



# MINERVA BRIEFING

## Australia AGM Season Preview

November 2021

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# 1. INTRODUCTION

As investors and companies alike prepare for the upcoming Australian AGM season, this Minerva briefing looks at the voting trends and governance developments in the market.

The briefing examines voting results in the ASX100 from the previous five years and the first seven months of 2021 to identify key environmental, social and governance (ESG) issues that may inform voting decisions in the upcoming voting season. The analysis shows that **eight companies that received a remuneration strike in 2020** and a further eight companies that received shareholder dissent of 20% but less than 25% 'Against' votes – shareholders will want to pay close attention to how the boards have responded to shareholder concerns.

With three companies already suffering a remuneration report defeat in the first half of the year, executive pay looks set to be a key issue for shareholders this voting season with the business response to the coronavirus pandemic a key factor.

In addition, the analysis found that whilst the average level of female board representation surpasses the recommended 30% target, **there are 31 companies that have not yet met the 30% target and only eight companies with a female executive**. Whilst overall, improvements are being made on the gender balance of boards at ASX100-listed firms, there is much more work to be done on cultural diversity and Indigenous representation.



## 2.SHAREHOLDER MEETINGS

### 2.1 FORMAT & TURNOUT

In response to the disruptions caused by the coronavirus pandemic, regulatory action was taken in 2020 to provide companies with greater flexibility in reporting and meeting format. Whilst the Corporations (Coronavirus Economic Response) Determination (No.1) 2020 bill expired in March 2021, companies have again been granted additional flexibility in preparing for the upcoming season. The Australian Securities and Investment Commission (ASIC) has announced it has adopted a 'no-action' position concerning the convening and holding of virtual meetings and has extended financial reporting deadlines in 2021<sup>i</sup>.

On 20<sup>th</sup> October the Federal Government introduced into parliament a bill to modernise the Corporations Act<sup>ii</sup>. The permanent reforms allow meetings to be held physically, as a hybrid, or, if expressly permitted by the company's constitution, virtually. This has led to several companies putting forward a resolution at their 2021 AGM to enshrine virtual-only meetings in the constitution. This has been met with an investor backlash<sup>iii</sup> and some companies have withdrawn proposed constitution amendments, including Brambles Ltd and Qantas Airways Ltd.

Whilst the modernisation of the Corporations Act and bringing corporate meetings into line with technological developments should be supported, shareholders will be keen to ensure that an online switch does not have a detrimental impact on shareholder rights. Shareholder advisory bodies have expressed concern over a move to

online-only meetings with the Australian Shareholders' Association (ASA) strongly objecting to virtual meetings.

The chart below shows average shareholder turnout at AGMs has generally been increasing over time, although with some swings in average turnout year-on-year.

*'The AGM is the one chance a year that shareholders, the owners of the company have the opportunity to actually face their directors, their representatives, and ask the questions they want answers to. A good AGM is an opportunity for healthy discussion and exchange of information and views. The virtual meeting is a sterile format where companies are able to ignore questions, and gloss over details. And similarly, forcing shareholders to receive communications by email. This proposed extension of Virtual meetings and forcing people on to emails is another attempt to deny retail shareholders their voice<sup>1</sup>.*

#### ASA public comment

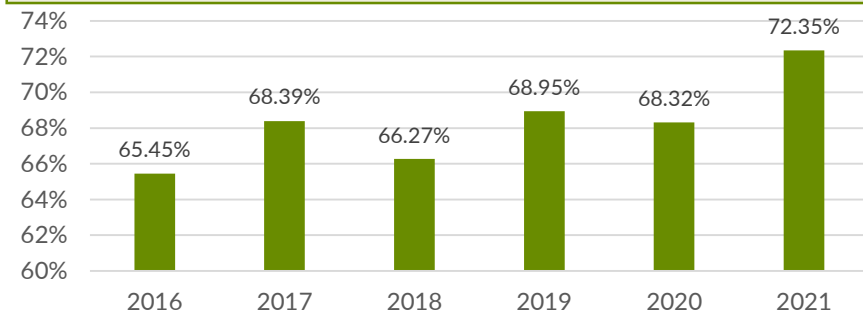


Figure 1: ASX 2016-2021 Average AGM Vote Turnout

## 2.2 SHAREHOLDER DISSENT

Average shareholder dissent across all resolutions considered at shareholder meetings of the ASX100 over the last five years has averaged 5.67%. This indicates that shareholders overwhelmingly support management, with an approval rate of more than 94%. From January to July 2021 average dissent has increased from 2020 and currently stands at its highest level, indicating an **upward trend in dissent**.

