



MINERVA BRIEFING

Australia 2022 AGM Season Preview

November 2022

1. INTRODUCTION

As investors and companies focus on the upcoming Australian AGM season, this Minerva briefing looks at the key environmental, social and governance (ESG) developments and voting issues for investors to look out for.

ESG activism plays an important role in driving the Australian market into the future. Indeed, ESG challenges have played a major role in shaping the Australian market, including the catastrophic 2019 bushfires, climate warming concerns, considerations of indigenous rights, and Australia's reliance on exports during the global coronavirus health and economic crisis. Good ESG practice is critical in avoiding reputational damage and building resilience to crises such as the pandemic and climate emergency.

At the same time, Australian regulators have stepped up their review of greenwashing and misleading statements that overstate environmental and sustainability credentials. Oil and gas firm Santos hit the headlines as the first company in the world to have a legal case brought against it over alleged misleading statements on its net-zero commitments, as climate-related litigation and greenwashing action ramps up.

Climate change poses material financial risks for investors, as well as opportunities. Institutional investors have long considered the uncertain policy environment in Australia as a barrier to unlocking climate opportunities. The introduction of the Climate Change Bill 2022 may push the market along by establishing a national climate change legislative framework and greater expectations around company and investor action.

In recent years, there has been an increased focus on ESG voting, which has been impacting voting outcomes on remuneration and director elections. Additionally, ESG-focused shareholder proposals have become of increased prominence in the market and after several Australian companies made commitments on holding a vote on climate transition action plans this year, 2022 looks set to be another ESG heavy peak season in Australia.

Key ESG Developments



Executive remuneration continues to be a contentious issue for shareholders with dissent on the increase and **more remuneration reports voted down in 2021 than in each of the preceding five years.**



New Government net zero legislation indicates a renewed focus on climate change and future policy action which will likely **filter down to business and investors.**



Several Australian companies are set to hold their first say on climate votes in 2022. The pre-peak season voting results indicate an active voting stance from shareholders on climate transition plans.



Shareholders are continuing to file **resolutions on environmental, social and governance issues** with climate change the key focus.



With an increased demand for sustainability-related financial products, **Australian regulators are on the lookout for greenwashing.**

2.REMUNERATION

2.1 TWO STRIKE RULE

The two-strikes rule was introduced in 2011. Under the rule, **if shareholders vote against a company's executive remuneration report two years in a row, the board may be voted out of office via a 'board spill' resolution.** The intention behind the strike system is to encourage greater transparency and engagement on executive remuneration as well as greater director accountability where boards are unresponsiveness to shareholder concerns.

A 'first strike' occurs when a company's remuneration report receives an 'against' vote of 25% or more. The 'second strike' occurs when a company's subsequent remuneration report also receives 'against' votes of 25% or more.

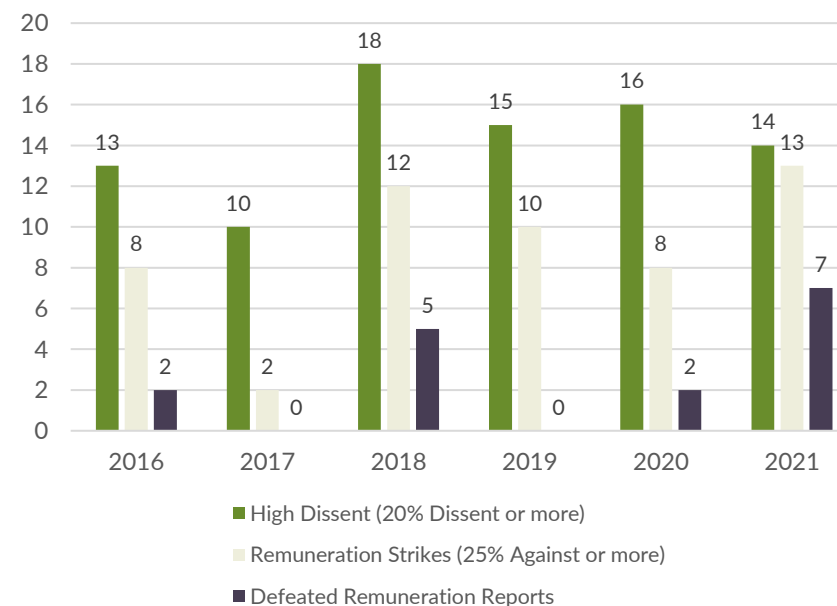
When a second strike occurs, the shareholders will vote at the same AGM on a 'board spill' resolution which if passed, the company is required to hold a spill meeting within 90 days at which all individuals who were directors when the directors' report was considered at the most recent AGM will be required to stand for re-election (other than the managing director).

