



Connection Pathways by Cara Shields

DEEP DIVE INTO ASX 200 AGMs IN 2021

February 2022

KING & WOOD
MALLESONS
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CONTENTS

INTRODUCTION

2021 AGMs saw two of the biggest global stories play out on the corporate stage – climate change and COVID. How were listed entities addressing climate change and broader ESG issues? Those answers were framed of course by year two of the COVID pandemic, imposing continued restrictions on gatherings, and challenges for the business agendas under discussion.

In our view, listed entities and Boards generally continued to do a great job responding to the challenges this posed for the AGMs, despite some repeated technical questioning (see **Appendix A**) and the [megaphone media](#) tactics employed by proxy advisers.

Based on our analysis, in 2021, there were no significant changes to voting outcomes from those in 2020. That suggests that shareholders have either continued to believe that ASX listed entities generally navigated the challenges in 2021 well or shareholders again were not prepared to ‘rock the boat’ during another pandemic affected year.

Our key observations of the trends in calendar year 2021 are set out in this report. By way of comparison, our report for ASX200 AGMs in calendar year 2020 can be accessed [here](#).

Vast majority of AGMs again fully virtual in 2021

A number of proposed amendments to allow virtual AGMs **withdrawn** in the face of **proxy opposition**

Marginally more first and second strikes on remuneration reports

Climate change accounted for **majority** of shareholder-requisitioned resolutions

Board-endorsed candidates elected/re-elected with **high support**

All termination benefits resolutions passed with high support

KEY OBSERVATIONS FOR 2021



Virtual AGMs continue to be the preferred format

Once again, the rules in 2021 governing how AGMs could be held were ‘messy’. A series of piecemeal ASIC and legislative measures applied at different times throughout the year to facilitate virtual meetings.

Those measures were relied upon by the majority of companies, with 79% of ASX200 entities opting for a fully virtual AGM in 2021.

This no doubt reflects the various government restrictions prohibiting physical attendance in various states during parts of the year, as well as legitimate concerns not to contribute to ‘spreader’ events.

Fortunately the path forward is looking clearer with permanent changes in the *Corporations Amendment (Meetings and Documents) Bill 2021 (Bill)* passed by Parliament on 10

	2021	2020
Fully virtual meeting	79%	77%
Hybrid meeting	18%	19%
Physical meeting	2%	2%
Other ¹	1%	2%

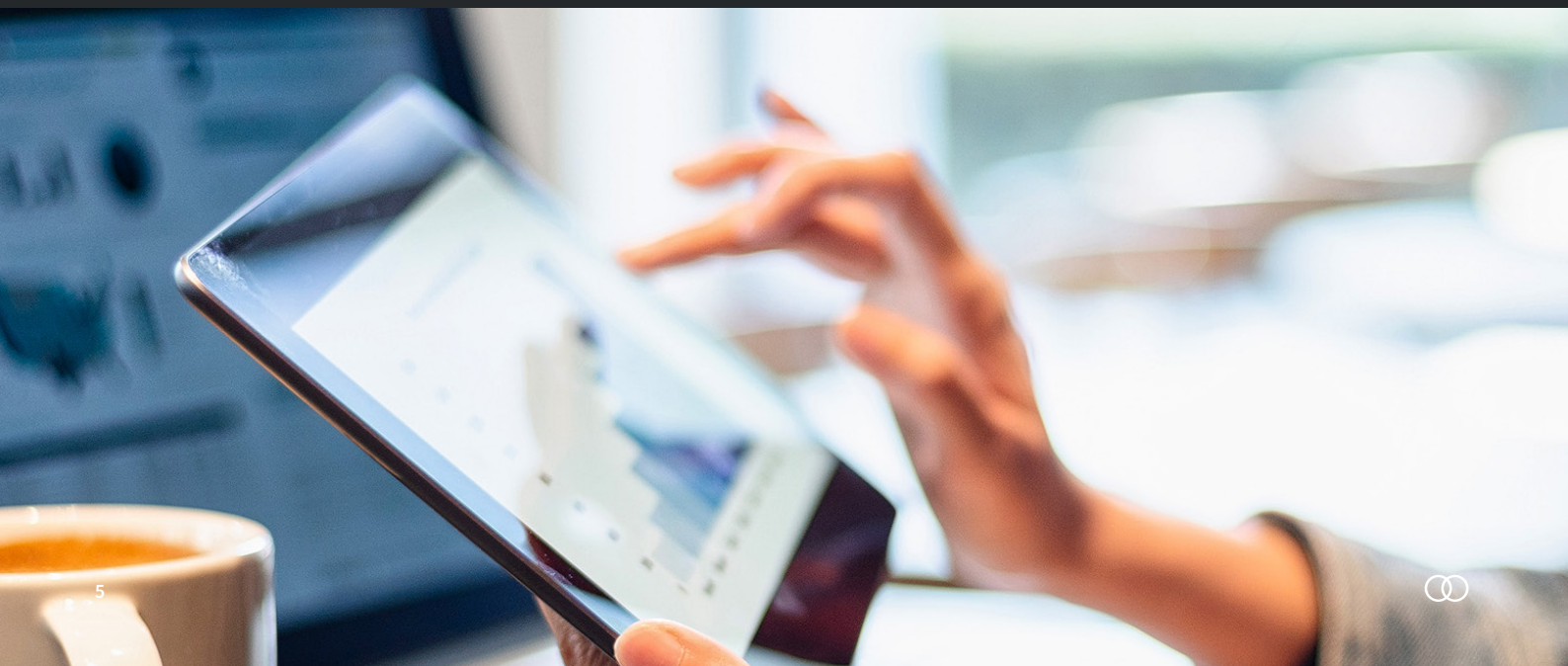
February 2022. The changes relating to AGMs commence on 1 April 2022.

It hasn’t been entirely smooth sailing to get those permanent changes over the line. Earlier consultation drafts of the changes received mixed responses from governance bodies, investors and proxy advisers. We’ve written elsewhere about the [megaphone media tactics](#) employed by some to prevent entities facilitating

virtual meetings in their constitutions.

In the meantime, until 31 March 2022, entities can continue to rely on the temporary measures provided by the *Treasury Laws Amendment (2021 Measures No 1) Act 2021 (Cth)* to hold hybrid or virtual meetings.

¹ This includes companies not required to hold an AGM (e.g. as a result of new listing or corporate structure), or that held a ‘closed meeting’ (i.e. only the board and employees who held shares were allowed to attend).



KEY OBSERVATIONS FOR 2021



Constitutional amendment resolutions expressly permitting hybrid or fully virtual meetings were shot down in the face of proxy adviser resistance

A number of entities in 2021 proposed to seek shareholder approval to amend their constitutions to 'prepare' for the permanent changes. While a small number 'got in early' with their shareholders approving the amendments earlier in the year,

a proxy adviser campaign against constitutional change gained traction.

As that campaign ramped up, 7 entities either withdrew or amended their constitutional amendment resolutions, citing reservations raised by shareholders and proxy

advisers regarding virtual meetings. Of the 19 entities that proceeded to a vote, 5 entities were defeated and the 14 entities who were successful had cornerstone shareholders supporting them or avoided the proxy adviser spotlight.