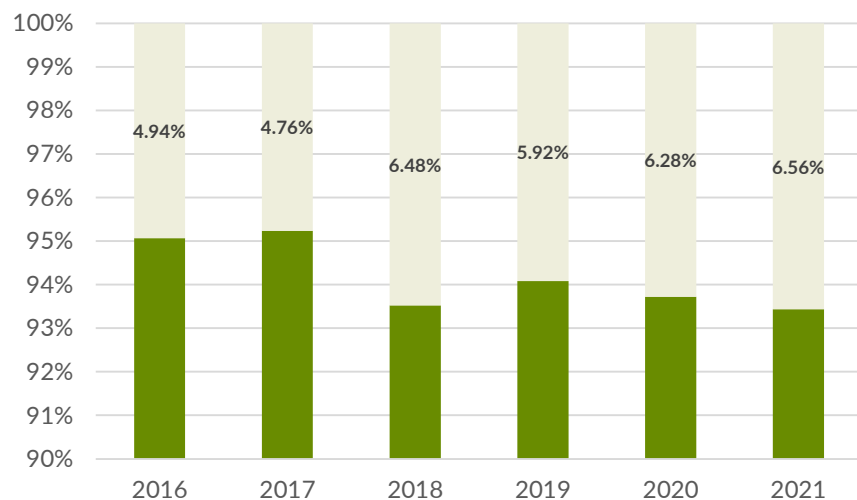


Figure 2 - Average Shareholder Dissent in the ASX100 2016-2021

Figure 3 below shows the number of companies and the number of resolutions that have received shareholder dissent of 20% or more since 2016. The data demonstrates that **since 2017 the number of high dissent instances has been steadily increasing over time**.



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

# 3. KEY GOVERNANCE ITEMS

## 3.1 BOARD ACCOUNTABILITY

Figure 4 below shows that average dissent on director elections in 2021 currently stands at its highest level for six years at ASX100-listed companies. However, whilst there is increasing discussions over shareholders holding individual directors accountable for governance failings, the number of high dissenting director elections has not reached 2017's level. The early results for 2021 indicate that the

upwards trend in director dissent could continue after full voting results for the year are in. From January to July 2021, the average dissent on director elections stood at 4.50% and one candidate received between 10-20% dissent and three received 20% or more dissent.