However, **shareholders rarely, if ever, vote through the board spill resolution** – this suggests the system may have limited effectiveness in dealing with unresponsive boards as shareholders may wish to avoid destabilising the board over remuneration concerns.

It should be noted that only 'for' and 'against' votes are considered when determining whether a strike has occurred, and abstentions are not included in the calculations. Whilst abstentions are not counted, many investors positively abstain to indicate their lack of support for management. Using a sporting metaphor, a positive abstain is a "Yellow Card" to send a warning to management or as part of an engagement escalation strategy. However, the exclusion of abstentions in determining whether a strike has occurred demonstrates the potential pitfalls of abstaining when concerns are held.

While a lower number of companies received high dissent (20% or more) in 2021, of those 14 resolutions, 13 received a remuneration strike. Further, seven remuneration report approvals were voted down by shareholders – a record year in terms of strikes and defeats. The results indicate that shareholders are "picking their battles", resulting in a smaller number of high-profile significant dissent levels but overall low overall dissent levels. **Where opposition has been expressed, it was often at a very high level, suggesting a more targeted approach from shareholders on remuneration.**

Figure 1: Remuneration Dissent in the ASX100 2016-2021



2.2 REMUNERATION STRIKE WATCH LIST

In 2021, 12 companies in the ASX100 received a remuneration strike and will place a 'board spill' resolution on the 2022 AGM agenda in the event of a second strike. An additional one company received dissent of at least 20% but less than 25% 'Against' votes. Shareholders will want to pay attention to how the boards in question have responded to shareholder concerns.

Table 1: 2021 ASX100 Remuneration Strikes

Company	AGM Date	For %	Abstain %	Against %	Strike
Appen Ltd	28-May-21	74.61%	3.76%	21.63%	No
Charter Hall Group Ltd	12-Nov-21	69.03%	0.34%	30.63%	Yes
Crown Resorts Ltd	21-Oct-21	33.80%	1.26%	64.94%	Yes
Dexus Property Group Ltd	20-Oct-21	55.30%	5.17%	39.53%	Yes
Goodman Group Ltd	18-Nov-21	64.88%	2.71%	32.40%	Yes
IDP Education Ltd	19-Oct-21	40.86%	4.42%	54.72%	Yes
Insurance Australia Group Ltd	22-Oct-21	36.60%	0.21%	63.19%	Yes
Link Administration Holdings Ltd	23-Nov-21	45.90%	0.05%	54.04%	Yes
Oil Search Ltd (Delisted)	30-Apr-21	37.84%	1.39%	60.77%	Yes
Rio Tinto Ltd (UK Law)	6-May-21	38.62%	1.37%	60.00%	Yes
Rio Tinto Ltd (AU Law)	6-May-21	46.46%	5.11%	48.42%	Yes
Scentre Group Ltd	8-Apr-21	71.28%	4.02%	24.71%	Yes
Transurban Group	21-Oct-21	69.60%	0.28%	30.12%	Yes
Westpac Banking Corp	15-Dec-21	51.48%	1.79%	46.72%	Yes

In the pre-peak season period of 2022, 17 ASX100 companies have held a shareholder vote on their remuneration report. Shareholder dissent has averaged 7.80%, and two companies received remuneration strikes. Santos Ltd received a first strike after shareholders expressed concerns over the grant of a one-off \$6.0m incentive award to CEO Kevin Gallagher. ASX Ltd received a first strike due to concerns over the Company's remuneration approach in light of performance concerns after a delay was announced in the replacement of its Clearing House Electronic Subregister System.

