFP Document and Revised RFP were transparent and outlined the scope requirements and process matters, including the evaluation criteria that would be applied. ▪ The evaluation criteria set out in the Evaluation Plan were applied consistently across the RFP Document, Revised RFP and reported on in the Evaluation Report. <p>Section 6 of the procurement guidelines state that “Where the project is icare Procurement led, accountability for the management and delivery of the procurement activity rests largely with the icare Procurement team and vice versa. It is important to note that any business lead procurements must follow icare’s standard sourcing process including the use of approved procurement templates.”</p> <p>RSM found no evidence that:</p> <ul style="list-style-type: none"> ▪ A formal Procurement Strategy had been developed; ▪ Adequate documentation had been developed or retained that supported the detailed analysis of the RFP responses, including the completed evaluation matrix or rationale to support allocation of the scores provided against each criterion; or ▪ A detailed Evaluation Report, in line with the procurement templates was developed.
<p>Dealing with conflicts of interest</p>	<p>RSM was advised and the documentary evidence confirms that:</p> <ul style="list-style-type: none"> ▪ dealing with conflicts of interest was an objective of this procurement, with processes for declaring of any conflicts established, by way of completion of the Procurement Evaluation Committee Undertaking; and ▪ No conflicts were declared.

6. DETAILED FINDINGS (CONT.)

6.9 Scope Item C: Procurement Deep Dive (Current) – Adactin / TCS

6.9.1 Background

Digital & Technology ('D&T') Testing Practice capability across all icare projects was supplemented with variable testing resources from Cognizant, Adactin and TCS. These vendors were engaged directly during the NISP Program, under the NI Procurement Exemption, with subsequent extension also approved under the NI exemption. The creation of the NISP Program aimed to centralise the claims data into a single technology insurance platform reducing the fees payable to the agents.

With the contracts for testing services all due to expire on 30 September 2020, D&T wanted to check the market for current rates and ensure that icare is achieving value for money outcomes across the existing contracts.

Supported by Procurement and an Internal Probity Advisor, the RFP was released as a Limited Tender to 10 suppliers. In addition to the three incumbent suppliers, additional suppliers were selected using the Gartner's Magic Quadrant of Leaders for Application Testing Services Worldwide reference paper.

Responses were received from 7 suppliers:

1. Adactin
2. CapGemini
3. Cognizant
4. Infosys
5. NTT
6. TCS
7. Wipro

icare awarded a Panel arrangement to the following suppliers, on a time and materials approach, managed through weekly project status updates:

1. Adactin; and
2. TCS.

Chronology

Date	Activity
3 September 2020	RFP released via the NSW eTendering portal
16 September 2020	Closing date for the RFP submissions
TBC	Agreement between icare and Adactin executed
7 October 2020	Agreement between icare and TCS executed
20 December 2020	Contract Award published on the NSW eTendering register

6.8.2 Observation

Policy

The icare Procurement Policy, dated November 2018 and the Procurement Guidelines V4.0, dated 19 August 2020, were in affect at the time of this procurement. The minimum requirements for market engagement, based on respective spend and identified risk level are summarised below:

Requirement	Observation
Develop and finalise the Procurement Strategy. Section E.2 of the Procurement Guidelines states that "Procurement Strategies are required for expenditures above \$250,000".	RSM has confirmed a Procurement Strategy was developed. However, the strategy is not consistent with the template for procurements over \$680,000.

Mandatory use of existing Whole of Government Contract or Prequalification Schemes.	RSM has not validated that all suppliers approached are on the ICT Services Scheme.
Engagement of a Probity Advisor/Probity Auditor for a high-risk market engagement	RSM confirmed that an internal Probity Advisor was engaged
Develop an Evaluation Plan, that nominated Panel members consisting of the right business users and technical experts and reflects the key priorities and evaluation criteria.	RSM has confirmed a Probity and Evaluation Plan was developed in accordance with these requirements.
Ensure the RFx documentation is clear, concise and comprehensive and that existing relevant documents and templates are used.	RSM has confirmed a clear, concise and comprehensive RFP was released to market.
Ensure code of conduct / confidentiality agreements are signed by Evaluation Panel members, prior to going through the process.	RSM has not found any evidence that a Code of Conduct / Confidentiality Agreements was signed by Evaluation Panel members.
Conflicts of Interest are identified and managed in accordance with the icare COI Policy.	RSM has confirmed that all Evaluation Panel members signed a Conflict of Interest Declaration Form. No conflicts were declared.
Evaluation Committee are to complete and sign an Evaluation Report, approved by the appropriate icare Financial Delegate.	RSM has confirmed a Briefing for the Chief Executive Officer was prepared and approved. However, an Evaluation Report consistent with the procurement templates was not developed and signed by the Evaluation Panel.
Gateway Review requirements for all High Risk / High Value Procurements over \$10million, including development of a NSW Government Business Case	RSM has been advised that a Gateway Review was not required, as the procurement was a Panel engagement and standing offer arrangement.

