**Director tenure in the Governance Framework for sport and recreation in New Zealand**

As organisations begin the Governance Mark process we are seeing a number of constitutions and trust deeds without maximum tenure for directors. This is a Foundation (mandatory) requirement of the Framework. Considerable feedback and discussion has led us to pause and reconsider the requirement which in some cases may prevent an organisation from gaining the Mark.  
We have considered good practice here and offshore. We have also sought feedback from the two Framework panels and our own group of governance consultants.

**Good practice**

The **Institute of Directors in New Zealand** in its Four Pillars best practice guide does not suggest any maximum term. It does however indicate a term of six years for non-executive directors. Service beyond that it suggests needs to be in a context of regular performance assessment.

The **Harvard Law School Forum on Corporate Governance** has this view;

*Appropriate board refreshment and director succession plans, accompanied by robust annual director evaluations, are the best means for public companies to ensure that board members are independent, engaged and productive and that they have the relevant experience and expertise to assist the company as it executes on its strategy.*

Simon Wong of the London-based investment firm Governance for Owners; writing for **McKinsey** takes a different view.

*Lastly, boards should put in place term limits for directors and CEOs, with some flexibility on the exact timing of exit, to ensure that new perspectives come into the boardroom and that boards remain sufficiently detached from management.*

Both the Australian Sport Commission and Sport England in their mandatory governance codes now specify limits to tenure, ten and nine years respectively. Both funders have indicated a grace period of a few years to comply, then there will be investment implications.

**Articles**

A couple of pieces that indicate a solid period of service is good but around the nine-year mark contribution drifts off. [Effective Governance](http://www.google.co.nz/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEwiKmquLuN7QAhWMkpQKHWs-AIYQFggqMAI&url=http%3A%2F%2Fwww.effectivegovernance.com.au%2Fwp-content%2Fuploads%2F2014%2F07%2FDirector-Tenure-Paper.pdf&usg=AFQjCNFe2r75tbRCZlveJijW1wA-tWuWBA&bvm=bv.139782543,d.dGc) and [Chief Executive](http://chiefexecutive.net/impact-board-tenure-company-performance/)

**Feedback from New Zealand**

*We have included anonymised verbatim feedback from our panels and consultants. This accurately reflects the range of opinions and presents both sides of the argument.*

I am strongly in favour of retaining a maximum term, ten years, in ordinary circumstances.

For not for profits and sports organisations, there are a lot of committed board volunteers that do not always see the need for board renewal and change. Unfortunately, this can lead to stagnation of views and direction and can be very off-putting for new candidates.

My view is very much along the lines of a fixed tenure of six years (2 terms of 3 years) however under exceptional circumstances extending this by a further one or two years.

A key requirement of effective governance is to ensure succession in a timely manner occurs, with new blood and fresh thinking coming through. I do not subscribe to the view that there is no one suitable to fill a vacancy, in fact you could argue a board that has not been refreshed for some time maybe a negative in the eyes of a potential candidate, i.e " old boys network "

In fast evolving environments a term of close to a decade will test most individual’s ability to remain ‘contemporary’

There should be a flexibility to acknowledge a board that has a good performance assessment regime and appointments process, rather than sticking to a one size fits all.

So my view is that limiting tenure is only one tool to ensuring that non performing long term members are eased out, that the board has a fresh outlook through new members and that there are checks and balances in place to prevent potential abuses.

Maximum tenure of 9 or 10 years would be my pick, then a compulsory stand-down period before being eligible for reappointment.

There are creative ways in which the board can continue to benefit from the input of the ‘indispensables’ without them being on the board.

In regard to maximum tenure. I think this is a provision that needs to stay. I am concerned with organisations I work with where very long standing members can at times become domineering and “I know best because of my history”. I think it works well where a long serving member is required to step down and at a later date may get re-elected / appointed. I have met with such people who commented that it was good in hindsight to have a break, see things from the outside and become involved again where newer members were contributing to the culture and direction of the organisation.

I can see the argument for retaining engaged directors who have surpassed a maximum tenure period, but there is the ability for boards to co-opt, so that experience can be retained for a project/period/ issue so I still tend to be on the side of a maximum tenure, set at an appropriate term for the organisation.

People just need to take on board the principle of limited tenures and then it will quickly become normal. It is the transition that is the tricky part.

**Should there be exceptions to the rule?**

The circumstances would need to be extraordinary where succession planning has failed to produce candidates with the requisite skills needed by a board, then an extension of tenure for say another year could be contemplated to ensure the board can function

There needs to be;

* A compelling argument for exemption; and
* A systematic approach to succession planning that shows a genuine intent with respect to regular board refreshment; and
* A rigorous independently facilitated board and peer evaluation process.

I feel that a board with no fixed tenure may be able to manage that situation with a robust appraisal process but it must be robust, transparent and **conducted by outside entities.**

I strongly have the view that tenures should be limited. No-one is so good that they are irreplaceable but I could see that there could be an occasion for a one term (or part of) where a board member is critical for completing a key initiative/project/strategic implementation. Maybe a case for a short-term secondment to the Board?

**Our conclusion**

Tenure is not an end in itself but intended to ensure directors remain engaged, contributing and contemporary. There are arguments that this can be achieved in other ways and they are valid. Primarily this involves individual director performance assessment. Very few sector organisations embrace this on a regular basis. Therefore, we will **retain fixed tenure as a Foundation element** of the Framework. We will consider an exception in extraordinary circumstances if the organisation can demonstrate;

* Systematic and robust succession planning.
* Regular performance assessment of the board (as a whole) and individual directors.
* These assessments are conducted by an independent third party and been in place for some years.

Organisations who decide it is timely to adjust their constitution or deed and begin a transition to fixed tenure will also meet the requirement.

There are ways, as suggested, to retain the wisdom of long serving directors without them being on the board.

*Our thanks to the many people who have contributed to this discussion at all points. All frameworks need to be open to discussion and able to change over time and we welcome feedback on any issue.*

February 2017