Of the companies that received a strike in 2021 and have already held their 2022 AGM, no company received a second strike. This could be indicative of the effectiveness of the strike system in encouraging greater engagement between boards and shareholders.

3. CLIMATE CHANGE

Australia is highly exposed to the transition and physical risks of climate, posing material financial risks for institutional investors and businesses. Climate inaction and policy uncertainty have been highlighted as key issues in the Australian market, posing a key barrier to low carbon investment despite the support for green opportunities, and in Australia's capability of meeting its net zero commitments¹.

On 14 September 2022 the new Labor led Federal Government's [Climate Change Bill 2022](#) received assent, enshrining an emission reduction target of 43% from 2005 levels by 2030 and net zero emissions by 2050. The legislation provides greater certainty for investors and participants in the energy market and a more stable policy setting. The legislation may signal a new climate focused policy pathway in the market.

Whilst government action matters, investors are responsible for the delivery of their own climate commitments. Investors can take action on the energy transition by incorporating climate change into investment decisions, engaging over climate change-related issues and seeking disclosure from companies as well as reporting on their own activities.

3.1 CLIMATE REPORTING IN AUSTRALIA

Active ownership requires high quality and timely data on climate-related risks from companies to inform stewardship decisions. The recommendations from the [Financial Stability Board Taskforce on Climate-Related Financial Disclosure \(TCFD\)](#) provide a common international framework for investors and companies alike. The use of TCFD sets clear reporting requirements and standards, streamlines reporting and encourages greater consistency and quality in reporting.

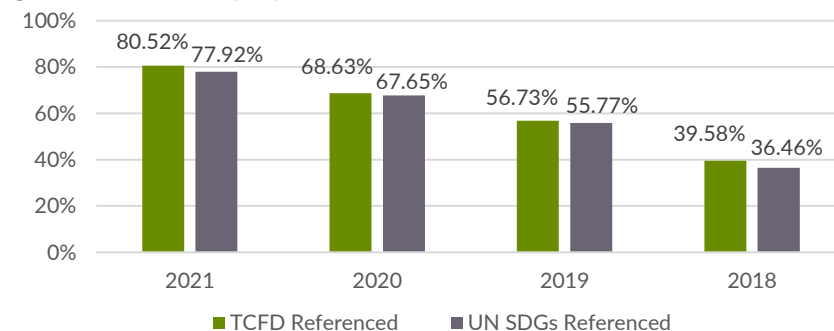
Whilst not mandatory in Australia, the Australian Prudential Regulation Authority and Australian Securities & Investment Commission consider

TCFD as being best practice for climate-related financial disclosures, and the Financial Services Commission recently published [climate risk guidance for fund managers](#), which sets expectations around net zero targets, labelling investment products, and fulfilling legal obligations to disclose climate-related risks.

However, being guidance materials, they are less prescriptive than mandatory reporting seen elsewhere around the world, such as in Hong Kong, Japan, New Zealand, Singapore, and the United Kingdom. It is likely that Australian regulators will review climate reporting requirements in future. Highlighting support, [20 of Australia's most influential business and financial peak bodies came together in 2022 to express support for the need of a sustainability reporting standard](#) including action on climate risk through the International Sustainability Standards Boards (ISSB) draft global sustainability reporting standards.

Minerva's analysis of corporate disclosures of ASX100-listed companies has found **the proportion of companies referencing the UN Social Development Goals and the TCFD Guidelines has been steadily increasing over time** - a clear majority of companies are now referring to both frameworks.