Probity

Probity Principle	Observation
Value for Money	RSM was advised and the documentary evidence supports that value for money was a key driver during the procurement, with value for money considerations incorporated in the Procurement Strategy, the Evaluation Plan and considered as part of the overall Evaluation activity.
Fairness and Impartiality	RSM was advised and the documentary evidence supports that Suppliers were treated in accordance with the principle of fairness and impartiality, with documentary evidence indicating that: <ul style="list-style-type: none"> The RFP was released and managed via the eTendering platform, which ensured that Suppliers were notified of the opportunity and any new information at the same time; and All Interested Parties received access to clarification responses that were non confidential in nature.
Confidentiality	RSM was advised and the documentary evidence supports that: <ul style="list-style-type: none"> RFP responses were received via the NSW eTendering portal. The Evaluation Panel established a secure file sharing space within Microsoft Teams, for the storage of confidential project information, including Supplier responses. RSM has not found evidence to indicate that a Code of Conduct / Confidentiality Agreements was signed by Evaluation Panel members.
Accountability and Transparency	RSM was advised and the documentary evidence supports that: <ul style="list-style-type: none"> A Procurement Strategy was developed;

	<ul style="list-style-type: none">▪ The need for internal probity support was identified and provided;▪ A Probity and Evaluation Plan was developed, that established the process to be followed and evaluation criteria to be applied;▪ The RFP Document was transparent and outlined the scope requirements and process matters, including evaluation criteria that would be applied.▪ The evaluation criteria were applied consistently across the RFP Document and Evaluation Plan;▪ Adequate documentation had been developed or retained that supported the detailed analysis of the RFP responses, including rationale to support allocation of the scores provided against each criterion.
Dealing with conflicts of interest	<p>RSM was advised and the documentary evidence supports that:</p> <ul style="list-style-type: none">▪ All Evaluation Panel members completed a Conflict of Interest Declaration; and▪ No conflicts were declared.

6. DETAILED FINDINGS (CONT.)

6.9 Scope Item C: Lessons Learnt

Application of the “NI procurement exemption”

Application of the “NI procurement exemption” (s154A of the Workers Compensation Act 1987 exempts the Workers Compensation Nominal Insurer from Part 11 of the Public Works and Procurement Act 1912, which sets out the statutory provisions for the procurement of goods and services by government agencies) should only be made with Board approval. (NB: the current policy does require Board approval for use of the NI procurement exemption) The Board paper should include a Business Case detailing the proposed procurement and probity processes and setting out why that process delivers a superior outcome than if procured under Part 11 of the Public Works and Procurement Act 1912.

Application of the “NI record-keeping exemption” (section 3 of the State Records Act 1988 specifically excludes the Workers Compensation Nominal Insurer from the definition of public office. Accordingly, the requirements of that Act do not apply to the Nominal Insurer should only be made with Board approval. The Board paper should detail the proposed approach to creating, managing and protecting all relevant procurement process records.

Any consideration of procurement to be undertaken as a direct negotiation should take into account and address the guidance set out in the Independent Commission Against Corruption’s “Direct Negotiations: Guideline for Managing Risk, August 2018” on a no exception basis.

Application of Legislation/Policy in the context of icare’s “Commercial Mind, Social Heart” philosophy

icare describes its philosophy as “Commercial Mind, Social heart”. The “Commercial” imprimatur appears to have been misinterpreted and incorrectly applied, at least by some people, to mean no red tape and manifesting as value for money not being adequately assessed and poor record-keeping.

