Introduction

The Ashurst Board Advisory ASX 200 Board Succession Planning Review (November 2020) contains an analysis of ASX 200 Director (both Executive and Non-Executive) numbers and tenure. The focus of our Review is on Non-Executive Director (NED) succession planning.

At Ashurst Board Advisory, we advocate proactive and ongoing Board Succession Planning to achieve “world’s best practice” in Board and Company performance. This Review outlines why Board Succession Planning is so important, and highlights the key elements in the approach and strategies adopted by leading Boards.

Our focus is on assisting our clients to establish a forward-looking approach to corporate governance, including Board Succession Planning. We work with our client Boards proactively and pragmatically, to address key challenges and opportunities, and to assist in driving a sustainable future for the benefit of all stakeholders.

Joshua Smith
Head of the Board Advisory Practice
Ashurst Consulting

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“Board Succession Planning should be proactive – that is, live and continuously evolving. It should be proactive against planned (and unplanned) future retirements, and involve a cycle of continual assessment, renewal and regeneration...”
All ASX 200 Boards should have and maintain an active Board Succession Plan.

Board size and composition is ultimately a matter unique to each Company and Board.

Ongoing and active Board Succession Planning is critical to Board and Company performance. It plays a key role in assisting a Board to discharge its obligations to shareholders and stakeholders.

The appointment of a Non-Executive Director to a Board should be the result of a rigorous and structured Board renewal process. That process should continuously assess the attributes, skills, experience, diversity and tenure necessary for a Board to govern effectively over the long term.

Board Succession Planning should be proactive – that is, live and continuously evolving. It is proactive against planned (and unplanned) future retirements, and involves a cycle of continual assessment, renewal and regeneration, as Company strategy, lifecycle and market conditions change over time.

Board Succession Planning is also inextricably linked to Board performance review and appraisal. Both processes should be “read” together and are key elements of good and proactive corporate governance (which should assist Board and Company performance over the longer term).

A balanced Board, possessing the right mix of skills and experience (including diversity as to gender, ethnicity, geography etc), will help ensure diverse and broad thought and insights – and ultimately improved business judgment.

Non-Executive Director tenure is an important factor which should be considered when assessing Board composition. Appropriate Board Succession Planning plays an important role in maintaining a balance between Board refresh and regeneration, and the retention of sound corporate memory.

Commentary in the ASX Corporate Governance Council’s Principles and Recommendations (4th ed) references tenure related to the assessment of Non-Executive Director independence. It notes “the mere fact that a Director has served on a Board for a substantial period does not mean that the Director has become too close to management or a substantial holder to be considered independent. However, the Board should regularly assess whether that might be the case for any Director who has served in that position for more than 10 years.”
10 APRA’s Prudential Standard CPS 510 Governance which applies to “APRA-regulated institution[s] in the deposit-taking, general insurance, life insurance and private health insurance industries,” provides that, “The Board of a locally incorporated APRA-regulated institution must have in place a formal policy on Board renewal. This policy must provide details of how the Board intends to renew itself, in order to ensure it remains open to new ideas and independent thinking, while retaining adequate expertise. The policy must give consideration to whether Directors have served on the Board for a period that could, or could reasonably be perceived to, materially interfere with their ability to act in the best interests of the institution. The policy must include the process for appointing and removing Directors, including the factors that will determine when an existing Director will be re-appointed.”

11 Increasingly, leading ASX listed Boards are establishing parameters around Non-Executive Director tenure. Where such parameters exist, a 9 or 10 year limit for Non-Executive Directors, and 12 year limit for the Chairman, are increasingly common, while retaining the discretion to extend tenure in unusual / special circumstances.

12 Evolving notions of good corporate governance suggest that a 9 year tenure (3 terms of 3 years) for a Non-Executive Director is optimal.
Ashurst Consulting’s analysis of ASX 200 Director numbers and tenure highlights that for Non-Executive Directors on ASX 200 Boards:

- 36.5% are in year 1 to 3 of tenure.
- 27.2% are in year 4 to 6 of tenure.
- 18.0% are in year 7 to 9 of tenure.
- 18.3% of ASX 200 are in year 10+ of tenure.

Adopting a “3 x 3 year” (that is, 3 consecutive terms of 3 years) tenure approach, about one third (33%) of the Non-Executive Director population should sit within each of the 3 tenure brackets (that is, year 1 to 3, year 4 to 6, and year 7 to 9).

Further analysis of ASX 200 Non-Executive Directors tenured at more than 12 years indicates:

- 9.5% have a tenure of greater than 12 years.
- 50.0% (118 NEDs) of those who have served more than 9 years have a tenure of greater than 12 years.
- 31.8% (75 NEDs) of those who have served more than 9 years have a tenure greater than 15 years.

The figures arising from Ashurst’s ASX 200 Board Succession Planning Review indicate that there should be a more even spread across the tenure groupings than is actually the case. Proactive Board Succession Planning has a key role to play here.

It is important to note that while Non-Executive Directors may begin to lose their impact and potentially, their independence, after having served 9 years on a Board, this is not always the case and accordingly there is no “hard and fast” rule. Clearly, a Board must have regard to various factors when determining its position in relation to Non-Executive Director tenure / re-election beyond 9 years (noting that re-election will then be for a further 3 years).
HOW DO “WORLD CLASS” BOARDS PERFORM?

What does good look like?