Continuing focus on remuneration

Negative votes on remuneration reports in 2021 continued to trend upwards albeit marginally. At the same time, second strikes remain very rare among the ASX200.

Previously expressed concerns by some that there would be wholesale overcompensation in year two of the pandemic because of an absence of vesting in 2020 don't seem to have played out in voting outcomes. This suggests in most cases Boards may have got the balance right. Though with 33 of the ASX200 getting strikes or near misses there are clearly still some issues causing shareholder dissatisfaction (and we look at the range of apparent reasons, including ESG and governance/conduct issues, in more detail below).

19 ASX200 entities received a strike in 2021, and 8 remuneration reports were voted down. Negative votes on remuneration reports in 2021 continued to trend upwards albeit marginally. At the same time, second strikes remain very rare among the ASX200.

	2021	2020	2019
Total number of strikes for the ASX200 (inclusive of second strikes, if any)	19	17	15
Number of second strikes	2	1	3
Number of 'near misses' (i.e. entities within 10% of a strike)	14	14	16
Number of remuneration reports voted down	8	6	1

Where there is a 'strike' the average vote against remuneration reports also remained roughly the same as last year (at approximately 44%).

KEY OBSERVATIONS FOR 2021



Increased focus on ESG and ESG resolutions

It will come as no surprise that activists continue to make full use of their ability to requisition resolutions at AGMs on ESG matters.

17 ASX200 entities received 23 shareholder-requisitioned resolutions to put to their 2021 AGMs. This is a slight increase from 14 entities in 2020 and 12 entities in 2019.

As in previous years, the majority of resolutions continued to take the form of a proposed amendment to the entity's constitution, followed by advisory resolutions contingent on the constitution amendment being passed. Rio Tinto was an exception, where the Rio Board supported two ESG resolutions relating to emissions targets and climate-related lobbying. Because the Board supported the resolutions, the constitutional amendment was not required and was withdrawn. These two Board supported resolutions were passed as ordinary resolutions, each with 99% support respectively. This is the first time a shareholder-requisitioned resolution on climate change has been passed at an AGM for an ASX200 entity.

Climate change issues accounted for the vast majority (18 of the 23, or nearly 80%) of the shareholder-requisitioned resolutions in 2021. The other recurring theme was cultural heritage protection.

The average support vote for proposed constitutional amendments remained steady (at 6%) – meaning the packages put forward by activists didn't get through the first hurdle. But, as we have noted previously, that is not necessarily the point. Expression of shareholder 'will' on the advisory resolution through proxy/direct votes received in advance of the meeting carries weight even though those resolutions don't end up needing to be voted on.

We see this through shareholders increasingly indicating support for the conditional advisory resolutions (either by direct votes and/or proxy), with an average support vote of 34% in 2021, up from 22% in 2020. In this way, shareholders are exerting 'soft' power by effectively expressing an escalating opinion on the need for action/change. There were some outliers that also pushed this average up with four resolutions receiving over 98% shareholder support. Alongside Rio Tinto's resolutions, BHP and South32 received 99% and 98% shareholder support respectively on advisory resolutions also relating to climate change.² Even without including the Rio Tinto, BHP and South32 resolutions (given these ended up being Board supported), the average support vote was roughly on par with last year's average.

We also saw 7 ASX200 entities commit to putting their climate action plans to a non-binding vote at their 2022 AGM (i.e. a 'say on climate' vote). All of these entities are in the oil and gas, mining or energy industries (though CBA has also [said](#) it would consider putting a 'say on climate' vote at its 2022 AGM). In 2021, only BHP held a 'say on climate' vote, which received 85% shareholder support at its Australian AGM.

The 'say on climate' votes, as well as the [Santos greenwashing case](#) and increasing pressure from stakeholders generally, has led some companies to 'revamp' their climate reporting and apply a more rigorous approach to its preparation, including undertaking a detailed verification exercise. This comes as no surprise given the Taskforce on Climate-related Financial Disclosures (TCFD) encourages entities to apply internal governance processes to their climate reporting that are the same or substantially similar to those used for financial reporting. We look at these developments, and more, in our analysis of climate change risk disclosures and governance of the ASX50 in 2021 which will be released soon.

² The Boards of BHP and South32 also supported the relevant advisory resolutions (relating in both cases to climate-related lobbying) but the constitutional amendment resolutions on which they were contingent were not withdrawn, were not supported by the Boards and were not passed by shareholders. The advisory resolutions were therefore never put to the meeting.



Director election / re-election trends remaining steady

The majority of candidates for election / re-election were generally overwhelmingly supported by shareholders. This continues the trend of previous years.

There is a spread of results on voting outcomes making it difficult to discern any trends in voting behaviour. However, where there has seemingly been protest votes by shareholders, these may have been motivated by governance-related matters. Gender diversity also continued to be a strong focus, which may have also influenced voting results. We observed a slight increase in the proportion of female candidates seeking election or re-election in 2021, as compared to 2020 (40% in 2021 compared to 37% in 2020).



Termination benefits approvals continue to be uncontroversial

In 2021, 9 ASX200 entities put forward termination benefits resolutions, all of which passed with significant support.

Average shareholder support for this type of resolution remains high at 93% (a slight decrease from 99% in 2020).

This suggests well-crafted, reasoned and balanced proposals providing Boards with flexibility to address case-by-case termination arrangements are supported by the vast majority of shareholders.

NOTES ON OUR DATASET FOR 2021

In reviewing our data for 2021, we looked at AGMs held in calendar year 2021 for entities that were in the S&P/ASX200 as at 31 October 2021.

However, as in previous years, our dataset captures fewer than 200 AGMs given not all ASX200 entities need to hold an AGM. Our dataset also captures fewer than 200 votes on remuneration reports because not all entities need to present remuneration reports to their investors for a vote (e.g. due to their corporate structure). It does not include the small number of votes on remuneration for ASX listed entities that are held under foreign legal requirements, which do not use the same 'two strikes' structure as Australian law.

All references to 'entities' in this note are inclusive of entities with other corporate structures that are listed on the ASX (e.g. stapled securities and listed trusts).

Although year on year comparisons have been used in this report, movements in the composition of the ASX200 between 2020 and 2021 mean that our report does not necessarily provide a direct entity-for-entity comparison in all cases.

All figures have been rounded to the nearest whole number.

FORMAT OF AGMs

Concessions allowing virtual AGMs in 2021

As flagged in our 2020 report, the Federal Treasurer announced on 31 July 2020 that temporary amendments to the Corporations Act allowing the holding of AGMs using technology would be extended until 21 March 2021.