While legislation/policy may provide some procurement process flexibility, given the significant size and complex nature of icare as an organisation and funds at risk, icare should be bound to a procurement and probity framework equal to or better than other agencies and have in place robust procurement processes. These processes should align with the existing procurement obligations of government agencies and require as a minimum, that:

- Procurement processes establish value for money as the primary objective. There should be documented appraisal and decision-making related to value for money throughout the procurement process, considering the whole-of-life costs and benefits of the transaction. All such decision-based documents should have evidence maintained to indicate who reviewed and approved the various outcomes and processes along the procurement journey;
- Conflicts of interest are declared, assessed, recorded, managed and monitored; and
- Full and accurate records of the procurement activity should be maintained, to, amongst other things, provide adequate justification and substantiation that the procurement was carried out in a fair and consistent manner and demonstrate that there is transparency of Project processes and decision making, to ensure the activity can withstand scrutiny and be defensible at any point in time.

Policy and training needs to be supported by systems that are commensurate with the risk profile of these processes to monitor and detect where employees are / are not following what is expected of them (for example value for money and record keeping, refer above).

Governance and Culture

It is vital to have an established process for monitoring all aspects of icare’s corporate health and for escalating issues of significant risk, so they can be resolved by the right people at the right time.

RSM recognises and acknowledges that icare is working towards organisational change. However, we have observed and recognise that deep seeded change can only work if it is part and parcel of the culture of the organisation. It needs to be actively upheld and implemented by every person in the organisation and supported by a commensurate and sustainable cultural shift program.

Strong leadership will be critical. Board sponsorship of the procurement and probity transformation program is required, with strong “C” level leadership to initiate change and to ensure it permeates throughout the organisation. The Executive Team must be responsible for modelling good governance behaviours and demonstrating their commitment to achieving Government objectives through accountable processes.

6. DETAILED FINDINGS (CONT.)

6.9 Scope Item C: Lessons Learnt (Cont.)

Governance and Culture (Cont.)

Consistent and regular messaging of the organisations governance approach and cultural expectations must be reinforced, with all employees encouraged to be active participants in icare's governance processes and take their governance responsibilities seriously.

To this end we recommend a Chief Procurement Officer be appointed to be responsible for the significant procurement process and cultural changes that are required and to ensure their successful and sustainable permeation throughout the organisation.

Probity and Procurement Training

A regular education program should be established demonstrate to staff how governance systems help improve performance and achieve goals and ensure they understand the expected behaviours and requirements that need to be adhered to, under icare's policies and procedures and applicable NSW Government policies and guidelines. This is to counter the often-held view that such policies and guidelines are inefficient, constraining and value eroding. Probity and Procurement education should include, but not be limited to:

- Educating all employees on the accepted behaviours and requirements under the icare Code of Conduct, Travel Policy, Gifts and Benefits Policy and Conflict of Interest Policy;
- Providing practical examples when travel / gifts / benefits can be accepted;
- The internal approval processes required prior to accepting any of the above; and
- Why, How and When conflicts/relationships need to be declared.

For employees with authority to carry out procurement across the Business Units, a more tailored program should be developed and delivered on an annual basis. The program should as a minimum, addresses the following topics:

- Probity requirements;
- When an internal or external probity advisor / probity auditor is required;
- Direction Negotiation (Sole Sourcing) requirements;
- Templates that must be completed for all procurements;
- When and how the procurement team should be engaged;
- Minimum records to be maintained across all procurement;
- Where procurement/contract related documentation should be stored;
- Any recent changes to the existing policies and procedures;
- When and how the NI exemptions (procurement and record-keeping) can be applied; and
- How things can go wrong, escalation of issues to the right people at the right time, and any lessons learnt.

6. DETAILED FINDINGS (CONT.)

6.10 Scope Item C: Other Information, Observations or Recommendations

6.10.1 Background

The Scope of the review includes:

“As with all external engagements, the advisors will also be asked to provide any other information, observations or recommendations that are outside their specific scope but that may be relevant to other parts of the Review Terms of Reference.”