The following section outlines the four key elements Ashurst Consulting’s Board Advisory Practice recommends as a guide to achieving “best practice” Board Succession Planning.
ONE

ADOPT A PROACTIVE SUCCESSION PLAN

- Establish an active Board Succession Plan. The succession planning process is typically led by the Board nominations committee (usually overseen by the Chair of the committee / Board). Nevertheless, there should be open dialogue about Board Succession Planning at board meetings, and the full Board should be across the detail.
- A Board renewal and Director appointment plan for the coming 12 to 24 months should be developed.
- The Plan should identify who retires and when, together with what skill set(s) the Board should seek to add and when.
- This Plan should be used as a continuously evolving document by the Board for review at least every 6 months.
- There should also be regular review (every 4 to 6 months) of external / available Non-Executive Director talent against planned (and unplanned) retirements.
  - The above is particularly important in the case of key Board leadership roles (Chair, and Chair of each Board committee), having regard to unexpected occurrences / events.
  - Best practice suggests that World Class Boards engage an external consulting firm to provide the Board with a list of available and likely available Non-Executive Director talent against agreed criteria every 6 months.
  - Optimal Board performance is of interest to investors and all stakeholders, and there are increasing expectations about the importance of succession planning and communication with stakeholders.
  - An external consultant should be engaged to assist with ongoing planning and external mapping.
  - Ashurst Board Advisory is focused on assisting its clients to establish a proactive succession planning process. We work to address any challenges our clients might be presented with proactively and pragmatically, to assist in driving a sustainable future for the benefit of all stakeholders.

TWO

ASSESS & ANALYSE BOARD COMPOSITION

- A skills matrix is a useful tool that allows Boards to map the skills and competencies relevant to the organisation / Board.
• This can then be assessed against current Board composition, to develop an overall perspective of the Board, identifying any skills gaps to then be addressed in the Board Succession Plan. Further, it can be used to understand skills needs in the context of planned Director retirements.

• The matrix is a “living” document, which should be updated as required. As the organisation evolves and as Company strategy, lifecycle and market conditions change, the needs of a Board will also change. Evolution is essential to ensure the board has the right mix of people, knowledge, skills and experience necessary for optimal performance both now, and into the future.

• A diverse Board also reduces the likelihood of “group think”, and encourages fresh thoughts, ideas and insights.

 DEFINE NON-EXECUTIVE DIRECTOR TENURE

• A proactive and prudent Board plans ahead.

• Boards should chart the tenure of each Non-Executive Director and the expiry date of their current term.

• Evolving notions of good corporate governance suggest that a maximum 9 year tenure (3 x 3 year terms) for a Non-Executive Director is optimal. Beyond that time, there is a perception that Non-Executive Directors may begin to lose their impact and potentially, their independence.

• Non-Executive Director re-election also potentially presents the opportunity for Board renewal – the hiring of a new Non-Executive Director, rather than the re-election of an incumbent. In some cases, refreshment of Non-Executive Director talent may be preferable for optimal Board performance, possibly in response to changing Company strategy or other market circumstances. Irrespective of the reason, it presents an opportunity to reassess as against current and future skill and experience needs.

• Regularly tracking Non-Executive Director tenure and re-election may help to avoid loss of “collective corporate memory”, which may occur if several or all Non-Executive Directors retire over a short timeframe.

 UNDERTAKE REGULAR BOARD & DIRECTOR PERFORMANCE REVIEWS

• Regular assessment of both Board and individual Director performance (including Executive Directors) is critical to identify and address areas, where improvements can be made for the benefit of the Company and its Board.
ASX 200 DIRECTOR TENURE

KEY INSIGHTS

- 1,292 are Non-Executive Directors (84.7%), and 233 are Executive Directors (15.3%).
- ASX 200 Boards have an average of 7.6 Directors per Board – 6.5 Non-Executive Directors and 1.1 Executive Directors.
- 36.5% of ASX 200 Non-Executive Directors are in year 1 to 3 of tenure.
- 27.2% of ASX 200 Non-Executive Directors are in year 4 to 6 of tenure.
- 18% of ASX 200 Non-Executive Directors are in year 7 to 9 of tenure.
- 18.3% of ASX 200 Non-Executive Directors are in year 10+ of tenure.
- 6 ASX 200 Companies appointed all of their Directors in the past 3 years. 4 recently listed on the ASX.
- 3 ASX 200 Boards appointed all but one of their Directors (in each case, the Chair) in the past 3 years.
- 1 ASX 200 Board has all but 1 Director in year 10+ of tenure.
- Further analysis of ASX 200 Non-Executive Directors in year 12+ of tenure shows that:
  - 9.5% have a tenure of greater than 12 years.
  - 50% (118 NEDs) of those who have served more than 9 years, have a tenure of greater than 12 years.
  - 31.8% (75 NEDs) of those who have served more than 9 years, have a tenure greater than 15 years.
- Statistics include 8 alternate Non-Executive Directors.
“As the majority of working Australians are directly or indirectly invested (through their superannuation funds) in ASX 200 Companies, it is critical that the Boards of Australia’s leading listed Companies embrace proactive corporate governance practices. Our aim is to help build a sustainable future for these Companies for the benefit of all stakeholders.”

JOSHUA SMITH, HEAD OF THE BOARD ADVISORY PRACTICE, ASHURST CONSULTING

ABOUT THIS REVIEW
Data is current as at 23 July 2020. The tenure groupings outlined in this document have been developed with data obtained at that date.