Figure 2: ASX100 company references to UN SDGs and TCFD



¹ For more information see Minerva's Australia ESG Update Briefing

3.2 CLIMATE TRANSITION PLANS

Companies and investors have a role to play in ensuring a just climate transition. Boards need to take action to ensure they have appropriate governance structures in place to manage this issue and provide reliable disclosure on their exposure to climate-related risks and opportunities, and investors have a role to hold investee companies to account for failing to appropriately manage risks.

One recent emergent investor initiative is the [Say on Climate initiative](#), which calls for companies to hold a shareholder vote on climate transition action plans. During 2021, several Australian companies committed to holding a say on climate vote in 2022, including:

- AGL Energy Ltd
- APA Group Ltd
- Boral Ltd
- Fletcher Building Group Ltd
- Fortescue Metals Group
- Origin Energy Ltd
- Rio Tinto Ltd
- Santos Ltd
- South32 Ltd
- Woodside Energy Group Ltd

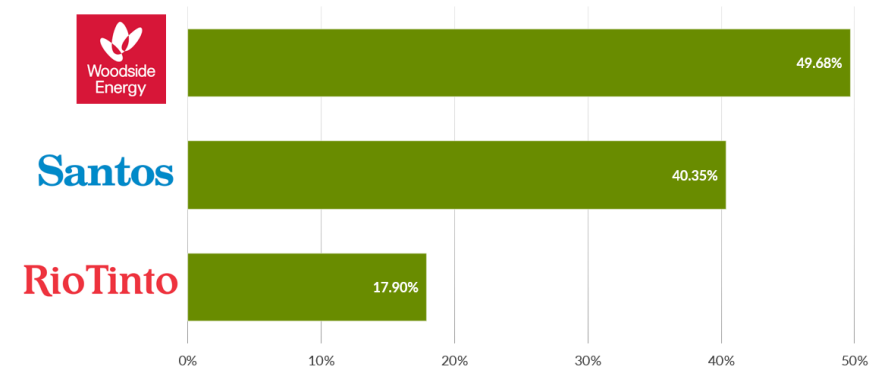
Accordingly, **climate transition plans will be a key focus for resources, engagement and voting in this year's AGM season with a number of companies expected to hold a vote.**

Analysis by Minerva of global say on climate votes found that no company received shareholder dissent of 20% or more on their climate transition plan in 2021. The voting results suggest that companies were rewarded by investors for being first adopters of say on climate and for the commitment

on transparency and engagement on climate this entails, rather than for the strength of their transition plans.

However, shareholder dissent on say on climate votes has increased in 2022 suggesting that now that the resolutions are starting to bed in, and good practice standards and guidelines developed, investors are more willing to hold companies to account for a plan insufficiently aligned with the Paris Climate Agreement. The early voting results at Australian companies in the pre-peak season months agree with this view, with Santos and Woodside both receiving very high oppositional votes from shareholders.

Figure 3: 2022 Say on Climate Votes Shareholder Dissent



Whilst shareholder dissent has increased on say on climates, no company has yet to suffer a defeat and **investors need to be cautious on climate transition plan votes due to the risk of rubber-stamping plans that are not aligned with the Paris Climate Agreement goals²**. Climate risk management is set to be the biggest issue for investors this coming season and investors will need to closely examine company climate-related disclosures and consider the most appropriate resolution to target for concerns.

² For more information see Minerva's briefing on climate stewardship.

4. ESG INVESTING

More investment managers than ever before are engaging companies on matters relating to environmental and social issues and reporting back to investors on the outcomes achieved. [Australia's responsible investment market](#) has reached a record \$1.5 trillion in assets under management, now representing 43% of total professionally managed funds.

4.1 GREENWASHING

With the increase in investor demand for, and availability of sustainability-related financial products comes the risk of greenwashing, investors being misled, and companies facing potential reputational and legal risks for misleading statements on their sustainability commitments.

