



MINERVA BRIEFING

2021 Australia Proxy Season Review

March 2022

AWARDED FOR ESG LEADERSHIP



Winner – Best Sustainable & ESG Investment Initiative
Investment Week – Sustainable & ESG Investment Awards
Minerva | September 2021



Runner-up – ESG Data Provider of the Year
Pensions Expert – Pension and Investment Provider Awards
Minerva | September 2021



Winner – ESG Initiative of the Year
Environmental Finance – Sustainable Investment Awards
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INTRODUCTION

Prior to the 2021 Australian AGM season, Minerva published a [Season Preview](#) document for clients and friends of Minerva offering expert insight into the voting trends and governance developments in the market. With Australia's AGM season now concluded, this updated briefing looks back on the environmental, social and governance (ESG) issues covered in the preview briefing with fresh insights from the results voting results of the ASX100.

Key Takeaways

Overall shareholder dissent fell in 2021, however there was a notable increase in support for ESG-related shareholder proposals and in the number of remuneration report defeats – “Strikes”. This suggests shareholders are taking a more targeted approach, resulting in a lower number of significant dissent resolutions, but where opposition was expressed, it was often at a very high level. Climate change continues to be the priority focus for ESG activism in the market.

Key Statistics

- Average dissent in 2021 stood at 5.75%, lower than 2020's 6.28%.
- 42 resolutions and 24 companies received high dissent at a meeting in 2021, compared to 2020's 63 resolutions and 36 companies.
- 13 remuneration report resolutions received a strike in 2021, of which seven were voted down by shareholders. This compares to eight strikes and two defeats in 2020.
- There were 37 shareholder proposals filed in 2021 with the majority concerning climate change.
- Average shareholder support on shareholder proposals has almost doubled (from 12.87% to 23.27%), and five climate change-related proposals received majority support.



SHAREHOLDER MEETINGS

MEETING FORMAT AND TURNOUT

The coronavirus pandemic and lockdown restrictions continued to impact corporate meetings in Australia in 2021. Average meeting turnout at AGMs in the ASX100 dropped again this year from 68.32% to 66.89%.

Companies were restricted in their ability to hold online meetings in 2021 following the expiry of temporary legislation introduced in response to the coronavirus pandemic. Although a bill to modernise the Corporations Act so that it allows for hybrid and virtual AGMs was introduced by the Federal Government into parliament on 20th October 2021, it was not brought into effect in time to allow for its smooth implementation.ⁱ

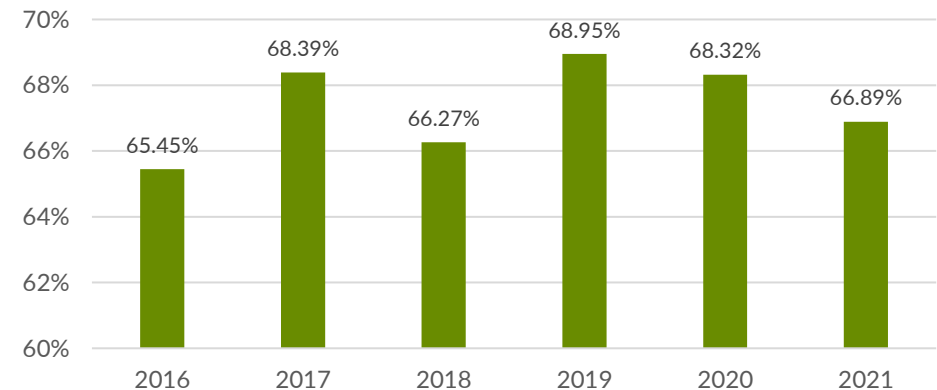
The permanent reforms now allow meetings to be held physically, as a hybrid, or, if expressly permitted by the company's constitution, virtually. This led to several companies putting forward a resolution at their 2021 AGM to enshrine virtual-only meetings in the constitution.

These resolutions were met with concerns from shareholders which led to Dexs Property Group Ltd and Brambles Ltd withdrawing proposed constitutional amendments, while Vicinity Ltd put two such resolutions forward which both failed to receive a sufficient majority to pass.

These resolutions needed a 75% vote in favour to pass. Several institutional investors remain opposed to the use of virtual-only meetings and expect companies to return to allowing physical attendance once circumstances allow.

When voting on the introduction of the ability to hold virtual meetings, investors must consider whether other constitutional changes are bundled with the proposal and whether the article includes a provision that virtual-only meetings will be held only in exceptional circumstances.