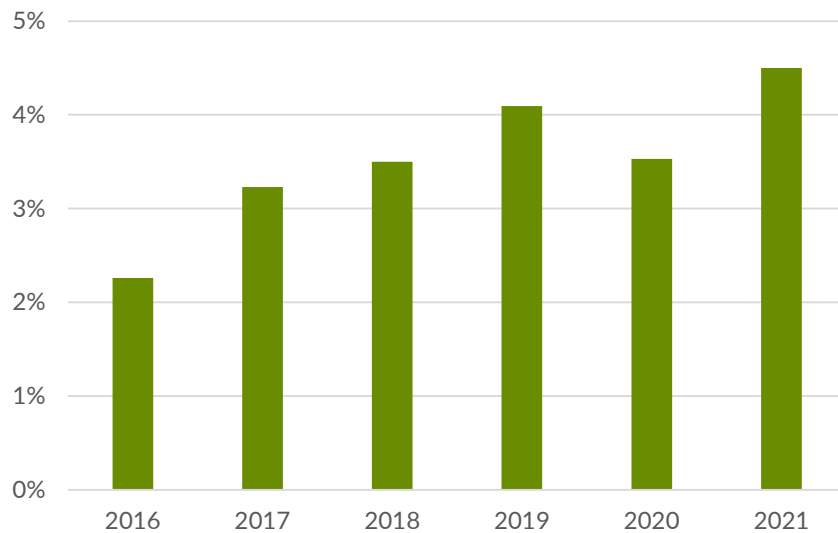


Figure 4 - Average Dissent on Director Elections in the ASX100 2016-2021

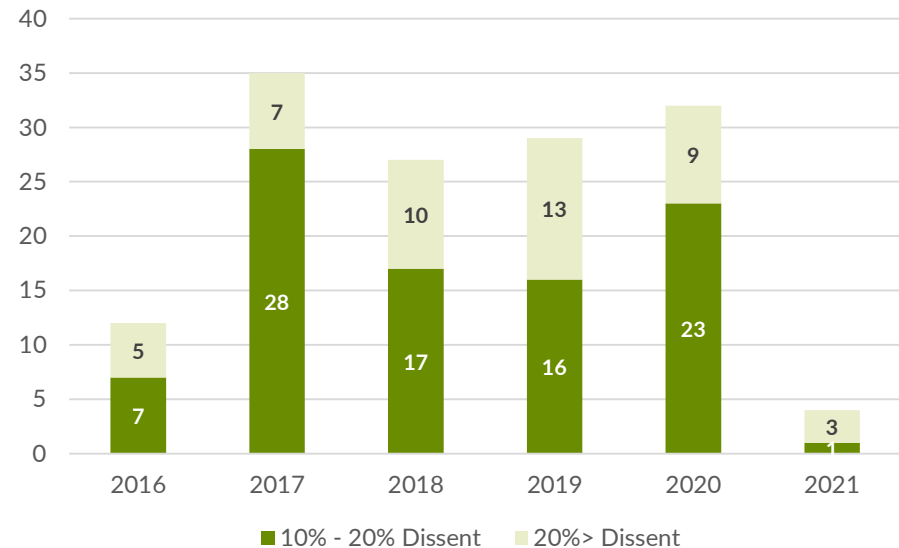


Figure 5 - Count of High Dissent Director Elections in the ASX100 2016-2021

## 3.2 BOARD DIVERSITY

The ASX Corporate Governance Principles recommends listed entities to have a diversity policy and measurable objectives for achieving gender diversity in the composition of its board, senior executives, and workforce generally. The principles recommend the measurable objective for board gender diversity should be set at not less than 30% of directors at companies listed in the S&P/ASX300.

An assessment of ASX100 boards for financial years that end between 1 April 2020 and 21 March 2021 found the **average level of**

**female representation to be 34.16%**. Whilst this represents positive progress, only **eight companies had a female executive director**. The lack of female representation in senior positions highlights the importance of effective gender talent management and succession planning of executive roles. Additionally, **31 boards fell below the recommended 30% level**. Investors may review the progress made by these companies when making engagement decisions this season

**Table 1 - Gender Laggards: Boards with below 30% female representation**

ALS Ltd	Ancor plc	AMP Ltd	AusNet Services Ltd
Beach Energy Ltd	BHP Group Ltd	carsales.com Ltd	Challenger Ltd
Charter Hall Group Ltd	Cleanaway Waste Management Ltd	Cochlear Ltd	Evolution Mining Ltd
Flight Centre Travel Group Ltd	Goodman Group Ltd	Iluka Resources Ltd	Magellan Financial Group Ltd
Newcrest Mining Ltd	NEXTDC Ltd	Northern Star Resources Ltd	Origin Energy Ltd
QBE Insurance Group Ltd	REA Group Ltd	Reliance Worldwide Corp Ltd	Saracen Mineral Holdings Ltd
Scentre Group Ltd	Star Entertainment Group Ltd; The	Sydney Airport Ltd	Vicinity Ltd
Washington H Soul Pattinson & Company Ltd	Westpac Banking Corp	Worley Ltd	

## Beyond Gender

In May 2020, Rio Tinto destroyed 46,000-year-old rock shelters in Western Australia's Pilbara region, which were highly significant to the area's Aboriginal traditional owners, the Puutu Kunti Kurrama and Pinikura (PKKP) people. The Juukan Gorge shelters were destroyed as part of an extension of the Brockman 4 iron ore mine despite opposition from traditional landowners. The destruction was met with international outcry and led to the departures of key executives, including Rio Tinto's CEO.