Following the Australasian Centre for Corporate Responsibility (ACCR), launching [legal action against oil and gas giant Santos](#) over its claim that natural gas is “clean fuel” and that Santos has a credible pathway to net zero. The [Australian Institute of Company Directors has warned companies that legal risks around greenwashing are on the rise.](#)

Reflecting this, **Australian regulators have started to take action on greenwashing.** In June 2022, the Australian Securities and Investments Commission (ASIC) released [guidance \(INFO 271\)](#) for entities offering sustainability-related products on how to avoid making misrepresentations in promotional material, disclosure statements, and offerings that could be considered “greenwashing. The guidance provides clarification on existing obligations and laws investors should comply with to avoid greenwashing.

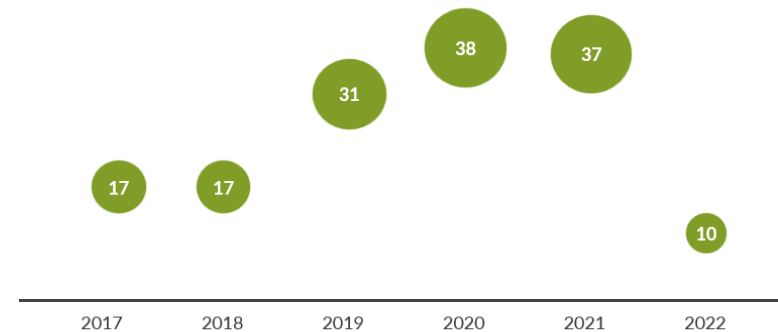
The Australian Stock Exchange (ASX) announced in its [Corporate Plan for 2022-2026](#) that it will focus on preventing harms arising from greenwashing and supporting effective climate and sustainability governance and disclosure. The ASX will work with other agencies and international peers to coordinate action and improve practices, and also take enforcement action against misleading marketing and greenwashing by entities. Finally, the

Australian Competition & Consumer Commission (ACCC) [2022/23's compliance and enforcement priorities](#) include manipulative or deceptive environmental and sustainability claims. **These statements place companies and investors on notice for the quality of their sustainability claims and disclosures.**

4.2 SHAREHOLDER PROPOSALS

The number of shareholder proposals filed in the ASX100 has been increasing over time, with 2020 being the record year in the number of proposals filed. In the first six months of 2022, there have been 10 shareholder proposals voted on, and with the Australian peak season around the corner, the total number is expected to reach similar numbers seen in recent years.

Figure 4: Number of Proposals Filed in Australia



ESG issues have dominated shareholder resolutions in Australia, with shareholders showing a particularly keen focus on climate change. There have also been a number of proposals on Aboriginal and Torres Strait Islander rights, engagement and cultural protection in the market.

A unique feature of the Australian market is the filing of resolutions seeking an amendment to the constitution to give shareholders the right to propose advisory resolutions or to express an opinion.

Filing a constitution amendment request gives shareholders the platform to propose advisory resolutions on other matters, such as climate change, at the same meeting. As the constitutional amendment resolutions are classified as 'special resolutions', shareholders struggle to find the required majority and no such proposal has been successful.

If the constitution amendment fails, then any advisory resolution also filed at the meeting cannot pass as they are conditional on the amendment, regardless of the level of support received.

Section 249N of the Commercial Act governs the mechanism for shareholders to file resolutions. Shareholders may file a resolution if they hold at least 5% of the voting rights, or if the resolution is filed by 100 or more shareholders entitled to vote at the meeting.

Management powers in Australia are typically vested exclusively with the directors, and the courts define a shareholder resolution as a 'decision' of the company. Therefore, **shareholder resolutions are binding on the company and are subject to a supermajority requirement of 75% votes in favour.**

The current system makes it difficult for shareholders to hold public companies to account on issues they would like to express an opinion on. **Whilst constitutional amendments may help fix the issue on an individual company level, the issue would be better dealt with on a market-wide basis to ensure comparability.** In light of the increasing shareholder activism, **a regulatory review of the shareholder resolution regime would be timely and beneficial to both boards and shareholders.** Despite these challenges, the number of shareholder resolutions in the ASX100 has increased over time and are becoming a regular feature in the market.