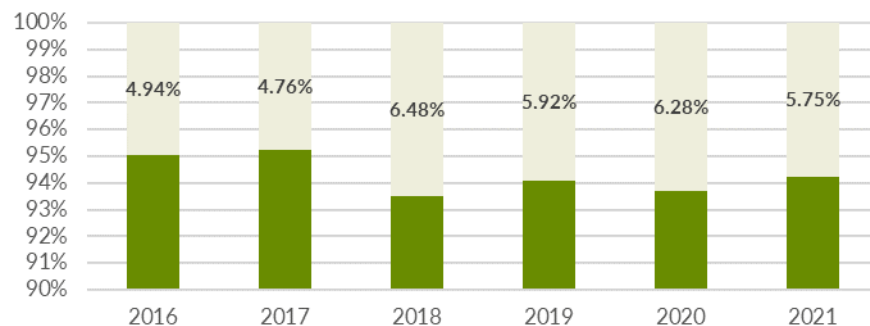
Figure 1 - ASX 100 Average Turnout AGMs (2016-2021)



SHAREHOLDER DISSENT

Average shareholder dissent across all ASX100 resolutions over the last six years has averaged 5.70%. Shareholders overwhelmingly support management, with an approval rate of more than 94%. In 2021, average dissent slightly fell from 2020's dissent level, from 6.28% to 5.75%.

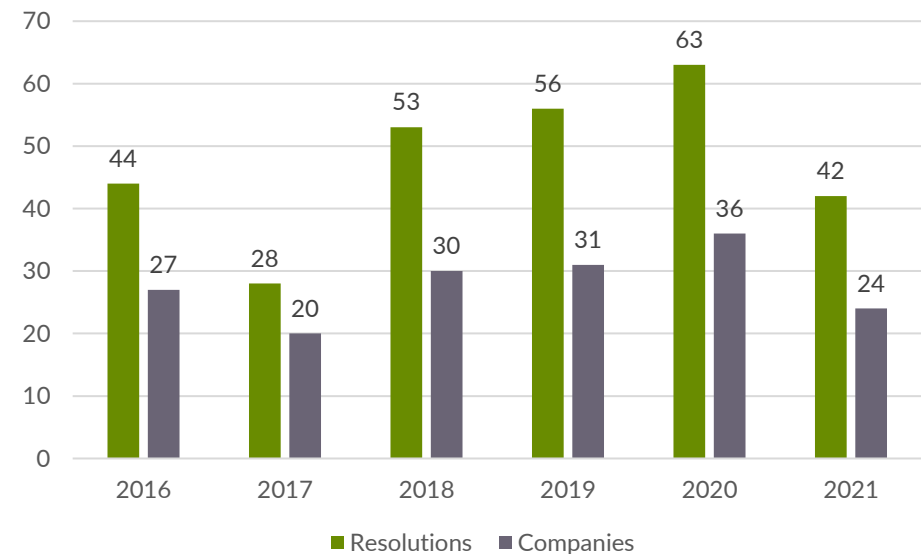
Figure 2 - Average Shareholder Dissent in the ASX100 (2016-2021)



In addition to lower average dissent, 2021 also saw a lower number of companies and resolutions receiving high shareholder dissent (20% or more votes against management recommendation).

In 2021, 24 companies received high dissent on one or more resolution at a shareholder meeting and overall, 42 resolutions received high dissent. This reflects a reversal from the consecutive increases in dissent from 2017 to 2020.

Figure 3 - High Dissent Companies and Resolutions in the ASX100 (2016-2021)



Nine resolutions proposed by management were voted down by shareholders in 2021, of which seven were remuneration report approvals and two were resolutions seeking amendments to the constitution to introduce the ability to hold virtual-only meetings.

In addition, there were five resolutions proposed by shareholders that received majority support in 2021. Notably, whilst overall dissent fell in 2021, average support on shareholder proposals increased from 12.87% to 23.27%. This indicates shareholders are more willing to oppose management on a resolution proposed by shareholders rather than on a resolution proposed by management.

KEY GOVERNANCE ITEMS

BOARD ACCOUNTABILITY

The chart below shows that average dissent on director elections in 2021 stayed relatively steady from 2020 levels at 3.64% compared to 3.53%. In 2021, 11 director elections received dissent of 20% or more and a further 15 received dissent between 10-20%. Looking back, 2019 continues to remain the standout year for dissent on director elections.

Figure 4 - Average Dissent on Director Elections ASX100 (2016-2021)