The incident has been a driver for calls for greater rights and power for Indigenous people and stronger cultural heritage protection. The blast resulted in the Australian Parliament tasking the Joint Standing Committee on Northern Australia with investigating its immediate causes and consequences and its wider ramifications for the protection of Indigenous heritage. The Committee's interim report 'Never Again' found that despite evidence provided to Rio over many years about the cultural importance of the rock shelters to the PKKP people, it made a deliberate decision to choose the only one of four expansion options that required the destruction of the rock shelters on the basis that it would maximise access to the lucrative iron ore body located in the area<sup>iv</sup>.

The final report was released in October 2021<sup>v</sup> and found that while the destruction of Juukan Gorge was the result of Rio Tinto's failures, the events also highlighted the inadequate protection afforded by the Western Australian Aboriginal Heritage Act 1972. Throughout the course of the inquiry, it became apparent that there are **serious deficiencies across Australia's Aboriginal and Torres Strait Islander cultural heritage legislative framework, in all state and territories and the Commonwealth**. The report made various

recommendations to modernise the legislative frameworks in all Australian jurisdictions to bring meaningful protections for Aboriginal and Torres Strait Islander cultural heritage.

This has also led to calls for greater cultural diversity on boards of listed companies. Research by the Governance Institute of Australia found that whilst progress has been made in the area of gender diversity, in terms of cultural diversity, the Australian boardroom is moving at a much slower pace, remaining dominated by those of Anglo-Celtic and European ethnicity. The analysis found that **90% of directors in the ASX300 came from an Anglo-Celtic background and 2.5% from a European background**. Based on current trends, the analysis estimated it is going to take **18 years for the boardroom to be reflective of Australia's cultural diversity**<sup>vi</sup>. With the increasing focus on Indigenous rights in Australia and the Black Lives Matter movement, there may be calls for the introduction of targets on board ethnic diversity, as seen in the UK.



Figure 4 - The Pilbara, Western Australia

### 3.3 REMUNERATION STRIKES

The two-strikes rule was introduced in 2011<sup>vii</sup>. **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 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.

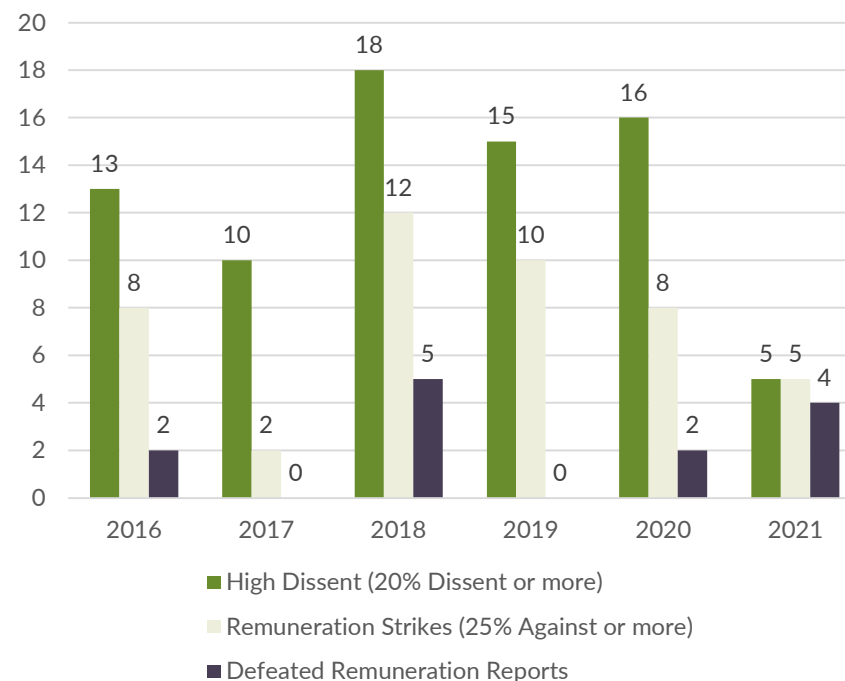


Figure 5 - Remuneration Dissent in the ASX100 2016-2021

However, the exclusion of abstentions in determining whether a strike has occurred demonstrates the potential pitfalls of abstaining when concerns are held.

