

BOARD

Board size

An organisation's constitution generally prescribes the minimum and maximum number of directors that may be appointed to the organisation's board, as well as the minimum number of directors to constitute a quorum at board meetings.

For companies registered under the *Corporations Act 2001* (Cth) (Corporations Act):

- The following statutory minimums apply (refer s 201A):
 - Proprietary company – 1 director who must ordinarily reside in Australia;
 - Public company – 3 directors of which 2 must ordinarily reside in Australia;
- There is no prescribed maximum number of directors.

Most state/territory-based associations incorporation legislation does not prescribe minimum or maximum numbers for the association's management committee (or board).

The maximum and minimum number of board members for statutory authorities and other public sector organisations are usually prescribed in the legislation by which the authority or organisation is constituted.

There is no perfect size for any board and optimal board size is influenced by many factors including:

- Size and complexity of the organisation and its business/operations
- The diversity of the business lines of the organisation (geographic and functional)
- Cultural norms within the industry in which the organisation operates (for example, university boards tend to be larger)

The ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations*¹ provide the following practical guidance in relation to the size of a board:²

The board needs to be of sufficient size so that the requirements of the business can be met and changes to the composition of the board and its committees can be managed without undue disruption. However, it should not be so large as to be unwieldy.

1. ASX Corporate Governance Council, 2019, *Corporate Governance Principles and Recommendations*, 4th Edition, February, <https://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-fourth-edn.pdf>, (accessed 8 August 2019).

2. Ibid, p 12.

More generally an organisation's board should be of sufficient size so that:

- There are sufficient board members to:
 - discharge the board's workload;
 - ensure an overall adequacy of skills and competencies;
 - populate the board's sub committees (as applicable);
 - give a diversity of perspective to the board's deliberations; and
 - encourage engaged deliberations;
- There are not too many board members such that:
 - discussion is constrained and it is difficult for all board members to meaningfully engage in and contribute to deliberations;
 - ease of interpersonal relations at the board table is inhibited; and
 - board members struggle to know their fellow board members sufficiently to gain trust and confidence in them.

Good governance principles concerning board size and appointments

By way of 'rule of thumb' example, the following board sizes are not unusual for Australian corporations:

- Large ASX listed (8 to 12)
- Medium ASX listed (6 to 8)
- Small ASX listed (4 to 6)
- Large charities/NFP boards (8 to 12)
- Small charities/NFP boards (5 to 8)
- Public unlisted companies (4 to 8)
- Proprietary companies (1 to 4)
- Public sector boards (6 to 12)
- University boards (14 to 22)

The board should be structured desirably so that:

- there is an appropriate balance between executive and non-executive members;
- there is a majority of non-executive directors;
- there is at least a critical mass (say at least 2 for a smaller board) of independent directors; and
- the board meets the requirements of any diversity policy, particularly gender diversity.

Independence refers to directors who have true *independence of mind* in their deliberations as directors, and at least should not include those directors who may lack *structural independence* (that is, executives, substantial shareholders in the corporation or their representatives, and those representing corporations or businesses which are major purchasers or suppliers to the corporation), but without denigrating the value that such persons can contribute to a board.

The chair of the board desirably should satisfy the following criteria:

- non-executive; and
- not also the CEO.

However, it is acknowledged that in the case of a number of emerging proprietary and family corporations, the business founder often assumes a combined role until its governance framework matures. In the USA, it remains common practice for around 50 per cent of the listed corporations to combine the roles of chair and CEO.³

Increasingly good governance practices prefer the chair to also be *independent* even for family and proprietary corporations, although legacy practices for proprietary and/or family corporations may be more tolerant of the corporation's founder succeeding to the role of chair upon stepping down from the role of CEO.

3. Spencer Stuart, 2018, 2018 United States Spencer Stuart Board Index, p 5, https://www.spencerstuart.com/-/media/2018/october/ssbi_2018.pdf, (accessed 8 August 2019).

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