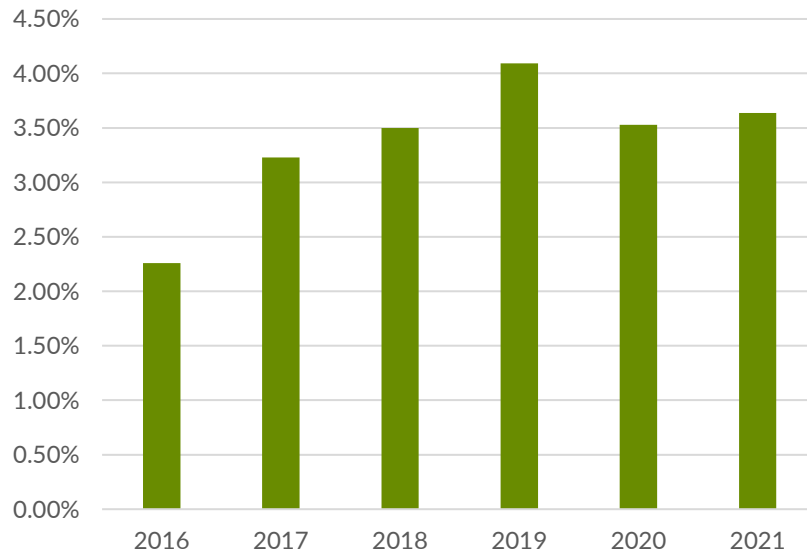
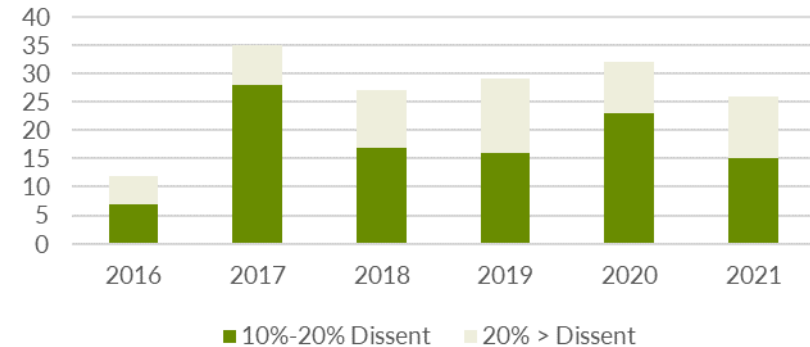


Figure 5 - Count of High Dissent Director Elections in the ASX100 (2016-2021)



REMUNERATION

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 intent behind the strike system is to encourage greater director accountability for executive remuneration where boards have failed to adequately respond 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. 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

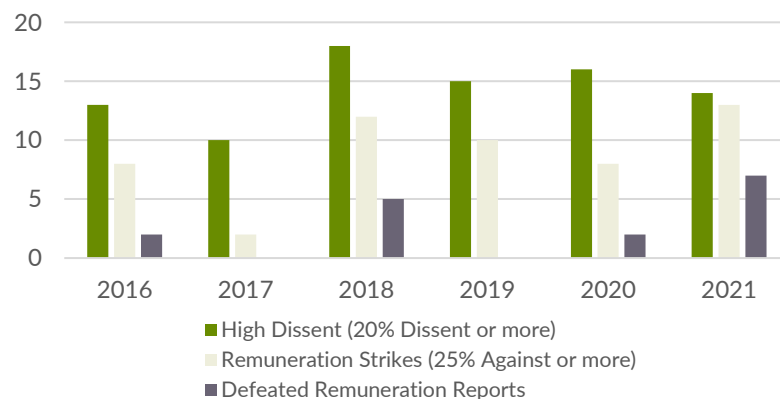
recent AGM will be required to stand for re-election (other than the managing director).

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.

In 2020 eight companies in the ASX100 received a remuneration strike – of which, only one received a second strike in 2021.

Figure 6 - Remuneration Dissent in the ASX100 (2016-2021)



Case Study: Crown Resorts Ltd

Crown Resorts Ltd received a first strike in 2020 after a regulatory inquiry was launched into alleged facilitation of money laundering at its casinos and cultural, governance and risk management failings. CEO Ken Barton stepped down after the inquiry found Crown was not fit to hold a gaming licence in New South Wales, meaning it cannot operate its newly built casino in Sydney. A second inquiry conducted in 2021 by the Victorian Royal Commission granted Crown a two-year grace period to correct a ‘catalogue of wrongdoing’ at its Melbourne casino.

At the 2021 AGM around 30% of shareholders voted against the remuneration report – shareholders had expressed concerns with the \$9,674,098 aggregate termination payments to outgoing CEO Barton and executives Barry Felstead and Todd Nisbet.

Interim Board Chair Jane Halton stated *“the Board carefully reviewed each executive’s termination arrangements, our legal obligations and the surrounding circumstances at the time these decisions were made, including obtaining advice. In this context, the Board considers its decisions on the termination payments to former senior executives were made in the best interests of shareholders having regard to the circumstances facing the Company.”*

Despite the concerns, the board spill resolution received only 4.51% shareholder support - highlighting shareholder general lack of support for the spill mechanism or perhaps support for the reconstituted Board.

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 this year.

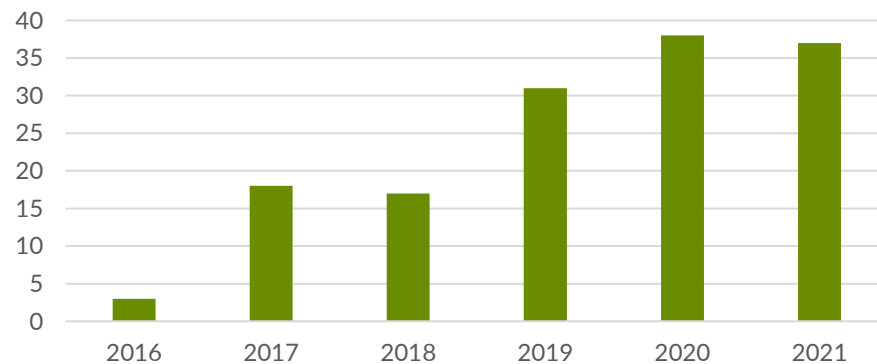
Table 1 – ASX100 remuneration strikes (2021)