The other parts of the Review Terms of Reference are:

- Operations, including claims management, the claims agent model and incentive structures, return to work performance, and the service provided to injured workers.
- Delivery of the recommendations of the 2019 Compliance and Performance Review of the Nominal Insurer (NI) (‘the Dore Review’)
- Realisation of benefits that it was established to achieve.
- Culture
- Governance
- Executive remuneration
- Board effectiveness and accountability
- Relationship with the State Insurance Regulatory Authority (SIRA)

6.10.2 Observations for consideration by other parts of the review

Culture and Governance

- RSM recognises and acknowledges that icare is working towards significant organisational change. However, change can only work if it is part and parcel of the culture of the organisation. It needs to be actively upheld and implemented by every person in the organisation.
- Strong leadership will be critical. Board sponsorship of the procurement and probity transformation program is required, with strong “C” level leadership to initiate change and to ensure it permeates through the organisation. The Executive Team must be responsible for modelling good governance behaviours and demonstrating their commitment to achieving Government objectives through accountable processes. With there being significant history and examples of transactions being conducted in a manner that aims to be pragmatic over transparent and defensible, we recognise this is likely to be a challenging shift for the organisation holistically.
- Consistent and regular messaging of the icare’s enhanced and updated governance approach and cultural expectations must be consistently reinforced, with all employees encouraged to be active participants in icare’s governance processes and take their governance responsibilities seriously, becoming change-agents in their own right.
- icare describes its philosophy as “Commercial Mind, Social heart”. The “Commercial” imprimatur appears to have been understood, at least by some people to mean no red tape and manifesting as value for money not being adequately assessed and poor record-keeping.
- Policy and training need to be supported by systems to monitor and detect where employees are / are not following what is expected of them (for example value for money and record keeping, refer above).
- It is vital to have an established process for monitoring all aspects of icare’s corporate health and for escalating issues of significant risk, that can be resolved by the right people at the right time.
- Significant effort is required to address the procurement and probity gaps identified. Appropriate resource requirements will need to be methodically determined and acquired to ensure the success of the transformation program. However, investment in the PIP and cultural shift will not in itself provide evidence of the program’s success. Program evaluation processes will need to be developed to define and measure the success of the program. This is critical to ensure shifts in the delivery of the program can be expediently made if inadequate traction is being achieved or process and compliance failures continue to occur despite best efforts.

6. DETAILED FINDINGS (CONT.)

6.10 Scope Item C: Other Information, Observations or Recommendations (Cont.)

6.10.2 Observations for consideration by other parts of the review (Cont.)

The materiality and complexity of procurements carried out across icare support appointment of a CPO, who can provide senior level accountability and expertise within the executive, to support and report to the CEO, CFO and the Board. This level of senior sponsorship would be helpful when you look towards the transformation process and organisational shift that needs to occur.

Board effectiveness and accountability

- Board sponsorship of the procurement and probity transformation programs is required, with strong “C” level leadership to initiate change and to ensure it permeates through the organisation. To support icare on this journey, Treasury should consider appointing an independent Director to the Board, with skills and experience in public administration, to ensure sponsorship, oversight and direction is provide from the top down.

APPENDIX A – INITIAL AND REVISED SCOPE

Revised Scope

A. Probity

- Internal policies to manage probity matters such as conflicts of interest, gifts, international travel and other benefits exist; or
- To the extent that such policies have been identified by icare as inadequate, that assessment activities have been conducted to ensure the policy(ies) have been (or will be) introduced or updated to ensure consistency with better practice, NSW Government standards and public expectations generally;
- Where policies have been recently introduced, that:
 - the ‘gap analysis’ and other supporting material for the change is robust and detailed so that the new or reformed policy is well-founded;
 - implementation and project plans are in place and of the commensurate quality to ensure the effective implementation and future operation of the policies and development of detailed supporting processes and procedures across icare; and
 - effective risk management plans are in place for the interim period, while the new policy(ies) is/are being implemented.
- Probity matters are properly identified, documented and escalated to the Chief Risk Officer, Risk Committee and Board (where required).