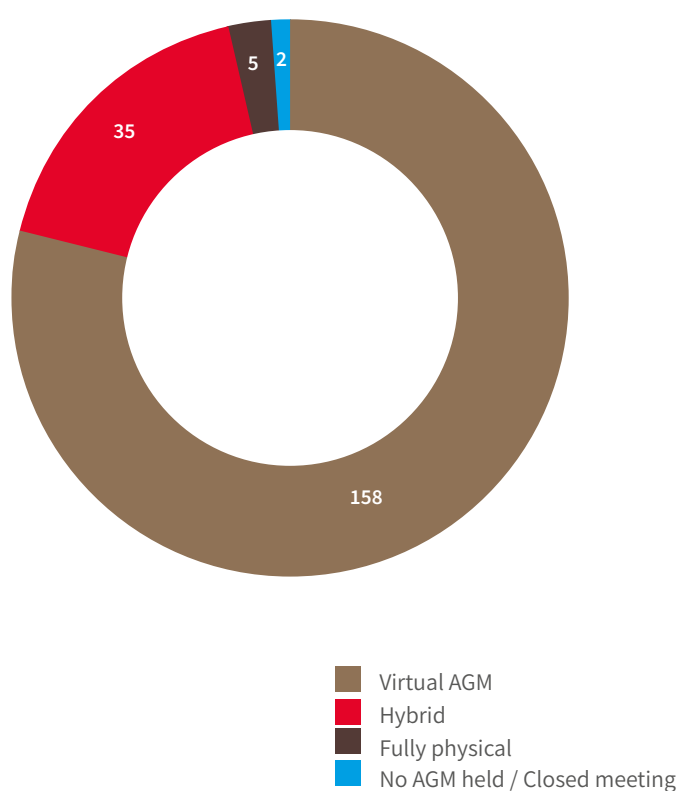
Following this, on 29 March 2021, ASIC [reiterated](#) its 'no-action' position relating to convening virtual meetings, which applied to all meetings held between 21 March 2021 and 10 August 2021.

On 10 August 2021, the Federal Government again passed temporary legislative amendments to facilitate fully virtual meetings provided members have a reasonable opportunity to participate in the meeting. The temporary amendments also specify that a reasonable opportunity to participate includes the ability for members to exercise a right to speak (and ask questions) either orally or in writing, as well as vote in real time. We provided more details on the amendments [here](#).

Continuing preference for virtual AGMs

As shown in Chart 1, 158 entities (79%) held a fully virtual AGM, while 40 entities (20%) opted for a hybrid or physical AGM. The remaining 2 entities (1%) either were not required to hold an AGM in 2020 as a result of corporate structure, or held a 'closed meeting' (i.e. only the Board and employees who held shares were allowed to attend).

Chart 1: Format of 2021 AGMs



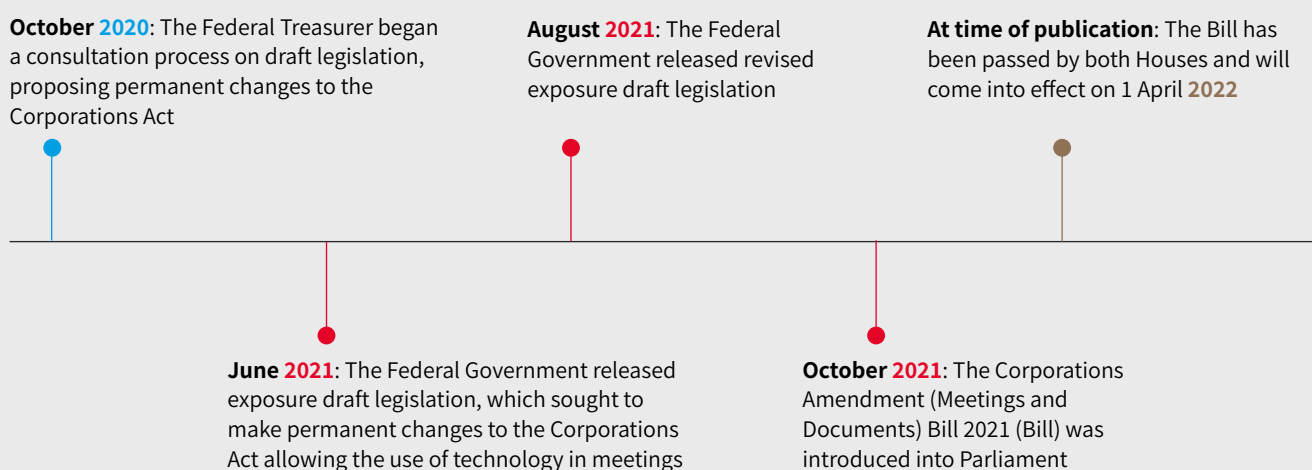
Of the 158 entities that held a fully virtual AGM, 61 entities also allowed members to cast a direct vote prior to the AGM. In all other cases, entities recommended members lodge proxy votes if they wished to vote ahead of time, or attend the meeting and vote directly during the meeting.

All entities holding fully virtual meetings also allowed members to ask questions during the meeting. This was typically conducted in writing through the online meeting

platform. Following the introduction of the temporary amendments in August 2021 facilitating virtual meetings, we saw a significant increase (compared to 2020) in the number of entities specifying in their notices of meeting that they would allow shareholders to ask questions orally via teleconference.

Legislation to make virtual AGMs permanent

Drawing on the temporary concessions, the Federal Government progressed permanent reforms to the Corporations Act to allow for the use of technology in meetings. Those reforms were passed by both Houses on 10 February 2022. Key steps in the consultation process of those reforms are summarised below.



October 2020 consultation

On 19 October 2020, the Federal Treasurer [began](#) a consultation process on exposure draft legislation proposing permanent changes to the Corporations Act, which closed on 6 November 2020. As discussed in our 2020 report, while there was significant support for electronic execution, the proposal to make permanent changes allowing for fully virtual AGMs attracted some criticism from shareholder advocacy groups.

June exposure draft legislation

On 25 June 2021, the Federal Government [released](#) exposure draft legislation, which again proposed permanent changes to the Corporations Act to facilitate the use of technology in meetings. We summarised the exposure draft legislation [here](#).

There were mixed views on the exposure draft legislation, including the provisions permitting virtual meetings only if expressly required or permitted in an entity's constitution.

August exposure draft legislation

On 30 August 2021, the Federal Government [released](#) revised exposure draft legislation. We summarised the revised exposure draft [here](#).

In general, submissions appeared to be largely supportive of the proposed reforms.

FORMAT OF AGMs

The Corporations Amendment (Meetings and Documents) Bill 2021

Following the series of consultations, on 20 October 2021, the Federal Government introduced a Bill including the proposed permanent reforms. The Bill was passed by both Houses on 10 February 2022 and will commence on 1 April 2022.

Australasian Investor Relations Association's (AIRA's) 2021 Biennial Benchmarking Survey [results](#) found that virtual meeting technology was rated as "the most important new technology" by investor relations professionals participating in the survey. In ordering scheme meetings over the last 18 months courts have also routinely ordered 'virtual' scheme meetings acknowledging the various temporary legislative and administrative measures in place to facilitate company convened meetings.

The permanent changes to facilitate virtual AGMs are expected to facilitate a range of benefits, including allowing overseas and interstate shareholders to participate more directly with their investments. The question is whether entities who don't already have the necessary constitutional provisions will be able to amend their constitutions to make full use of them.

Joint guidance on holding virtual meetings

Entities will still be able to rely on the existing temporary measures until 31 March 2022. For upcoming AGMs, the Governance Institute of Australia, Australian Institute of Company Directors (AICD), AIRA and the Law Council of Australia have released [joint guidance](#) outlining tips for holding virtual meetings. Among other things, they recommend entities:

- **check their constitution** to see if there are any provisions that may affect the AGM;
- **discuss contingency plans** with their technology provider and registry in the case of any technological issues;
- **set up an AGM area on their website** where shareholders can easily access details and links for the meeting;
- **encourage proxy voting and online lodgements** given the difficulties faced by postal services during the pandemic;
- **consider establishing pre-registration capabilities** to assess how many shareholders may attend the AGM; and
- **consider privacy issues**, particularly if the live stream of the meeting will be recorded and available on the entity's website after the conclusion of the meeting.