Company	Outcome	Dissent	Notes
Dexus Property Group Ltd	Defeated	66.20%	Shareholders expressed concerns over the grant of a one-off \$3.5m incentive award to CEO Darren Steinberg. The Dexus Board also granted a one-off retention equity award to executives Deborah Coakley and Ross Du Vernet.
Link Administration Holdings Ltd	Defeated	63.40%	Shareholders expressed concerns at takeover target Link over the grant of one-off retention awards to executives. In addition, shareholders may have been concerned with the payment of short-term incentives in the year following no payouts in the previous two years.
Rio Tinto Ltd	Defeated	62.16%	Shareholders expressed concerns over the remuneration treatment of outgoing executives and director accountability following Rio's destruction of a 46,000-year-old sacred indigenous site in Australia.
	Defeated	61.38%	
Insurance Australia Group Ltd	Defeated	59.14%	Shareholders expressed concerns over the alignment of executive pay with performance after IAG reported a full year loss of \$427m, after it was forced to put aside \$1.15 billion for business interruption claims due to poorly worded policies that meant IAG was liable for losses sustained by small businesses during COVID-19 lockdowns.
Oil Search Ltd	Defeated	54.10%	Shareholders expressed concerns over the alignment of executive pay and the shareholder experience after a fall in share price after Oil Search posted a loss for the year, cut revenue forecasts and downgraded assets. As Oil Search is incorporated in Papua New Guinea it was not required to hold a shareholder say on pay; it voluntarily put forward the resolution in the spirit of transparency and good governance.
Scentre Group Ltd	Defeated	53.54%	Shareholders expressed concerns over the payment of short-term incentives to executives after Westfield-owners Scentre reported a loss for the year and cut the final dividend to shareholders.
Appen Ltd	Passed	48.52%	Shareholders expressed concerns over the alignment of executive pay and the shareholder experience after Appen's share price crashed in 2021 amidst concerns over its performance and outlook.
Goodman Group Ltd	Passed	44.70%	Shareholders expressed concerns over a new 10-year long-term incentive plan that provided for a grant worth around \$38m to CEO Greg Goodman at face value. The board stated the vote result was due to different approaches in the method of valuing the proposed grant, and under its adopted fair value measure, the award was valued at \$9.5m.
IDP Education Ltd	Passed	35.12%	Shareholders expressed concerns over the level of remuneration granted to executives after the firm received \$7.973m in government jobkeeper wage subsidies in 2021 (2020: \$4.464m). A number of institutional investors expect the receipt of government support to be reflected in remuneration outcomes and for companies to pay back furlough money before making short-term incentive payments.
Crown Resorts Ltd	Passed	30.97%	Shareholders expressed concerns over the remuneration granted to outgoing executives following regulatory inquiries into risk management and governance failures at Crown.
Westpac Banking Corp	Passed	30.40%	Shareholders expressed concerns over the alignment of pay and performance. The Australian Securities & Investment Commission has launched six civil penalty proceedings against Westpac in the Federal Court. The proceedings, each the result of an individual ASIC investigation, allege widespread governance and compliance failures across multiple Westpac businesses.
Transurban Group	Passed	28.72%	Shareholders expressed concerns over the level of payout under the short-term incentive after the Company's performance was impacted by the coronavirus pandemic. Shareholders may have also had concerns with the one-off share awards granted to new executives Michelle Jablko and Simon Moorfield for forfeited incentives from their prior employers.

SHAREHOLDER PROPOSALS

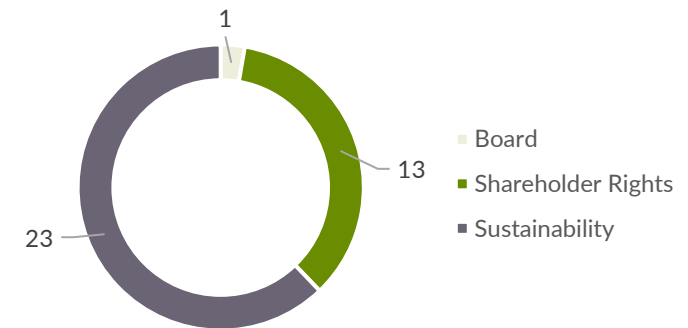
According to Minerva’s VoteWatch database, there were 37 shareholder proposals in the ASX100 in 2021, remaining relatively stable to last year’s 38 shareholder proposals.

Figure 7 - Number of shareholder proposals in ASX 100 (2016-2021)



Around 60% of the shareholder proposals in 2021 concerned sustainability issues, highlighting the importance of ESG issues for Australian shareholders. Of the sustainability proposals all but two concerned climate change-related issues – the other two proposals concerned human rights and cultural heritage protection.

Figure 8 - ASX100 shareholder proposals by topic (2021)



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.

A company’s constitution governs decision-making rights for shareholders. As a result, there are routinely resolutions filed by shareholders seeking an amendment to the constitution to give shareholders the right to propose advisory resolutions or to express an opinion. Filing this 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.

