

Non-Government Schools Not-For-Profit Good Governance Principle 3 – Board structure and suitability of board members

Good governance arrangements ensure school proprietors and boards¹ manage their affairs with suitable oversight and accountability, and are critical for meeting not-for-profit (NFP) obligations under section 83C of the *Education Act 1990 (NSW)* (the Act).

To help schools develop and maintain good governance practices, the Non-Government Schools Not-for-Profit Advisory Committee has developed a set of [Guiding Principles for Good Governance](#).

Good Governance Principle 3: Board structure and suitability of board members states that:

'Boards should be of an appropriate size and have a suitable mix of qualifications, skills and experience to effectively govern a non-government school. Board members should be of good character and must meet the fit and proper requirement as a 'responsible person' under NSW and Commonwealth legislation. Where practicable, the role of the chair should be independent and separate from that of the role of the Principal/CEO of the school.'

Effective board structure and member composition supports boards to make sound decisions, manage risk and meet their legal obligations, including the requirement to operate NFP. The key elements of this principle are:

- Board composition (mix of skills & experience).
- Board independence (school executive and related entities).

Board composition

School boards should manage their composition to include a diverse mix of skills/capabilities, experience and knowledge. Management of composition includes:

- determining skills required
- [assessing capabilities of board members](#)
- identifying gaps in capabilities and encouraging professional development
- recruiting on a skills/capabilities basis
- managing board size
- meeting character requirements.

Determining skills required

This refers to which skills/capabilities the board should look for in individual board members and how these capabilities combine to create an effective school board.

Assessing the right mix of skills requires careful consideration but does not need to be complex. An assessment should include asking:

- What capabilities are required for

¹ 'Proprietors and Boards' refers to all members of the governing body of the school sometimes also referred to as 'directors'. In these documents the governing body is referred to as the 'school board' or 'board members'.

the board to undertake its current responsibilities?

- What capabilities are required over the next 3 – 5 years to effectively drive the strategic priorities of the school?

Core activities of the school board include (but are not limited to) driving the business and financial operations of the school, ensuring all legal and regulatory obligations are met and overseeing risk management activities. Therefore skills/capabilities in the areas of financial management, legal, risk management, education and governance are important for school boards.

Assessing capabilities

It is good practice for boards to create and maintain a board skills matrix to assess current and potential members against established criteria. This can also help the board identify gaps in the boards' skills/capabilities. Resources are available on how to create a skills matrix including guides from the Australian Institute of Company Directors ([AICD](#)), Australian Securities Exchange ([ASX](#)) and [governance professionals](#).

Professional development

Boards should initially consider whether gaps in skills/capabilities can be addressed through professional development of current members.

Until a board has an adequate mix of skills, experience and qualifications, they should seek independent external advice on relevant matters to ensure sound decision making.

Many organisations offer professional development tailored to the non-government school and NFP environment. A minimum number of hours of governance professional development for responsible persons is a NSW Education Standards Authority (NESA) requirement for non-government school registration. Details of requirements and approved training

providers are on the [NESA website](#).

Recruiting new members

Recruiting new members with the required skills may be considered where boards cannot address capabilities/skill gaps through professional development. School boards should establish a clear process for appointing new board members, including eligibility requirements.

Appointing board members from a variety of backgrounds should be considered to promote diversity of thought in the boardroom and assisting with improvements in the strategic decision making and problem-solving capabilities of the board.

Board appointments should be made according to skill/capabilities, experience, and qualification requirements. Advertisements for new board members should list the skills/capabilities, experience and qualification requirements for the role. Other skills/capabilities can be listed as preferred but not essential.

Boards should follow open and transparent recruitment practices. There are a number of ways schools can source potential candidates, for example, advertising on online job boards, via the school newsletters, via other local community organisation networks or through current board member recommendations. Note that recommendations from current board members must be open and transparent; candidates must meet role requirements and participate in an interview process. Details of recommendations should be appropriately documented in board minutes.

Board size

Boards should be an appropriate size. The [ASX Corporate Governance Council's Corporate Governance Principles and Recommendations](#) states that a "board should be of sufficient size so that

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.”

The AICD also provides a detailed [guide](#) to determining the correct board size for organisations.

Character requirements

School boards must ensure that members are of good character. This includes meeting the fit and proper/responsible person requirements of the NSW Department of Education, Department of Education Skills and Employment ([DESE](#)), [NESA](#) and the Australian Charities and Not-for-profits Commission ([ACNC](#)).

Fit and proper/responsible person criteria includes having appropriate experience and expertise. Individuals’ criminal history, financial management history and debts are also considered. Before appointing new members, due diligence should be undertaken to confirm that the person is a fit and proper person including:

- [police checks](#)
- requiring applicants to complete a fit and proper person declaration
- requiring applicants to complete a form detailing their skills, experience and motivations for joining the board.

NESA requires that fit and proper declarations are to be made by all board members on an annual basis.

Board independence

Board members must ensure that board decisions are in the best interest of the school and students to ensure compliance with NFP legal obligations. Board independence is a key way to reduce the risk of making decisions that can lead to for-profit activity.