CONSTITUTIONAL AMENDMENTS

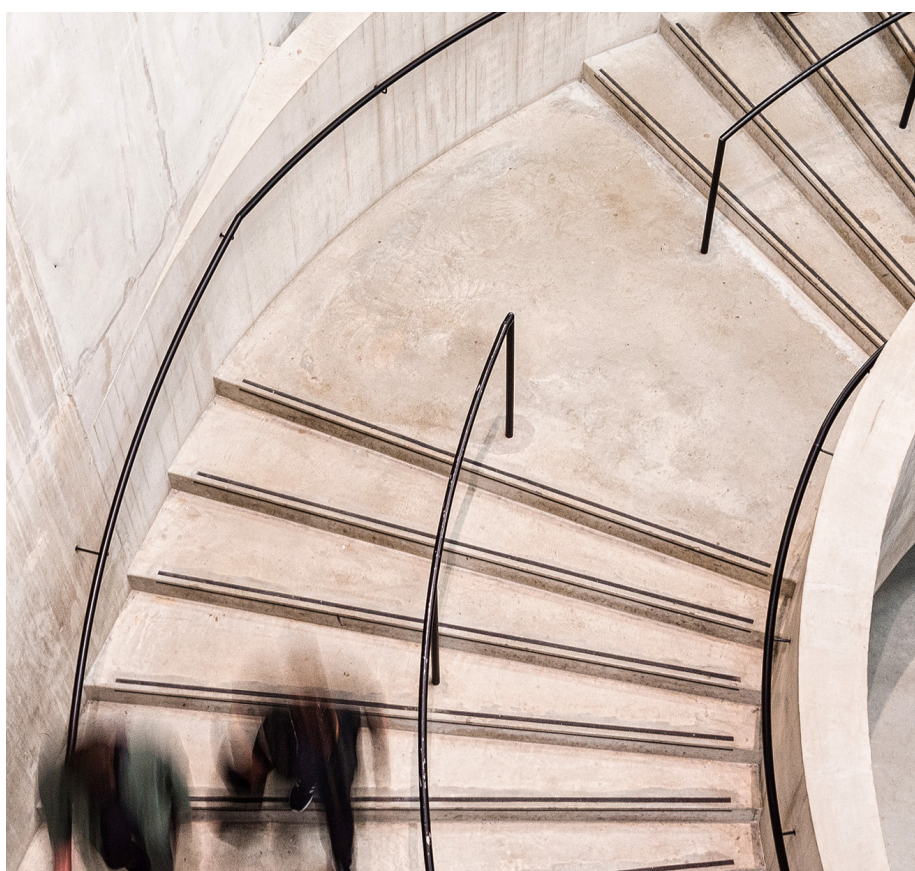
Under the new permanent changes, fully virtual AGMs will be allowed only if expressly required or permitted by an entity's constitution. In anticipation of the new law being passed, a number of entities proposed constitutional amendments at their 2021 AGMs to expressly permit virtual meetings.

Structure of resolutions

These resolutions were structured in two different ways:

- 1. Bundled together:** including technology-related amendments together with other constitutional amendments (e.g. refresh of takeover provisions); or
- 2. Separate resolutions:** having a standalone constitutional amendment resolution relating to technology-related amendments, and another resolution relating to other constitutional amendments.

The second approach was the approach recommended by the Australian Shareholders Association (**ASA**), on the basis it allows shareholders an opportunity to fully consider the proposed amendments. However, we did not see any significant difference in voting outcome between the entities who adopted one method over the other. One entity (Vicinity Centres) had separate 'technology' and 'general' amendment resolutions, and was unsuccessful in passing their 'technology' amendments (only 60.60% support) but successful in passing their 'general' amendments (with 99.85% support).



Our review

A small number of entities successfully passed resolutions to amend their constitutions to facilitate virtual meetings earlier in the year.

As we've written about previously (see our articles [here](#) and [here](#)), a campaign by proxy advisers later in the year led 7 entities to subsequently withdraw their resolutions or amend them to remove the provisions relating to fully virtual meetings.

Notwithstanding the proxy adviser campaign, 19 ASX200 entities proceeded to a vote. 5 entities were defeated, while 14 entities succeeded in receiving the minimum 75% shareholder support (due to either cornerstone shareholders supporting them or the entity having avoided the proxy adviser spotlight).

REMUNERATION REPORTS

There were expectations in early stages of the pandemic that entities could face increased scrutiny on remuneration-related matters, particularly where executive variable pay may be considered disproportionate to the entity's performance during the pandemic. However, we observed no significant change in the voting outcomes on remuneration reports over the last 2 years apart from an increase from 2019 in the number of remuneration reports being voted down.

Marginally more first and second strikes

Of the 199 ASX200 entities that held AGMs in 2020, 183 put forward votes on remuneration reports.

19 ASX200 entities (10%) received a strike in 2021 compared to 17 (9%) in 2020 (see Chart 3).

Of the 19 strikes received in 2021, 17 were first strikes and 2 were second strikes. This is a marginal increase from 2020, where 16 of the 17 strikes received were first strikes and 1 was a second strike.³

A year-on-year comparison of the continuing ASX200 entities that avoided a second strike this year is set out in Chart 4.⁴

³ In the 16 'first' strikes, NRW Holdings received its third consecutive strike.

⁴ Chart 4 demonstrates that out of the 17 entities that received a strike in 2020, 14 entities successfully avoided a second strike. The other 3 entities either received a second strike in 2021 (Crown Resorts) or were no longer in the ASX200 (NRW Holdings and Sandfire Resources).