Accordingly, since 2016 there have been 77 high dissent remuneration reports (against + abstentions of 20% or more) and 45 remuneration strikes (25% against or more). The **early months of 2021 indicate shareholders are taking a more active stance on voting on remuneration reports, with three companies in the ASX100 having their remuneration reports already voted down – more than the two voted down in the whole of 2020.**

## Key remuneration issues for shareholders to consider

**COVID-19:** With New South Wales and Victoria having been through extended lockdown, the response to the coronavirus pandemic will continue to feature heavily in remuneration report discussions. The alignment of the executive pay with the experience of shareholders, stakeholders and financial performance will continue to feature in 2021 voting decisions. Boards should consider ASIC's guidance on oversight and discretion in the context of variable remuneration during the pandemic<sup>viii</sup>.

**ESG Incorporation:** The incorporation of ESG-related metrics in incentive pay continues to be a debated issue in the market. The inclusion of ESG issues in incentive pay is common in Australia, particularly when compared to other markets, partly as a result of the Hayne Commission which suggested too much weighting on financial metrics in performance assessment for pay incentives had contributed to failures in governance and corporate culture. The incorporation of ESG metrics has so far featured more commonly in the short-term incentives rather than long-term incentives, however, there is a lack of consensus on how ESG should be measured and assessed in incentive pay with some shareholders concerned that companies may adopt soft targets that are easily met. Notably, the AGL Energy board highlighted the inclusion of climate metrics with a weighting of 33% in the long-term incentives as a contributor to high shareholder dissent in 2020 due to concerns that the targets are not fully aligned with shareholder outcomes.

**Bonus Disclosure:** Investors are increasingly calling for greater disclosure on the specific targets and target ranges used in bonus scorecards to allow for a more accurate assessment of alignment of pay with performance. It is common for disclosure in the market to focus on narrative discussions on bonus performance outcomes without disclosure of targets.

**Director Accountability:** Board spill resolutions are rarely if ever, passed. Cromwell Property Group saw its shareholders vote through a board spill resolution in 2020. With average director dissent on the rise in 2021, the voting trends indicate shareholders are increasingly holding directors accountable for failures in governance, including remuneration.

**Pay Ratio Reporting:** Since the UK and the US introduced CEO to employee average pay ratio reporting requirements, there are growing calls for its introduction in Australia. Both ACSI and ASA have expressed support for pay ratio reporting and in 2018 the Australian Labour Party announced a policy plan to introduce reporting requirements for listed firms with more than 250 employees to report the pay ratio<sup>ix</sup>. With the pandemic bringing the issue of inequality into the spotlight, there may again be calls for its introduction.

Figure 6 - Key remuneration details for Australian investors

## 2021 Remuneration Watchlist

In 2020, eight companies received a remuneration strike and will place a 'board spill' resolution on the 2021 AGM agenda in the event of a second strike. A further eight companies received dissent of at least 20% but less than 25% 'Against' votes. Shareholders will want to pay attention to how the boards have responded to shareholder concerns:

Company	AGM Date	Against Vote	Dissent Vote	Key Issue
AMP Ltd	8-May-20	67.25%	67.35%	AMP's remuneration report was voted down by shareholders due to concerns with the level of executive pay in connection to Boe Pahari's promotion. The Company narrowly avoided a second strike at its 2021 AGM.
AGL Energy Ltd	7-Oct-20	46.50%	46.87%	AGL suffered a first strike in 2020 after shareholders had concerns with the company's financial performance, the disclosure provided in connection with the annual bonus and associated discretion applied in connection to the outage at Loy Yang in 2019.
Crown Resorts Ltd	22-Oct-20	34.34%	65.60%	Crown Resorts received a first strike after a regulatory inquiry into alleged facilitation of money laundering and governance failings at the company. There were also large dissenting votes on director elections at the AGM. Crown Resorts could face a second strike in 2021.
Star Entertainment Group Ltd	22-Oct-20	45.00%	45.92%	Star Entertainment received a first strike in 2020 due to concerns regarding the payment of executive bonuses whilst the company received JobKeeper subsidies.
Challenger Ltd	29-Oct-20	28.25%	28.44%	Challenger received a first strike in 2020 after concerns were held with bonus payments in light of the company recording a net loss for the year.
LendLease Corporation Ltd	20-Nov-20	47.34%	49.76%	LandLease received a first strike due to shareholder concerns with the quantum of CEO remuneration and a view that the FY20 Deferred Equity Awards were not aligned with overall performance and the wider environment, including LandLease use of government wage support.
Northern Star Resources Ltd	25-Nov-20	25.12%	27.45%	Northern Star received a first strike in 2020 due to shareholder concerns with the grant of a retention award to Chief Operating Officer Luke Creagh and the lack of disclosure provided regarding the leaving arrangements for Executive Chair Bill Beament.
Qube Holdings Ltd	26-Nov-20	52.98%	54.07%	Qube's remuneration report was voted down by shareholders due to concerns with the payment of annual bonuses in light of the use of Jobkeeper subsidies and lack of consideration of fatalities by the remuneration committee. In response, the committee have adjusted targets and outcomes in FY21 to exclude any financial benefit from Jobkeeper.

Table 2- Companies that have experienced a remuneration strike

### 2021 Remuneration Votes So Far

Four companies received a remuneration strike in 2021 in the first seven months of the year, of which three suffered a remuneration defeat.

Appen Ltd received a first strike with a 47.5% Against vote whilst Oil Search Ltd, Rio Tinto Ltd and Scentre Group Ltd all saw their remuneration reports voted down by shareholders.

### High Dissent 2020 Votes

The following eight companies received high dissent at the 2020 AGM but did not receive a remuneration strike: Blue Scope Stee Ltd, Commonwealth Bank of Australia Ltd, Computershare Ltd, NEXTDC Ltd, Scentre Group Ltd, Seek Ltd, South32 Ltd, Woodside Petroleum Ltd.



Ask Minerva about our comprehensive remuneration data services.

## 4.SHAREHOLDER PROPOSALS

**ESG issues have dominated shareholder resolutions in the market**, with Australian shareholders showing a particularly keen focus on climate change. **ESG activism has increased in terms of number, prominence and impact**, with the Australian experience of ESG related resolutions proposed by shareholders dwarfing previous experience in the last 20 years<sup>x</sup>. However, Australian shareholders are faced with regulatory limitations on shareholder resolutions when compared to other jurisdictions.

Section 249N of the Commercial Act governs the mechanism for shareholders to file resolutions at a general meeting<sup>xi</sup>. 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 company’s constitution governs decision-making rights for shareholders. There have been several shareholder resolutions 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.

### Shareholder Proposals – A lack of Support?

In the last five years there have only been three successful shareholder proposals in the ASX100. All three resolutions occurred at Rio Tinto Ltd, one in 2016 and two in 2021.

The 2016 resolution was filed by the **Aiming for A** coalition and asked for enhanced disclosure on climate change, and the proposals in 2021 asked for emission reduction targets and greater disclosure on climate-related lobbying.

Notably, the Rio Tinto board endorsed each resolution. Accordingly, no shareholder resolution without the backing of the board has been successful suggesting board support is the key factor to success.

A proposal at Woodside Petroleum’s 2020 AGM on climate strategy and a proposal at AGL Energy’s 2021 AGM on Paris-aligned targets have come closest, having both received majority support. The proposals were not carried as the corresponding constitution amendment proposals were unsuccessful meaning the boards do not need to act on the proposals.