In 2021, **five climate-related resolutions received majority support. However, only two of the resolutions were 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 in 2021 is an increase in the number of votes cast in favour of shareholder proposals and in particular, the increase in support for the 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 four resolutions receiving over 90% support. Nonetheless, this shows a notable increase in shareholder support for company action on environmental and social issues, and in particular, climate change.

Figure 9 - Shareholder Proposal Support ASX100

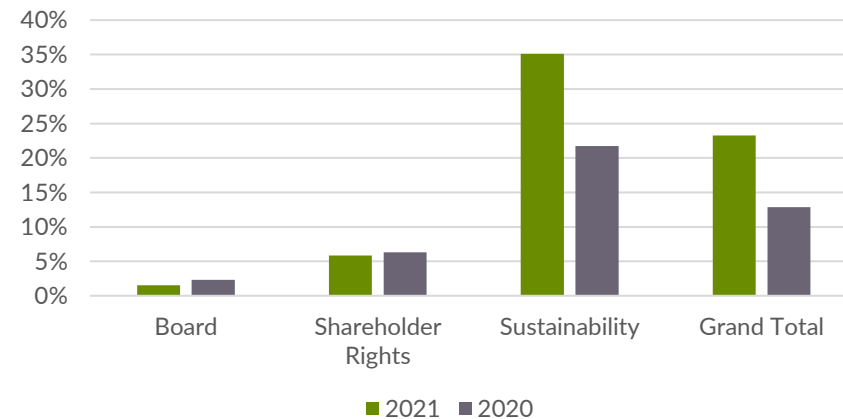


Table 2 - Support for advisory ESG-related shareholder proposals (ASX100, 2021)

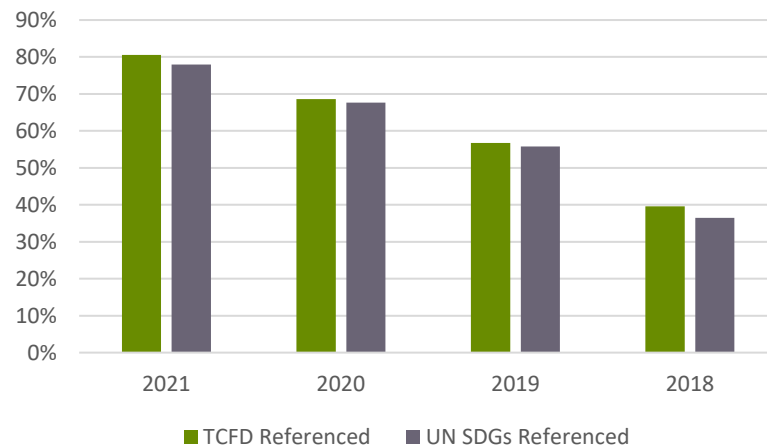
Company	Resolution	Vote in Favour	Outcome
AGL Energy Ltd	Paris-aligned Targets	50.97%	Not Carried
BHP Group Ltd	Climate Lobbying	98.55%	Not Carried
Rio Tinto Ltd	Paris-aligned Targets	98.52%	Carried
Rio Tinto Ltd	Climate Lobbying	98.59%	Carried
South32 Ltd	Climate Lobbying	98.01%	Not Carried

ESG DEVELOPMENTS

2021 was another important year for Australian ESG developments, with many of the trends laid out in Minerva's proxy season forecast continuing to develop. With 2022 set to be another record year for ESG disclosure and shareholder activism, this section reflects on the continuing developments in this area.

Minerva's analysis of corporate disclosures of ASX100-listed companies found the proportion of companies referencing the UN SDGs and the TCFD Guidelines has been steadily increasing over time - a clear majority of companies are now referring to both frameworks. However, this amplified discourse on environmental and social sustainability excludes regulatory and sector-specific ESG issues, which continue to impact the Australian Market.

Figure 10 - ASX100 company references to UN SDGs and TCFD



BANKS AND CLIMATE

All four of Australia's big banks faced shareholder resolutions asking them to abide by their self-declared support for net-zero emissions by 2050 and stop financing fossil fuels.

The resolutions asked for a firm commitment from Westpac Banking Corp, Australia and New Zealand Banking Group, Commonwealth Bank of Australia, and National Australia Bank not to fund any fossil fuel projects, in line with calls by the [International Energy Agency](#).ⁱⁱ

Originally filed in October 2021 by a group of about 100 shareholders, the resolutions came as a warning ahead of COP26. Australia's AGM season revealed shareholder support for the banks, against the resolutions, but their boards are on notice as regulators continue to step up pressure on climate-related disclosures.

The Council of Financial Regulators, consisting of the APRA, ASIC, RBA and Treasury, has established a working group on climate risk to consider and coordinate actions in relation to managing climate risks. The Council published an update paper in 2021 outlining its recent activities and planned further work. The Council plans on facilitating high-quality and comparable climate-related disclosures and examine the implications of emerging sustainable finance taxonomies and consider possible Australian approaches to these developmentsⁱⁱⁱ.