Chart 3: Year on year strike rate comparison

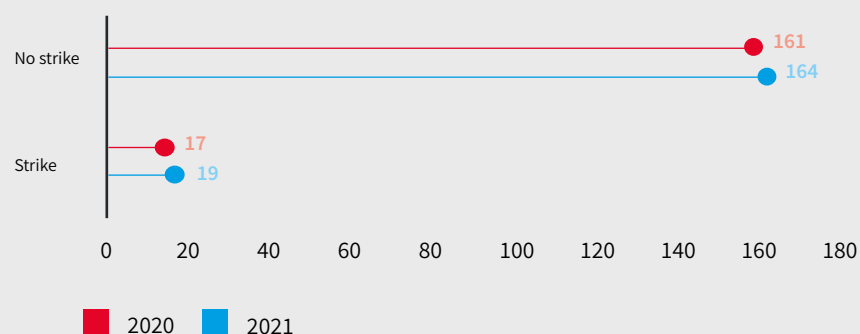
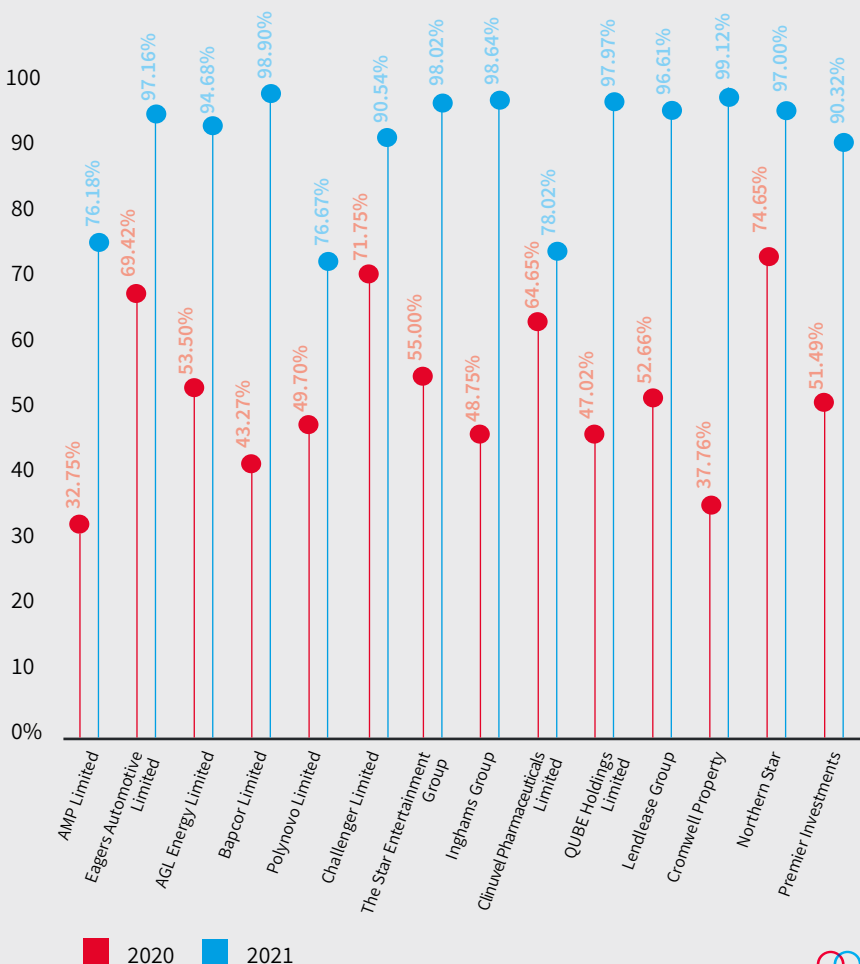


Chart 4: Remuneration report support vote for entities that avoided a second strike



REMUNERATION REPORTS

Increased number of remuneration reports voted down

Continuing the trend from last year, the number of remuneration reports voted down has increased but again only marginally from last year. As shown in Chart 5, 8 remuneration reports were voted down during the 2021 AGM season (i.e. received a support vote below 50%+1), compared to 6 in 2020 and 1 in 2019.

Magnitude of votes against remuneration reports

The average vote against a remuneration report in 2021 was 9% which has basically remained stable over the last 3 years.

More broadly:

- The majority of reports were still overwhelmingly approved:** 141 entities (77%) had more than 90% shareholder support in favour of their remuneration report, as shown in Chart 6 below. This is basically the same as last year and again suggests shareholders agree Boards have largely faced remuneration challenges in the current environment well (to the extent it's possible to link voting outcomes on remuneration matters alone). The Australian Council of Superannuation Investors made a similar finding in its 2021 [report](#) 'CEO Pay in ASX200 entities' – that Boards have largely risen to the challenges created by the COVID-19 environment, ensuring that "incentive payouts were truly earned, not just windfalls from being in the right place in troubled times".
- Near misses:** 14 entities this year were within 10% of a strike (the same as in 2021 and a slight decrease from the 16 near misses in 2019).

Chart 5: Year on year comparison of remuneration report vote down

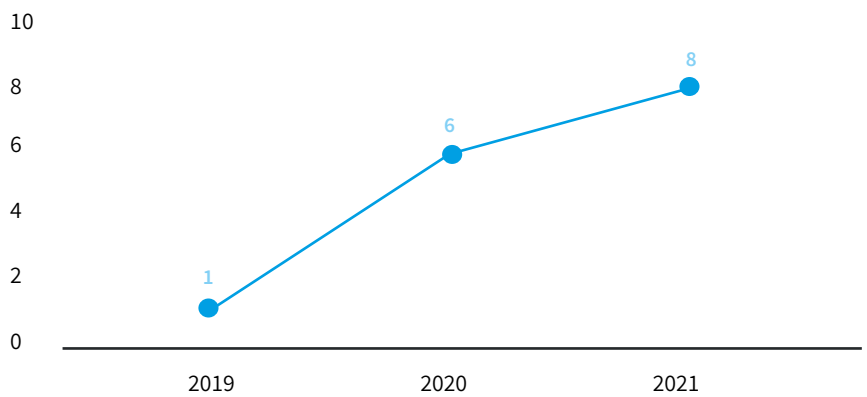
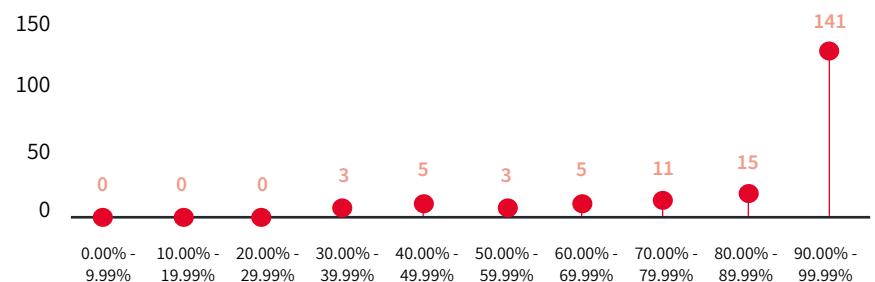


Chart 6: % Support vote for remuneration report



Factors informing shareholder voting on remuneration reports

There were a number of factors we identified that may have informed shareholder voting behaviour in 2021. As in previous years, the accuracy of these factors cannot be guaranteed, given it is not always possible to discern the real motive behind voting behaviour.



Board conduct in relation to ESG issues

There was a strong focus in 2021 on ESG issues such as corporate actions surrounding climate change. Of particular concern was the provision of financial support to entities engaged in 'fossil fuel projects'. ESG issues are discussed later in our report.

For example, Westpac received public scrutiny by climate activists for loans to certain mining entities, with views expressed that these loans undermined the bank's commitment to net zero emissions by 2050. This sentiment may also have been shared by shareholders, with Westpac receiving a first strike (30% vote against).

Similarly, Whitehaven Coal also received a first strike (with 53% vote against) after shareholders publicly expressed concerns around a decision to pay executives a short-term incentive despite its Narrabri mine suffering three production downgrades. Shareholders and proxy advisers also publicly raised concerns that environmental incidents at the mine were inconsistent with the entity's pay plans and were incompatible with the effort to limit global warming.



Remuneration structure

We also observed that from time to time there have been concerns expressed about remuneration structures that may have informed voting outcomes. For example, Goodman Group received a first strike against its remuneration report (with 42% vote against) after extending the testing of performance rights under its long-term incentive plan from three to four years, and doubling the vesting period to 10 years. While the ASA [supported](#) the extended testing period, it stated that it did not support the valuation method used to determine the number of performance rights to be issued (in particular, that an 'economic value' or 'fair value' assessment would at current security prices result in the number of performance rights being four times greater than if a 'face value' assessment was used).