B. Procurement

- icare’s recently updated Procurement Policy is consistent with better practice, NSW Government standards and public expectations generally;
- The ‘gap analysis’ and other supporting material for the reform activities is robust and the new or reformed policy is well-founded;
- Implementation and project plans are in place and of the commensurate quality to ensure the effective future implementation and operation of the policies and development of detailed processes and procedures across icare; and
- Effective risk management plans are in place for the interim period, while the new policy(ies) is/are being implemented (which will include the review of a small sample of recent transactions).

C. Procurement deep dive

- In respect of a specified set of procurements, the scope of work will examine:
 - Compliance with law, policy and better practice in the procurement exercises; and
 - Lessons to be learned to achieve better practice in the future.
- The contracts in scope are:
 - Perceptive – Development of NPS Framework;
 - Guidewire – Nominal Insurer system platform;
 - CapGemini – Implementation of the Guidewire system;
 - EML – Nominal Insurer claims management; and
 - IVE Group – Nominal Insurer communications services.
- Across A-C above, the external advisor will be asked for findings and recommendations to form part of the overall Review Report.
- As with all external engagements, the advisors will also be asked to provide any other information, observations or recommendations that are outside their specific scope but that may be relevant to other parts of the Review Terms of Reference.

Initial Scope

The Service Provider will be required to determine whether:

- A. *Probity*
 - I. *Internal policies to manage probity matters such as conflicts of interest, gifts, international travel and other benefits exist and are consistent with corporate best practice, NSW Government standards and public expectations generally; and*
 - II. *Probity matters are properly identified, documented and escalated to the Chief Risk Officer, Risk Committee and Board (where required).*

- B. *Procurement*
 - I. *icare is complying with and correctly applying all policies, regulation or legislation which apply to it in relation to procurement of third-party services;*
 - II. *Internal policies exist to manage probity issues associated with the procurement of third-party services;*
 - III. *Internal policies are being properly applied by procurement and probity officers;*
 - IV. *Risks and probity matters are properly identified, managed and reported to the chief risk officer and risk committee (where required) and in accordance with internal and external policies;*
 - V. *There is adequate documentation to evidence that probity requirements have been met; and*
 - VI. *icare has effective processes to ensure procurement of third-party providers provides the government and workers of NSW with value for money.*

- C. *In addition to the above described review of procurement and probity matters generally, the Service Provider will be asked to carry out a deep-dive examination of specific procurements that have featured in the recent media and Parliamentary coverage.*

The initial scope focused on policies and procedures in place at icare as at November 2020. During our review we were identified that current policies were in the process of being revised by icare.

icare's Probity submission to the McDougall Review stated that "icare's Travel Policy, Gifts and Benefits Policy and Conflicts of Interest Policy are currently under review and revised versions will be considered by the Board for approval within the next six months".¹⁸ icare's Procurement Practices submission to the McDougall Review stated that icare "acknowledges its procurement practices have been inconsistent, and in some cases, deficient, leading to procurement decisions that were inconsistent with icare's obligations as a NSW Government agency".¹⁹

The scope of this review was changed to put more focus on icare remediation processes, refer above.

¹⁸ icare and Workers' Compensation Independent Review – Submission by Insurance and Care NSW, Terms of Reference 1(i): Management of Probity matters such as Gifts, Travel and Conflicts of Interest

¹⁹ icare and Workers' Compensation Independent Review – Submission by Insurance and Care NSW, Terms of Reference 1(h): Procurement Practices