On the global stage, ASIC, through its membership of the International Organisation of Securities Commission's (IOCSO) sustainable finance taskforce, is working on improving sustainability-related disclosures made by issuers and asset managers and

enhancing coordination of relevant regulatory and supervisory approaches. ACSI has also expressed support for the objectives of the International Sustainability Standards Board in developing global baseline climate and sustainability reporting standards.

CONDUCT AND CULTURE

Corporate Australia has continued to face corporate culture scandals resulting in management restructurings.

James Hardie Industries plc announced on 7 January 2022 that Jack Truong was no longer employed as CEO. The Board undertook due diligence, which included an independent third-party consultant, following employee complaints about Truong's work-related interactions. The Board concluded that Truong's conduct, while not discriminatory, extensively and materially breached the James Hardie Code of Conduct, and resolved to terminate his employment.

Truong's dismissal is reflective of the growing importance being shown to culture and conduct at companies. Crown Resorts Ltd (money laundering and internal control failures), QBE Insurance Group Ltd (code of conduct breach) and Rio Tinto Ltd (cultural heritage protection failures) have all seen their CEOs depart in recent years due to conduct and ethical failures.

HUMAN RIGHTS DUE DILIGENCE

Human rights and modern slavery have long been an important topic for consideration by Australian shareholders. In December 2021, the Australian Parliament passed legislation to amend Australia's sanctions regime to allow for so-called 'Magnitsky' style sanctions to

be introduced, allowing extraterritorial sanctions that target specific countries, organisations and individuals.

The new sanctions will increase the due diligence expectations of businesses in Australia, requiring them to ensure entities or individuals they do business with are not subject to any of these sanctions.

These new sanctions come after a Private Member's Bill to ban imported products linked to modern slavery passed the Senate in August and was introduced to the House of Representatives in November.^{iv} Although the bill has not yet been passed, it comes as the latest in a series of international reactions to the alleged human rights abuses in Xinjiang.^v

This year, the tenth anniversary of the UN Guiding Principles for Business and Human Rights, Australia's Commonwealth Modern Slavery Act will be subject to review. This comes as the EU has begun implementing mandatory human rights due diligence (mHRDD), with legislation recently passing in both Germany and Norway. It is highly likely that the Australia's new sanctions law, the Private Members Bill on Xinjiang, and the EU's growing mHRDD scheme will have significant impacts on the Commonwealth Modern Slavery Act's review, making human rights due diligence a top priority for investors this year.

MINING SCANDALS CONTINUE

The destruction of sacred rock shelters in Juukan Gorge by Rio Tinto has acted as a catalyst for investor action on indigenous rights and cultural heritage protection in Australia while also highlighting the material

ethical and financial risks involved. Minerva covered these developments in our 2021 [Australia ESG Update](#).

In October 2021 a new initiative to improve cultural heritage protection in Australia was launched. The Dhawura Ngilan Business and Investor Initiative is led by the First Nations Heritage Protection Alliance in partnership with the Global Compact Network Australia (GCNA) and the Responsible Investment Association Australasia (RIAA). The new initiative has gone on record with ASIC to criticise Western Australia's new Aboriginal Cultural Heritage Bill, saying it will not prevent another Juukan Gorge.

Shortly afterwards, in November 2021 the Government announced a historic partnership with the First Nations Heritage Protection Alliance to strengthen safeguards for Aboriginal and Torres Strait Islander heritage.^{vi} Likewise, the RIAA has produced new guides on indigenous rights and cultural heritage protection, and an investor guide on human rights and climate change. These developments sparked by the Juukan Gorge scandal, enhance the due diligence expected of Australian businesses around First Nations.

Rio's actions have attracted global attention for their dealings with indigenous and first nations populations outside of the Juukan Gorge disaster. They face challenges in Arizona, United States over plans to build one of the world's largest underground copper mines after Native Americans raised concerns it would destroy sacred land. The dispute centres of Oak Flat Campground, which the Apache consider home to deities known as Ga'an, and site of religious ceremonies.

This year, a new scandal has emerged from Rio Tinto, with an independent report revealing "systemic" bullying, sexism and racism across its firm. The report conducted by Elizabeth Broderick, Australia's

former national sex discrimination commissioner, found that most women working at Rio experienced "everyday sexism" which included being left out of meetings and not being provided with a women's toilet. The report has also raised concerns about major mining company BHP Billiton.

Jakob Stausholm, chief executive officer at Rio Tinto, who commissioned the report, said the findings were "deeply disturbing" and offered his "heartfelt apology to every team member, past or present, who has suffered as a result of these behaviours". This report is likely to spark great action on diversity, equity and inclusion for Australian investors, especially in the mining sector.

While in Serbia, following weeks of protests the Serbian government revoked Rio Tinto's lithium mining license due to environmental concerns. The government stated Rio Tinto had failed to provide sufficient information to communities about the project. Rio, which states it complied with Serbian and EU laws, is reviewing the legal basis for the decision and has stated it may take the government to court. Rio had intended to invest \$2.4bn into the project, which was due to start production in 2027.