Board independence has a number of benefits including:

- encouraging objective discussions and decision making
- promotion of a broader range of ideas
- less opportunity for conflicts of interest and related entity transactions.

Further information on acting in the best interest of the school can be found in **Good Governance Principle 1: Act ethically, responsibly and in the best interests of the school.**

It is best practice to formalise the independent role and the process that ensures independent decision making of the board in the school’s governing documents (school constitution and other relevant policies and processes).

A majority of independent board members should be maintained to promote compliant decision making and the Chair should be independent (where possible).

For NFP purposes, an independent board member can be described as “a non-executive director who is not a member of management and who is free from any business or other relationship that could materially interfere (or could reasonably be perceived to materially interfere) with the independent exercise of that director’s judgment.”²

Board member independence of roles within the school is recommended, as dual roles (that is, members that are also teachers, principals or other school executives) have the potential to cause conflicts of interest in decision making. Boards are responsible for the strategic oversight of the school whereas the principal and school executive oversee day to day operations. Members of the school executive typically report to and seek advice from the school board. If they are also a board member, they are then put in a position to manage themselves, which can cause conflict.

Where it is not possible for a board member to be independent, they should ensure that their decisions are made in

² Per the AICD definition of an independent director.

the best interest of the school in line with their board responsibilities and adhering to conflict of interest policies.

Case studies

Case study A – Effective management of board structure and suitability of candidates

Hillside School is a small regional school. The proprietor of Hillside School is Greengrass Ltd. One board member is due to resign in the coming months and a new member will be appointed to replace them.

The Board has established a recruitment panel and advertised the role openly on online job boards (Seek and AICD) and in the local newspaper. The role description outlining the required skills and experience is part of the advertisement.

Prior to advertising, the recruitment panel reviewed the board skills matrix and assessed the areas of skills and experience that will be required. The resigning member contributes significant financial management knowledge and experience to the Board and has been identified as a critical capability in the new member. The Board has also decided to send 3 current members for additional financial management training to boost the skills of the Board overall.

When reviewing the applications, the recruitment panel assess each candidate against the skill/capability requirements. Two applicants have the required skills and experience and are interviewed. After interviews, the panel selects a preferred applicant and prepares a report on the recruitment process with recommendations for approval of the Board. The Board votes to approve the appointment. The new member will start one month before the current board member resigns to allow for an organised handover and transfer of knowledge. The new member is provided with a letter of appointment that clearly outlines their role, responsibilities and expectations.

The Board effectively managed their board structure and suitability of board members by:

- assessing the skills required
- recruiting an experienced member to maintain the balance of skills and experience
- training additional board members to ensure the board is not overly reliant on one person's knowledge and to broaden the board's capacity.

Case study B – Ineffective processes to ensure independence of the board

The proprietor of Little Green Fingers School is Leaf Ltd. The school principal is also the Chair of Leaf Ltd board. The Board occasionally needs to make decisions that conflict with the interests of the principal's role and this can cause real and perceived conflicts.

The principal's role concerns educational leadership, rather than the business operations of the school, which are looked after by the school's business manager.

The principal and school's business manager recently completed an annual review of staff salaries and prepared a meeting paper for the Board with the new contracts in advance of the meeting. The principal's salary was increased significantly and his contract terms included:

- 10 years with no review
- full payout if terminated in advance
- annual wage increases of 10% for the principal but not for any other staff.

No evidence or rationale was provided for the new salary levels and terms.

During the meeting, the Board is given an opportunity to raise objections to the terms in the contracts and vote whether to approve them. Two board members raise concerns over the pay increase for the principal, as well as the terms, however, this is not recorded in the minutes.

The Board does not have any measures in place to manage the conflict between the two roles held by the principal. Related entity and conflict of interest declarations are not made during board meeting and the principal/Chair was not asked to leave the room or abstain from voting on the matter. The principal is therefore able to vote to approve the terms of his own contract.

The Board **did not** effectively manage the independence of its role as it:

- failed to ensure board members were independent from other roles in the school
- did not put processes in place to effectively manage the conflicting interest of the principal as a board member.

Failing to manage their board structure and suitability of board members meant the school also faced compliance action for breaching their NFP obligations, as the terms of the principals' contract were above reasonable market value.

Case study C – Ineffective processes to manage board structure and ensure suitability of independent board members

Care Ltd runs Moonrise Disability Services (Moonrise) which has recently established Rise and Shine School, a school for students with disabilities. Care Ltd is the proprietor of Rise and Shine School and has one board that oversees both businesses (see diagram below):



The Board decided to use school funds to construct a new building with classrooms and a program centre. The program centre is used for students' extra-curricular programs and for Moonrise's weekend program for its service users. There is no agreement in place for Moonrise to use the school's facility and they do not pay any rent to Rise and Shine School.

Due to the lack of independence in the Board (board members oversee both Rise and Shine School and Moonrise), decisions were made that were not in the best interest of Rise and Shine School but that provided advantageous circumstances for Moonrise to deliver services.

The Board **did not** effectively manage their board structure and suitability of board members as they failed to ensure board members were independent.

Failing to manage the suitability of their board members meant the school also faced compliance action for breaching its NFP obligations in relation to the program centre being used by Moonrise at no charge.

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