Governance and conduct matters

Similar to 2020, some shareholders have appeared to use their votes to express views as to broader matters relating to general business performance or other issues. For example, Crown Resorts received a second strike following criticism from organisations such as the ASA in relation to 'excessive' termination payments given to executives who had already left Crown, as well as the establishment of a Royal Commission into the affairs of Crown's Perth Casino. It's possible the findings in the NSW Inquiry and the Victorian Inquiry relating to Crown and its subsidiaries may also have contributed to voting decisions on Crown's remuneration report.

Oil Search received a first strike (with 54% vote against) after proxy adviser Institutional Shareholder Services ([ISS](#)) stated that there had been excessive remuneration paid to Oil Search's former CEO and its short term incentive bonus payments were higher than the market median.

Link Administration also received a first strike (with 63% vote against) after it received takeover offers from various entities such as Pepper European Servicing and The Carlyle Group. It also faced questions from the ASA at its AGM as to its STI 'gateway'.

ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG) RESOLUTIONS

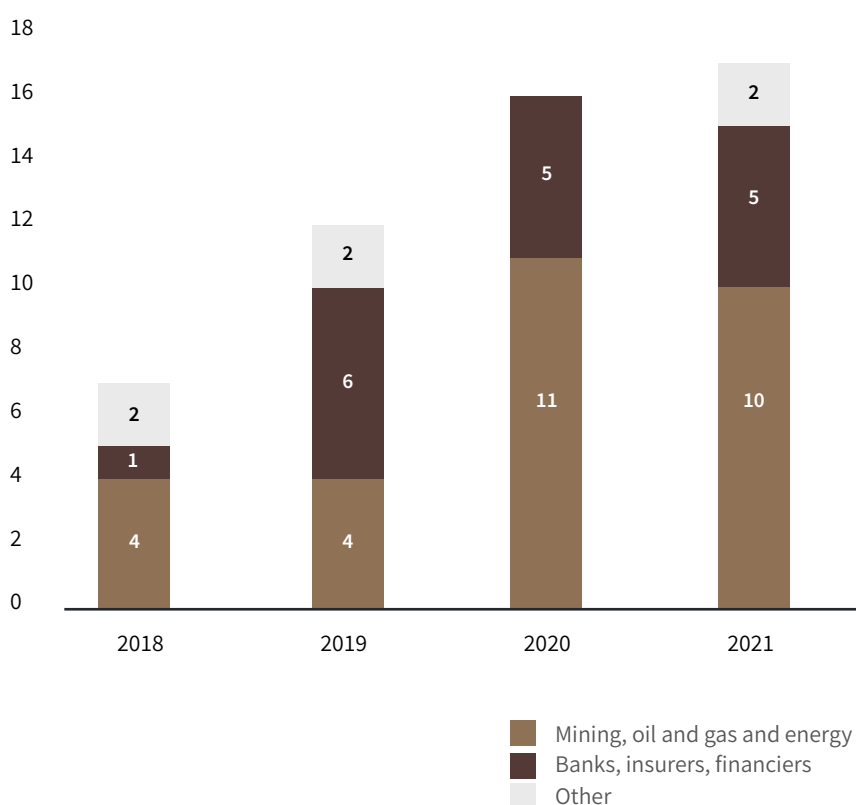
Increasing number of ESG resolutions

Continuing the trend in previous years, we saw a slight increase in the number of entities requisitioned with shareholder resolutions relating to ESG issues. 17 entities put requisitioned resolutions to their AGMs in 2021, compared to 14 entities in 2020. The entities continued to span a broad range of sectors, including energy, banks, insurance and utilities.

As in previous years, the Australasian Centre for Corporate Responsibility (ACCR) and Market Forces were the key activists behind the requisitioned ESG resolutions, accounting for all resolutions except for one.

We also saw some changes in the way activists participated at virtual AGMs. In some cases, entities allowed activists a specific platform (usually a pre-recorded video) to address the AGM and speak to the resolutions they had requisitioned prior to opening up for questioning. However, in the majority of cases, activists were able to address the AGM through submitting written questions (as with shareholders) using the on-line platform. At some AGMs, ESG questions dominated question time.

Chart 7: Breakdown of requisitioned entities by industry / sector



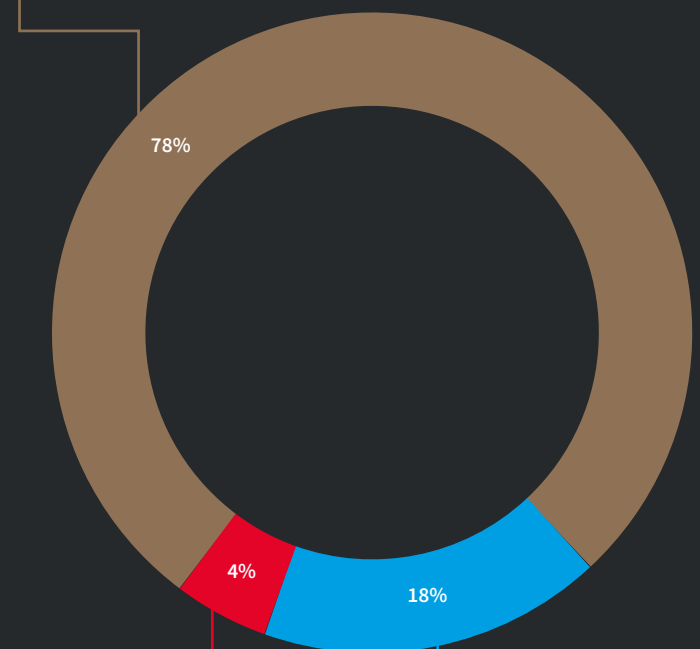
Structure and subject matter of resolutions

As in previous years, the requisitioned resolutions largely followed the standard formula of:

- a proposed amendment to the entity's constitution; and
- one or more advisory resolutions that are contingent on the amendment being passed.

The subject matter of the advisory resolutions generally related to climate change or cultural heritage protection, with climate change the dominant theme. The infographic to the right sets out the subject matters and the number of corresponding contingent resolutions:⁵

Climate change (18 resolutions): the majority of advisory resolutions related to climate change issues, for example disclosing Paris-aligned targets, information relating to capital expenditure and fossil fuel exposure, and reviewing industry associations for consistency with the Paris Agreement



Other (1 resolution): this resolution was requisitioned by a shareholder of News Corporation, and related to voting requirements for certain resolutions

Cultural heritage protection (4 resolutions): these resolutions related to specific projects and would include requirements to gain consent and consult with Traditional Owners. 3 of the 4 cultural heritage protection resolutions related to the Beetaloo gas basin in the Northern Territory.

⁵ In some cases entities received more than one requisitioned resolution.



ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG) RESOLUTIONS

Success rate

For the first time, two requisitioned resolutions were passed in 2021. Market Forces and the ACCR each requisitioned a climate change-related resolution at Rio Tinto's AGM, which both passed with 99% support after being endorsed by the Rio Tinto Board.