REMUNERATION AND SUSTAINABILITY

This year's AGM season has revealed greater pressure on companies to establish greater links between remuneration and sustainability. Several companies have begun taking into account short-term sustainability incentives and long-term sustainability incentives for remuneration.

Some examples include BHP Group, whose board adjusted management incentives down by 10% to account for the

mistreatment of women at their isolated mine sites. This reflects the social issues identified in the wider mining industry in the section above. At Nine Entertainment, CSL and Domain are all also getting tougher on remuneration hurdles for their directors.

Companies that are failing to recognise their accountability to shareholders are being taken to account in remuneration votes by shareholders. See the Remuneration section above for more details or check out the full case study into Rio Tinto's remuneration issues in Minerva's [UK Voting Review 2021 H1](#) for an in depth analysis of a company failing to recognise its accountability to shareholders.

CLIMATE CHANGE TRANSITION PLANS AT THE FORE

With COP 26 raising the profile of private sector responsibilities in addressing climate change, this year saw aggressive climate transition plans from some of Australia's biggest polluters, including Fortescue Metals Group and Woodside Petroleum.

Continuing last year's trend, many AGMs saw shareholder proposals on climate change put forward by activist shareholder groups such as Market Forces and ACCR.

Australia has also emerged as one of the centre points of the Say on Climate Initiative, with several firms committing to holding a shareholder vote next year (including AGL Energy, Oil Search, Origin Energy, Rio Tinto, Santos, South32, Woodside Petroleum).

BHP Group Ltd became the first Australian company to voluntarily put forward a resolution to approve its climate transition action plan.

BHP received qualified support of 81.82% on its climate plan, with some shareholders expressing concerns over the exclusion of BHP's steelmaking customers from its Scope 3 targets – BHP's largest source of Scope 3 emissions.

As previously discussed in [Minerva's Climate Stewardship Briefing](#) in October 2021, such resolutions on climate transition plans have their benefits, but make up just one part of effective climate stewardship. Minerva advocates for active ownership and engagement on climate and aims to help clients do so.

BUNGLED PROXY ADVISER REGULATIONS

In February 2022 Australian Federal Treasurer, Josh Frydenberg, implemented a new regulation extending the country's financial services licensing regime to cover a broader range of proxy adviser activities. The regulation required proxy advisers to provide their voting recommendations to companies on the same day they are provided to investors from the enforcement date of February 7th and required proxy advisers to be independent of their institutional clients from July 1st, 2022. Advisers could have received a maximum penalty of \$11 million for breaking the new rules.

Figure 11 - Australian Treasurer Josh Frydenberg
(Source: [Julian Meehan](#))



The new rules had initially been put forward in May 2021, with the requirement that proxy advisers send their recommendations to companies ahead of their clients, attracting widespread criticism.

At the time, Minerva CEO Sarah Wilson publicly criticised the regulation stating that the Australian government's proposals are "*an extraordinary and authoritarian attack on basic property and establishment rights*", adding: "*We only have to look at the effect of issuer influence over the credit rating agencies to understand that research independence and objectivity is something the markets need and should cherish.*"

Bearing in mind that Australian boards experience some of the highest levels of shareholder support in developed markets at more than 94% it is really not clear what the problem has been.

In practice, the reforms would have had significant but limited ramifications to the operation of the industry itself. There are four major proxy advisers operating in Australia: ISS; Glass Lewis; Australian Council of Superannuation Investors, or ACSI; and Ownership Matters. Due to ACSI's unique operating structure – their board is made up of a subset of its members who are also their clients – under the new rules put forward by Treasurer Frydenberg, ACSI will fail unless it can find a new operating model that is legally compliant.

Outside of operating structure, other proxy advisers are also affected through their hiring practices. If you have worked for a superannuation fund or fund manager, it could be difficult to satisfy independence requirements to enable you to work for a proxy-adviser firm. No justifications are given for these restrictions, saving ensuring independence. Ironically, no such restrictions apply to the employees of Australian public regulators and regulated entities,

where shifting between public and private-sector employment occurs with some regularity.

Clearly proxy advisers should be independent from their institutional clients where possible, but to give undue power to companies over the votes of asset managers and owners could irreparably change the Australian proxy season for the worse.

Minerva's concerns are backed up by the independent watchdog Australian Securities and Investments Commission, which undertook a review of proxy advice services in 2017 and found no further regulation of proxy advice was needed. At the time, it stated there was *"no consensus on any specific areas in which existing industry guidance on the engagement process was deficient and should be updated"*. However, as such advice services have become more influential, increasing complaints from company directors under scrutiny have almost certainly sparked the latest reforms.

In the latest twist to the ongoing saga of Australian proxy adviser regulations, the highly criticised reforms were overturned by the Australian Senate on 10th February, just three days after they were enforced. The legislation for the regulations was still on its way through Australian Federal Parliament when it came into force and was knocked down in a 29 to 25 vote put forward by independent Senator Rex Patrick. Although the law has been unsuccessful once again, Treasurer Frydenberg is likely to reintroduce the bill is likely to return later this year after further review by the Government.