APPENDIX B – REVIEW APPROACH

Review Phase	Work Performed
Planning	<ul style="list-style-type: none"> ▪ Met with The Hon. Robert McDougall QC and NSW Treasury representatives to gain an understanding of review background and requirements; ▪ Identified and requested relevant documentation; and ▪ Developed a detailed timing of activities.
Initial Scope, Review of Documentation	<ul style="list-style-type: none"> ▪ Initial meeting with icare and key personnel; ▪ Commenced review of documentation and discussions with icare personnel; ▪ Regular check-in meetings with icare were established to addresses any road-blocks and discuss any queries or key observations during the review; ▪ Regular check-in meetings with Treasury were established to raise observations and themes that were being observed; ▪ Identified that icare were in a period of transformation and were updating and approving policies in real-time during the course of our review; and ▪ Provided an updated detailed timing of activities.
Revised Scope, Review Documentation and Interviews with Relevant Personnel	<ul style="list-style-type: none"> ▪ Received approval for a revised scope to be adopted; ▪ Requested additional documentation in light of the revised scope; ▪ Identified recent transactions for deep-dive review; ▪ Continued to hold regular check-in meetings with icare; ▪ Continued to hold regular check-in meetings with Treasury; and ▪ Interviewed representatives from icare to understand²⁰: <ul style="list-style-type: none"> ○ The activities that were being carried out with respect to the gap analysis; ○ The processes and activities that were carried out and how policies and procedures were applied across the deep-dive transactions. <p>Refer to below for the interview schedule.</p>
Synthesize Information	Subsequent documentation was reviewed. Information reviewed was synthesized to identify gaps and develop observations and recommendations across the Scope Items.
Prepare Deliverables	<ul style="list-style-type: none"> ▪ High-level, preliminary findings were discussed with icare; ▪ Provided draft report to NSW Treasury for discussion and feedback; ▪ Any suitable updates were incorporated and included in the draft report; ▪ Provided draft report to the Hon Judge McDougall for discussion; ▪ Any suitable updates were incorporated to issue the final report.

²⁰ Due to confidentiality reasons, we are unable to share the exact details / contents of our discussions. For the purposes of this report, we have relied on the evidence of physical documentation to support our overall observations and recommendations.

APPENDIX B – REVIEW APPROACH (CONT.)

Interview schedule

Agency	Name and Title
Adactin / TCS	Interim Sourcing Manager General Manager Digital & Technology Head of Delivery Enablement
Capgemini / Guidewire	GE Digital & Tech GM Portfolio Optimisation
EML	Then GM, Business Improvement General Manager, Loss Prevention and Pricing General Manager, Portfolio Optimisation Manager Assurance & Quality Operations General Manager, Customer Engagement
Enabler Interactive	Manager Senior Category Manager Manager, Sector Development
IVE	General Manager, Portfolio Optimisation Head of General Goods Services, Procurement
PwC Consultancy	General Manager, Risk Management Head of General Goods Services, Procurement General Manager, Procurement

McDougall Review Team involved in support of this review and attendance at weekly meetings were:

Name and Title
Deputy General Counsel (interim)
General Manager, Risk Management
General Manager, Procurement
Chief Risk Officer
Program Director
General Manager, Business Improvement and Assurance
Project Manager, Review and Remediation Program

APPENDIX C – PROCUREMENT OBJECTIVES

Below is excerpt from the NSW Government Procurement objectives
<https://buy.nsw.gov.au/buyer-guidance/before-you-buy/procurement-objectives>

There are 5 key objectives which must guide every procurement decision you make.

The 5 procurement objectives are:

1. Value for money
In every procurement, your primary consideration should be achieving value for money.
2. Fair and open competition
Competition boosts innovation, increases efficiency and improves access to government procurement for all suppliers.
3. Easy to do business
We want to attract a broad supply base that includes small to medium, regional and Aboriginal businesses.
4. Innovation
Innovation helps you grow a wider ecosystem of suppliers and can stimulate the NSW economy.
<https://buy.nsw.gov.au/buyer-guidance/before-you-buy/procurement-objectives> Procurement can help create the jobs and develop the skills that will build and sustain a fairer NSW.

APPENDIX D – PROCUREMENT GUIDELINES, GOVERNANCE STRUCTURE

Below is excerpt from the icare Procurement Policy guideline

3. icare's Procurement Governance Structure

The NSW Procurement Board oversees the Government's procurement system, sets policy and ensuring compliance. The objectives of the NSW Procurement Board are outlined at their NSW Procurement Board website.

icare excepting the Nominal Insurer, is required by the *Public Works and Procurement Act 1912* (the Act) to follow the directions of the NSW Procurement Board. icare's Procurement Policy and these Guidelines are aligned to the Act and the NSW Government Procurement Framework.

All procurement activities within icare must be performed in accordance with its Procurement Policy and Guidelines unless the Nominal Insurer exemption is approved by the relevant Group Leadership Team member.

icare's procurement governance is underpinned by the icare Financial Delegations, as well as the icare Procurement Policy and Guideline, and setting of procurement governance commences with the icare Board.

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