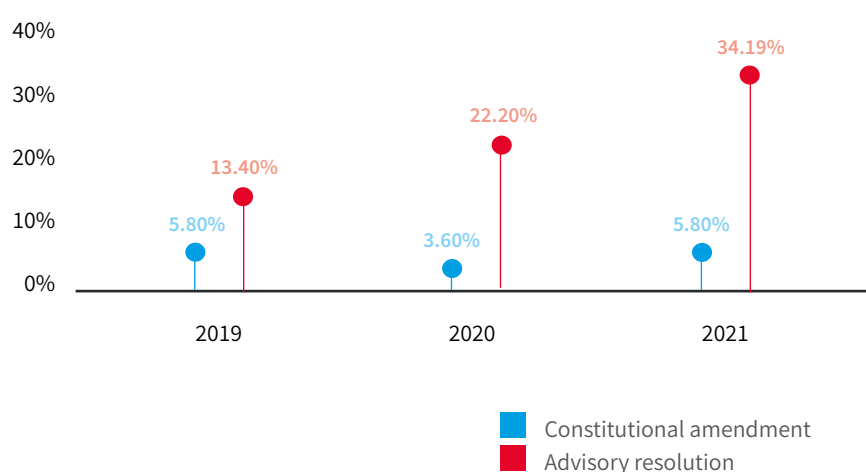
The average support vote for proposed constitutional amendments remained steady, at roughly 6%.

However, the level of shareholder support for advisory resolutions increased to 34%, compared to 22% in 2020 (see Chart 8). This increase is likely driven by the unprecedented support for the climate change resolutions at Rio Tinto's AGM, and two advisory resolutions at BHP and South32's AGMs, which received around 99% and 98% support respectively.

No doubt the support for the BHP and South32 advisory resolutions was also influenced by the fact the Boards of BHP and South32 supported them. Interestingly, unlike what happened for Rio Tinto, the constitutional amendment resolutions on which they were contingent were not withdrawn. The Boards of BHP and South32 did not support the constitutional amendment resolutions and they did not pass. Accordingly, the advisory resolutions were never put to the meeting.

Even without including the BHP, South32 and Rio Tinto resolutions (given these ended up being Board supported), the average support vote was 21% in 2021, which is roughly on par with last year's average of 22%.

Chart 8: Year on year comparison of support for ESG resolutions



The true level of shareholder support may differ from the figures above, particularly as advisory resolutions are generally only voted on if the constitutional amendment is carried. The above figures are based on proxy positions disclosed by entities, as well as any applicable direct votes even where the resolution was not actually put to the meeting for a vote.

Say on climate resolutions

The 'say on climate' initiative continued to gain traction in Australia in 2021. It is an initiative which was first launched in the UK by activist investor Chris Hohn. The ACCR joined the initiative in early 2021 to campaign for company transparency on climate reporting and annual non-binding votes by shareholders. The 'say on climate' initiative calls for entities (at a minimum) to:

1. disclose their emissions annually;
2. disclose their plan to reduce their emissions; and
3. put their plan to an annual advisory vote at their AGMs.

A number of activists in 2021 attempted to requisition 'say on climate' votes. To date, only BHP has held a 'say on climate' vote. This was passed at its Australian AGM with 85% shareholder support, which was consistent with the level of support at the entity's AGM in London (83%).

Most of the requisitioned 'say on climate' votes were subsequently withdrawn, after entities committed to putting their climate plans to a non-binding vote at their 2022 AGMs. So far, 7 entities⁶ have explicitly committed to putting a 'say on climate' vote at their 2022 AGMs, all of which are in the mining, oil and gas and energy sector.

We release a more detailed analysis of climate voting trends in our KWM report on climate change risk disclosures and governance of the ASX50 (our 2020 version is accessible [here](#)). Look out for our next update, which will be released soon.

⁶ This number includes Santos and Oil Search, who were at the time of making the commitment separate entities.

DIRECTOR ELECTIONS AND RE-ELECTIONS

Continuation of trends

486 individuals ran for election or re-election at ASX200 AGMs in 2021.⁷ As in previous years, there has been no substantial change in the average support for director elections, with the majority of candidates receiving a support vote of 95% or more.

Of the 86 candidates that received a support vote of less than 95%, the vast majority (73 or 85% of those candidates) were seeking re-election as opposed to election for the first time, and 75% of them were male (63 candidates). As in previous years, this suggests an increased risk of a less favourable vote for incumbent as opposed to new candidates.

The average support vote for director elections and re-elections has remained roughly the same at 96% (compared to 95% in 2020). The number of candidates that were not successful in being elected decreased from 8 candidates in 2020 to 3 candidates in 2021 (see Chart 10). All 3 candidates were self-nominated and not Board-endorsed. Comparatively, in 2020, only 1 of the 8 candidates that were unsuccessful in being elected was Board-endorsed. This reflects a continuing trend of candidates that are not Board-endorsed struggling to gain the support of shareholders.

Chart 9: Breakdown of director elections / re-elections by outcome

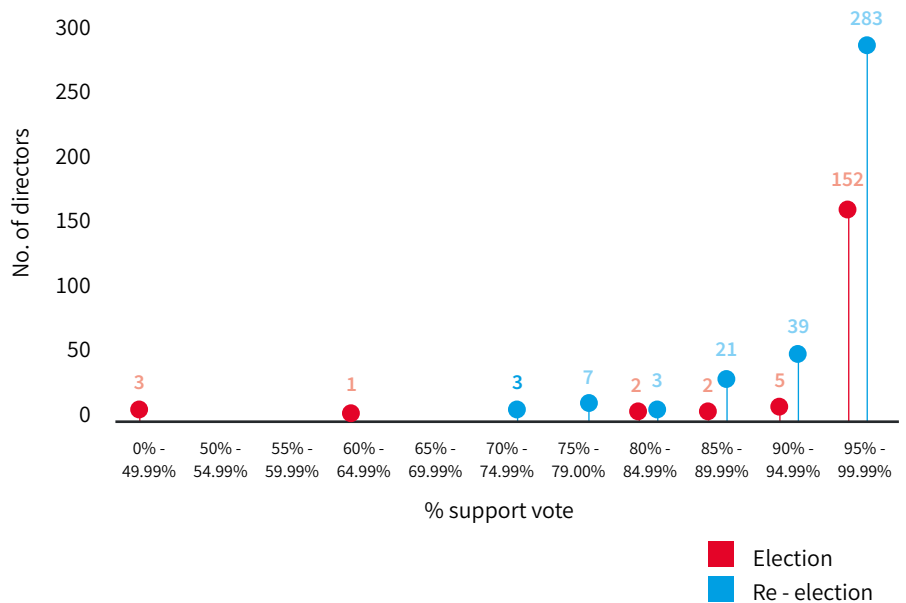
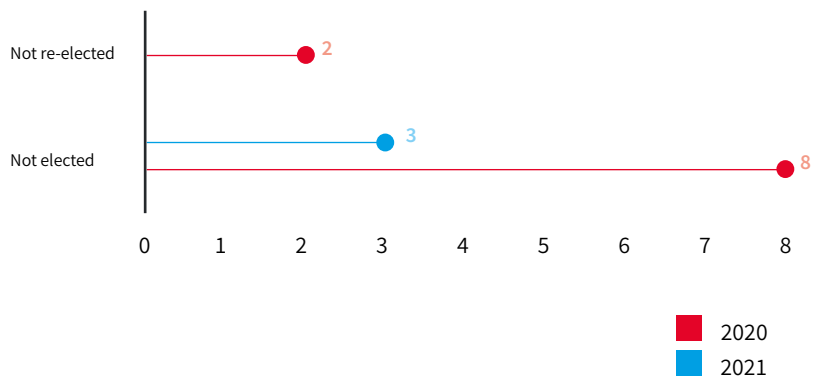