A second unique feature of the shareholder proposal experience in Australia is that the filing of proposals is dominated by just two organisations: Market Forces and the Australasian Centre for Corporate Responsibility.

Shareholder Support

In 2021, **five climate-related resolutions received majority support indicating increased support for ESG shareholder proposals. However, only two of the resolutions were carried.**

Table 2: Support for advisory ESG-related shareholder proposals (ASX100, 2021)

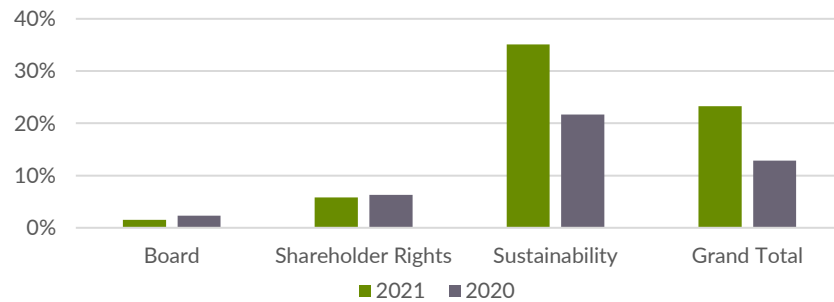
	Resolution	Vote in Favour	Outcome
AGL Energy Ltd	Paris-aligned Targets	50.97%	Not Carried
BHP Group Ltd	Climate Lobbying	98.55%	Not Carried
Rio Tinto Ltd	Paris-aligned Targets	98.52%	Carried
Rio Tinto Ltd	Climate Lobbying	98.59%	Carried
South32 Ltd	Climate Lobbying	98.01%	Not Carried

In the case of Rio Tinto, as the board recommended shareholders to vote in favour of the shareholder proposals, the shareholder withdrew the constitution amendment request meaning the proposals were not contingent on the amendment passing. While the BHP and South32 boards also recommended shareholders to vote in favour of the climate lobbying proposals, as the proposals were contingent on the constitution amendment resolution, they were not carried despite the high levels of shareholder support.

Another notable development was an increase in the number of votes cast in favour of shareholder proposals and in particular, an increase in support on advisory ESG-related shareholder proposals.

Average support for the constitution amendment resolutions has remained low at 5.82% average support while **support for advisory ESG-related shareholder proposals increased from 21.71% to 35.11% in 2021** – in part due to the successful resolutions noted above. Nonetheless, this shows a notable increase in shareholder support for company action on environmental and social issues, and in particular, on climate change.

Figure 5: Shareholder Proposal Support ASX100



Looking at the 2022 pre-peak season shareholder proposals, there have been 10 resolutions voted. The constitution amendment proposals have received average support of 5.66% and the climate-related proposals have received average support of 14.39% - a lower level than the average in 2021.

A decline in support on shareholder proposals in 2022 has been observed in other markets, such as the United States and the United Kingdom. There are various factors contributing to the decline which may be impacting shareholder voting on ESG proposals in Australia and elsewhere this year:

- Shareholder activists may have been emboldened by success in 2021 resulting in more ambitious proposals, particularly on climate change, with more requests for targets and policy rather than greater transparency, and more sustainability-related proposals filed than ever before.
- Some institutional investors clarified their voting approach on proposals that are considered too directive or are seen as micromanaging.

- A number of environmental proposals have been withdrawn following agreements between boards and shareholders, resulting in more ambitious proposals left on agendas.
- First-time proposals tend to receive low levels of support until boards and investors become more comfortable with them.
- There was a different political and economic environment with the war in Ukraine and crisis in the energy market impacting voting decisions around climate strategy and the need to ensure short-term energy security.