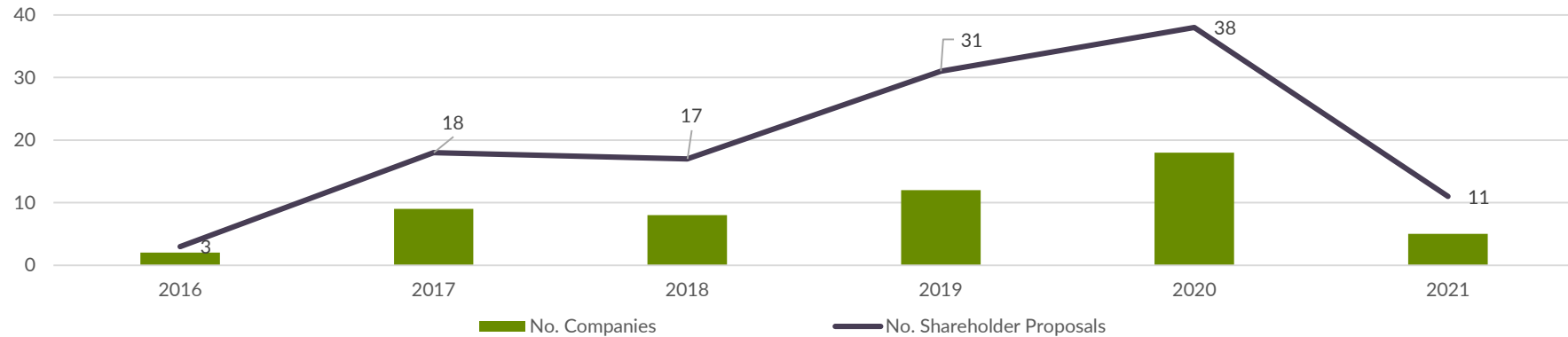


Figure 7 - Shareholder Proposals in the ASX100

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 constitution 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.** However, not all governance professionals support legislative changes to provide shareholders with greater scope to pass non-binding resolutions.<sup>xii</sup> Despite these challenges, the number of shareholder resolutions in the ASX100 has increased over time.

Despite the comparatively limited shareholder rights on resolutions in the market when compared to elsewhere and low success rate, Australian shareholders are continuing to use the ability to file resolutions as a way to draw attention and debate over ESG issues. Notably, the number of shareholder resolutions vastly outnumber those seen in the UK market despite the differing rules in place regulating the filing of resolutions.

Whilst 2020 saw the largest number of shareholder proposals voted on in the ASX100 in recent years, the vast majority of the proposals were filed by just two organisations. All director elections in the market have been self-nominated candidates, i.e., the shareholder nominates themselves for election to the board.

#### Concentrated Proposal Advocacy

**Australasian Centre for Corporate Responsibility (ACCR):** The ACCR is an Australian focused research and shareholder advocacy organisation with a focus on climate, labour, human rights, and governance issues.

**Market Forces.** Market Forces was launched in 2013 and is an affiliate project of Friends of the Earth Australia and a member of the BankTrack international network. Market Forces work focuses on institutions that are financing environmentally destructive projects

The charts below show that after constitution amendment requests, climate change has been the dominant proposal topic. Unlike in comparison to the United States, governance-related shareholder proposals are not a common feature in the market, other than shareholder-proposed director candidates. The proposals on confidential voting, executive remuneration, independent chairman and shareholder meeting thresholds all occurred at companies with a

dual listing in the United States. Notably, following Rio Tinto's destruction of sacred rock shelters, 2020 saw three resolutions filed on the rights of Aboriginal traditional owners and communities and cultural heritage protection as Aboriginal rights came to the forefront of debates for investors, business, and civil society. Climate has been the main topic of shareholder resolutions voted on by shareholders in the 2021 pre-season.