Chart 10: Year on year comparison of director election / re-election success rate



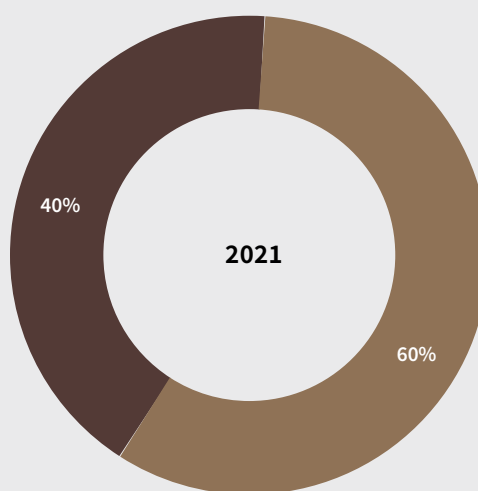
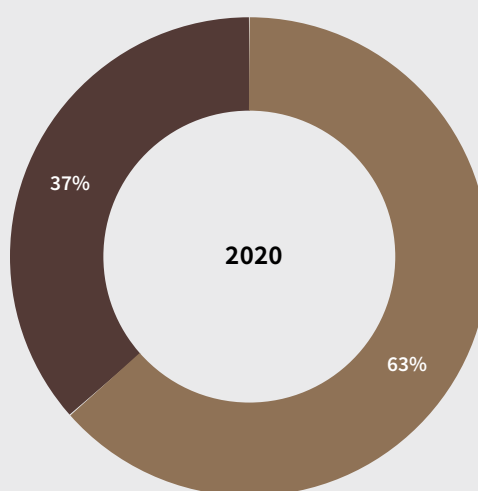
⁷ This number includes 32 candidates who ran for election or re-election at more than one AGM.

Gender representation on Boards

2021 saw a “historical milestone for Australia”, according to AICD Managing Director Angus Armour, with reports that there were no all male Boards left in the ASX200. As at 30 November 2021, female directors comprised 34% of ASX200 Boards.

As seen below, we also observed a slight increase in the proportion of female candidates seeking election or re-election in 2021, as compared to 2020.

According to the AICD’s latest Director Sentiment Index, balance of genders on Australian Boards remains a key issue. The AICD’s gender diversity report in September 2021 found that 74 Boards in the ASX200 were yet to reach the 30% women directors target. ISS, in its latest proxy voting guidelines, recommended voting against the chairman of the Board or nomination committee if the entity’s Board does not comprise at least 30% female representation.



■ Female
■ Male



DIRECTOR ELECTIONS AND RE-ELECTIONS

Understanding voting behaviours

Some factors that may have contributed to the voting outcomes on the elections / re-elections of directors in 2021 included:



Gender Diversity

As flagged above, gender continues to be a factor in the level of support directors are receiving. Our review showed that the average support vote for female directors was 97.7%, while the average support vote for male directors was 93.8%.



Relationship with major investors

Marcus Blackmore, who holds 23% of Blackmores, launched a campaign to vote against the re-election of the company's chairman, Anne Templeman-Jones, after the Board rejected Blackmore's preferred candidate, George Tambassis during the company's nomination process. This led to Anne Templeman-Jones receiving a significant protest vote of around 44%, only narrowly succeeding in being re-elected.



Governance concerns

Proxy adviser ISS recommended shareholders oppose the re-election of Nerida Caesar at Westpac's AGM due to her involvement in the bank's risk and compliance committee at the time various governance and risk issues came to light. Ms Caesar received a protest vote of approximately 20% at Westpac's 2021 AGM.

Similarly, there were also strong protest votes against the re-election of Warwick Every-Burns (25%) at A2 Milk's 2021 AGM after shareholders publicly expressed concern around the payment of bonuses to executives during a challenging fiscal year.

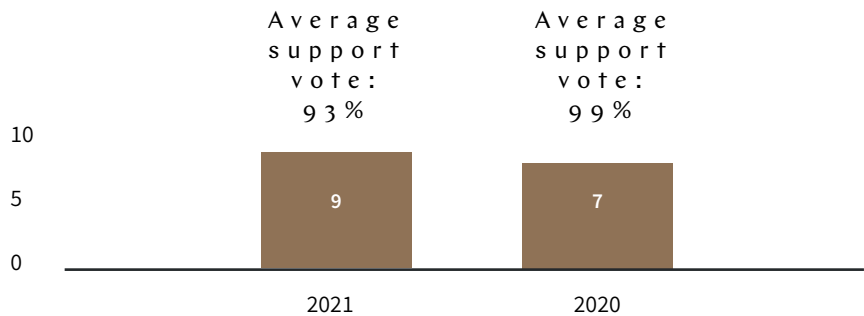
TERMINATION BENEFITS

In 2021, we saw 9 entities put forward resolutions relating to termination benefits, either approving prospective payments or arrangements, or renewing previous shareholder approval. This is compared with 7 entities in 2020.

All termination benefits resolutions were passed – the average support vote being just over 93% (compared with an average of 99% in 2020).

This indicates that shareholders generally find these types of resolutions uncontroversial, particularly where the proposals are well-crafted, reasoned and balanced.

Chart 11: Number of companies putting forward termination benefits resolutions, and average support vote



APPENDIX A: COMMON AGM QUESTIONS

In 2021, we saw a number of questions being repeatedly asked at different AGMs. We have included a list of the most commonly asked questions we observed below.

- Will the entity provide a full copy of the webcast and a written transcript of the AGM on its website after the AGM?
- Will the entity disclose the number of shareholders that have voted for / against / abstain on each item, in addition to the number of shares voted?
- Have any proxy advisers recommended shareholders vote against any resolution?
- Will the entity disclose proxy votes prior to discussion on the resolution?
- Could the [candidate seeking election] outline what their connections are to existing members of the Board?
- Could the entity outline the history of its relationship with [candidate seeking election] and what the process was to select the candidate?
- Did the entity apply / was the entity eligible for JobKeeper payments?
- Is the entity considering paying back (either fully or partially) received JobKeeper payments in instances where the Board has given healthy bonuses?
- What is the entity doing to reduce scope 1 and 2 emissions?
- Will the entity disclose its scope 3 emissions? How does it plan to measure and address these emissions?
- Could the entity comment on how it is managing having some non-executive directors and key executives based outside of Australia, given the pandemic has made it difficult to meet in person?
- Why is the entity afraid of endorsing constitutional amendment resolutions allowing the passage of advisory resolutions, particularly as this is the standard practice in the United States?

From what we observed, companies generally did a great job responding to these questions.

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