Although the initial rules have been rolled back somewhat, we remain concerned that regulatory interventions continue to undermine shareholders rights, give undue deference to companies, while the real issues of ineffective cross border voting remain unaddressed.

Figure 12 - Senator Rex Patrick (Source: [Wage Peace](#))



"The Senate did its job today. This was bad law, crafted to please Josh Frydenberg's big business mates and political donors, and the Senate rightly rejected it."

Australian Senator Rex Patrick

MINERVA VOTE WATCH

The screenshot shows the 'Vote Watch: Advanced Search' interface. It includes search filters for Company Name, Event Date Range (01 Jan '15 to 13 Nov 20), Resolution Category, Dissent (Dissect = 50%), Proposer, Region/Country, Industry/Sector, Primary Listing, Index (FTSE 200), and Guideline. Below the filters is a table of results with columns: Company, Country, Event Date, Event Type, Res. Num, Resolution, Resolution Category, Proposer, and Mgt Rec. The table lists 10 entries for companies like Ashmore Group plc, BCA Marketplace plc, Berkeley Group Holdings plc, Bodycote plc, BP plc, and Capital & Counties Properties plc.

Company	Country	Event Date	Event Type	Res. Num	Resolution	Resolution Category	Proposer	Mgt Rec.
Ashmore Group plc	GB	22 Oct 2015	AGM	17	To waive the requirement for a mandatory offer to be made to shareholders by Mark Coomas	Shareholder Rights	Mgt	For
Ashmore Group plc	GB	21 Oct 2016	AGM	18	To waive the requirement for a mandatory offer to be made to shareholders by Mark Coomas	Shareholder Rights	Mgt	For
BCA Marketplace plc	GB	16 Sep 2019	AGM	2	To approve the report on the implementation of the remuneration policy for the year ended 31 March 2019	Remuneration	Mgt	For
Berkeley Group Holdings plc; The	GB	06 Sep 2019	AGM	2	To approve the remuneration policy	Remuneration	Mgt	For
Berkeley Group Holdings plc; The	GB	06 Sep 2019	AGM	13	To re-elect as a director, Mr. Mark Coomas (Ashley David A.L.)	Board	Mgt	For
Berkeley Group Holdings plc; The	GB	06 Sep 2019	AGM	28	To re-appoint the 2011 Long Term Incentive Plan	Remuneration	Mgt	For
Bodycote plc	GB	17 May 2017	AGM	5	To elect as a director, E. Lindqvist	Board	Mgt	For
BP plc	GB	14 Apr 2016	AGM	2	To approve the report on the implementation of the remuneration policy for the year ended 31 December 2015	Remuneration	Mgt	For
Britt plc	GB	21 Apr 2015	AGM	20	To waive the requirement for a mandatory offer to be made to shareholders by Apollo Entities	Shareholder Rights	Mgt	For
Capital & Counties Properties plc	GB	01 May 2020	AGM	10	To approve the report on the implementation of the remuneration policy for the year ended 31 December 2019	Remuneration	Mgt	For

The analysis for this report has been prepared from data collected by the Minerva team during the AGM season and is available in real-time via our web platform, www.manifest.info.

With comprehensive searching and screening by country, data, resolution categories, and voting outcomes, the Minerva VoteWatch module offers governance analysts an unparalleled resource that is used by academics, investors and regulators alike.

To find out more, please contact us via email at hello@minerva.info.

METHODOLOGY

Minerva counts dissenting votes as those purposely not cast in favour of a management proposal, including both 'positive abstain' or 'withhold' and 'against' votes. For many years votes positively withheld have been a strong indicator of shareholder sentiment and are used to demonstrate that a shareholder cannot fully offer their support.

Companies have been classified as an ASX100 company based on listing as at the date of the shareholder meeting during the review period. The period 2016 to 2021 covers a full calendar year's data.

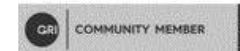
About Minerva

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

Other Briefings Available

- Board Evaluation in Europe
- Board Gender Diversity in Europe
- Board Independence – A Global Review
- Chair Independence
- Climate Stewardship
- Cybersecurity
- Employee Board Representation in Europe
- Global Research and Voting Policy Guidelines 2021
- Investment Association Remuneration Guidelines
- Shareholder Rights Directive II
- Sustainability and Remuneration
- Tax Secrecy
- Regulatory Round-up



SOURCES

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- i https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6784
- ii <https://www.reuters.com/business/environment/radical-change-needed-reach-net-zero-emissions-iea-2021-05-18>
- iii <https://www.cfr.gov.au/publications/policy-statements-and-other-reports/2021/council-of-financial-regulators-climate-change-activity-stocktake-2021/>
- iv https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=s1307
- v <https://www.nytimes.com/2021/12/08/us/politics/china-xinjiang-labor-ban-uyghurs.html>
- vi https://nntc.com.au/media_releases/landmark-first-nations-business-and-investor-initiative-launches-to-improve-cultural-heritage-protection-in-australia/