Table 3: 2022 Shareholder Proposals Voted

Company	Resolution Issue	Votes in Favour	Proponent
QBE Insurance Group Ltd	Constitution Amendment	6.10%	Market Forces
QBE Insurance Group Ltd	Climate Financing	17.88%	Market Forces
Santos Ltd	Constitution Amendment	4.69%	ACCR
Santos Ltd	Climate Capital Protection	15.05%	Market Forces
Santos Ltd	Climate Lobbying	14.58%	ACCR
Santos Ltd	Climate Decommissioning	15.63%	ACCR
Woodside Energy Group Ltd	Constitution Amendment	6.18%	ACCR
Woodside Energy Group Ltd	Climate Capital Protection	13.99%	Market Forces
Woodside Energy Group Ltd	Climate Lobbying	11.91%	ACCR
Woodside Energy Group Ltd	Climate Decommissioning	11.72%	ACCR

4.3 2022 KEY ESG VOTES

Minerva has identified the below key ESG proposals for shareholders to look out for in 2022, announced as of the end of September. This year, there is a focus on the financing of fossil fuel projects and reporting on climate accounting. These two climate issues have been the subject of shareholder activism elsewhere, and in particular, in the United States. Looking at the United States AGM season may provide an insight into how these proposals will play out in Australia.

Proposals on financing new fossil fuel projects at US banks and insurers received low levels of shareholder support, with around 11% on average, as shareholders were concerned the proposals micromanaged company strategy. However, proposals on climate accounting tended to receive high levels of support, with a proposal at Exxon Mobil Corp receiving majority support and a proposal at Chevron Corp receiving just under 40% votes in favour. Reflecting this, the [ACCR has announced that it has withdrawn its proposal on climate accounting at Origin Energy after the Company agreed to deliver the information.](#)

Table 4: Key ASX ESG Votes

Company	Expected AGM Date	Resolution Issue	Proponent
Commonwealth Bank Of Australia Ltd	12/10/2022	Constitution Amendment	Market Forces
Commonwealth Bank Of Australia Ltd	12/10/2022	Climate Financing	Market Forces
Origin Energy Ltd	19/10/2022	Constitution Amendment	ACCR
Origin Energy Ltd	19/10/2022	Climate Accounting	ACCR
Origin Energy Ltd	19/10/2022	Water Survey and Traditional Owner Engagement	Not Disclosed
Origin Energy Ltd	19/10/2022	Cultural Heritage Protection	Not Disclosed

Company	Expected AGM Date	Resolution Issue	Proponent
Origin Energy Ltd	19/10/2022	Traditional Owner Consent	Not Disclosed
Whitehaven Coal Ltd	26/10/2022	Constitution Amendment	Market Forces
Whitehaven Coal Ltd	26/10/2022	Climate Capital Protection	Market Forces
BHP Group Ltd	10/11/2022	Constitution Amendment	ACCR
BHP Group Ltd	10/11/2022	Climate Lobbying	ACCR
BHP Group Ltd	10/11/2022	Climate Accounting	ACCR
AGL Energy Ltd	15/11/2022	Shareholder Director Candidates	Galipea Partnership
New Hope Corp Ltd	24/11/2022	Constitution Amendment	Market Forces
New Hope Corp Ltd	24/11/2022	Climate Capital Protection	Market Forces
Washington H Soul Pattinson & Company Ltd	09/12/2022	Constitution Amendment	Market Forces
Washington H Soul Pattinson & Company Ltd	09/12/2022	Portfolio Paris Alignment	Market Forces
Westpac Banking Corp	14/12/2022	Constitution Amendment	Market Forces
Westpac Banking Corp	14/12/2022	Climate Financing	Market Forces
Australia and New Zealand Banking Group Ltd	15/12/2022	Constitution Amendment	Market Forces
Australia and New Zealand Banking Group Ltd	15/12/2022	Climate Financing	Market Forces
National Australia Bank Ltd	16/12/2022	Constitution Amendment	Market Forces
National Australia Bank Ltd	16/12/2022	Climate Financing	Market Forces

5. CYBER SECURITY

This year has seen a marked increase in the number of reported cyber security breaches in Australian companies, making it a likely topic of contention this AGM season. The highest profile cases such as those faced by Optus and Medibank have had dire consequences for shareholders, leading to a policy reaction by the Australian government.

The Australian Institute of Company Directors (AICD) and the Cyber Security Cooperative Research Centre (CSCRC) have released a new set of governance principles to help organisations strengthen their cyber security.

The principles are designed to enable directors to ask the right questions of management, spot red flags in how cyber security risk is being managed, promote a culture of resilience, and prepare and respond effectively to significant security incidents.

Table 5: Australian companies facing cyber threats in 2022

OPTUS	Sensitive information belonging to about 10 million customers was stolen. Personal details obtained included driver's licences, Medicare card information, names, dates of birth, email addresses and phone numbers. Optus will be reimbursing affected customers who have to replace their passports.
MEDIBANK	All Medibank customers have had their data exposed. The alleged hackers claim they have stolen 200Gb of data which includes medical history, including where medical services were received and codes relating to their diagnosis and procedures. The data breach contains highly sensitive information which raises significant reputational and brand issues.
ENERGY AUSTRALIA	Unauthorised access to its My Account online platform resulted in the exposure of data for 323 residential and small business customers.
TELSTRA	A data breach through a third-party platform has led to employee information being leaked.
WOOLWORTHS	Woolworths' MyDeal subsidiary has disclosed a data breach affecting 2.2 million customers, with the hacker trying to sell the stolen data on a hacker forum.

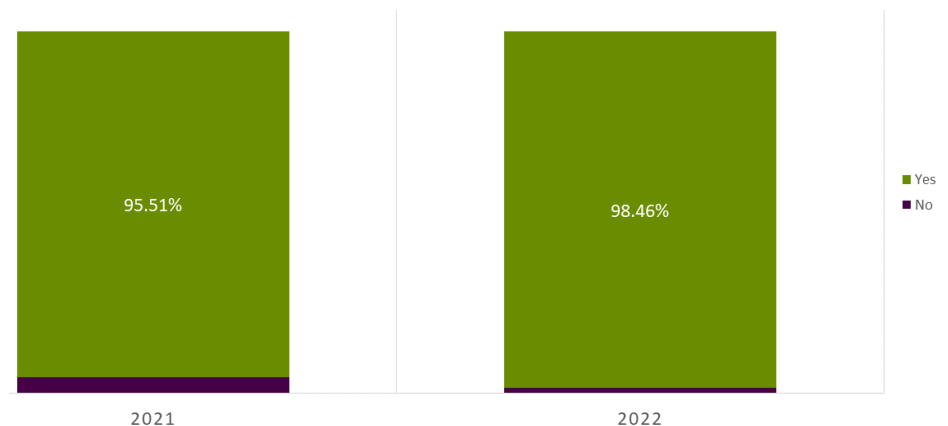
The new framework focuses on board oversight across five key areas:

- Roles and responsibilities
- Strategy development and evolution
- Incorporating cyber into risk management
- Building a cyber resilient culture
- Preparing and responding to a significant incident

Whilst the new framework is largely reactive to recent breaches, Australian companies themselves appear to have been paying close attention.

Minerva's ASX100 data for 2021 (89 companies accounted for) and 2022 (65 companies accounted for thus far) show that cyber security risk is a common consideration in annual reports. However, the proliferation of data breaches in recent weeks has uncovered gaps in Australian companies' underlying governance.

Figure 6: Australian companies disclosing cyber security risk (ASX100)



About Minerva

Minerva helps investors and other stakeholders to overcome data disclosure complexity with robust, objective research and voting policy tools. Users can quickly and easily identify departures from good practice based on their own individual preferences, local market requirements or apply a universal good practice standard across all markets.

For more information, please email hello@minerva.info or call + 44 (0)1376 503500

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