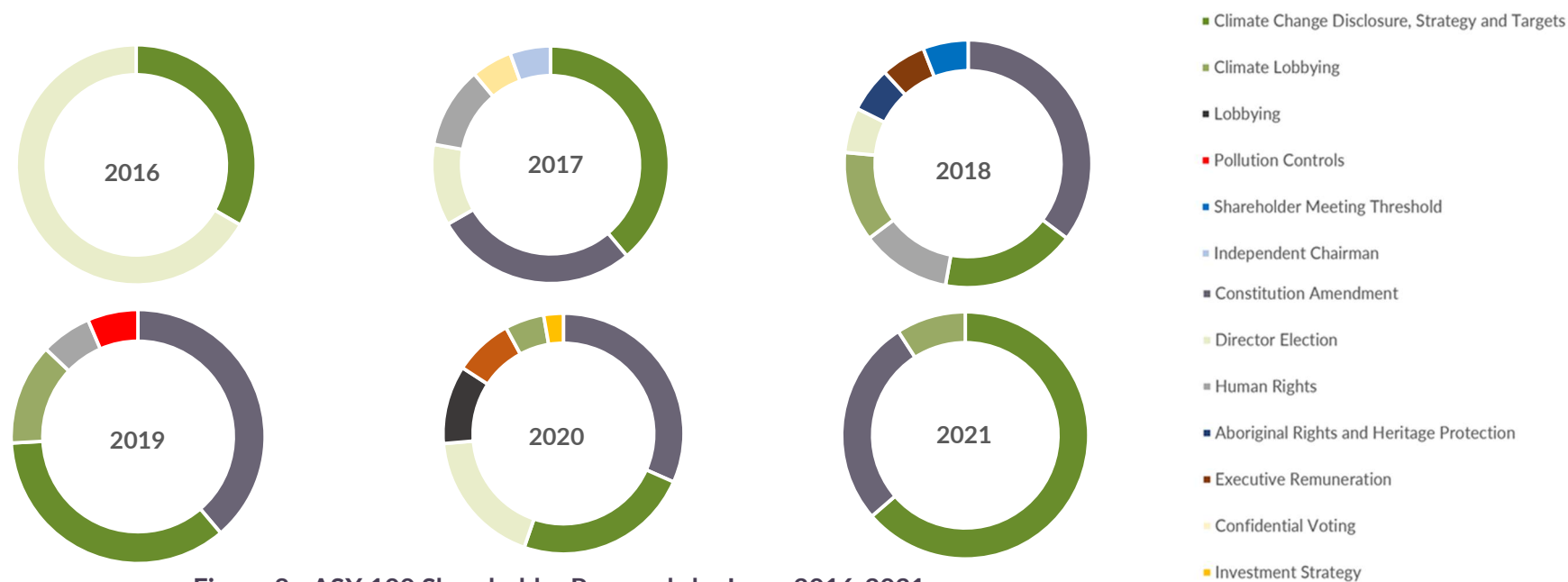


Figure 8 - ASX 100 Shareholder Proposals by Issue 2016-2021

## 4.1 KEY AUSTRALIAN ESG VOTES

Company	AGM Date	Resolution Issue	Proponent
AGL Energy	22/09/2021	Paris-aligned Goals and Targets	ACCR
AGL Energy	22/09/2021	Election of Ashjayeen Sharif	Self-nominated with the backing of Greenpeace
Commonwealth Bank of Australia Ltd	13/10/2021	Transition Planning Disclosure	Market Forces
Origin Energy Ltd	20/10/2021	Access to Clean Water	Not Disclosed
Origin Energy Ltd	20/10/2021	Cultural Heritage Protection Law	Not Disclosed
Origin Energy Ltd	20/10/2021	Traditional Owners Consent	Not Disclosed
Origin Energy Ltd	20/10/2021	Climate Lobbying	ACCR
Origin Energy Ltd	20/10/2021	Paris-aligned CapeX	ACCR
Whitehaven Coal Ltd	27/10/2021	Climate Capital Protection	Market Forces
South32 Ltd	28/10/2021	Climate Lobbying*	ACCR
Fortescue Metals Group Ltd	09/11/2021	Cultural Heritage Protection Law	ACCR
BHP Group Ltd	11/11/2021	Climate Lobbying*	ACCR
BHP Group Ltd	11/11/2021	Climate Capital Protection	Market Forces
Westpac Banking Corp	15/12/2021	Transition Planning Disclosure	Market Forces
Australia and New Zealand Banking Group Ltd	16/12/2021	Transition Planning Disclosure	Market Forces
Incitec Pivot Ltd	17/12/2021	Paris-aligned Goals and Targets	ACCR
National Australia Bank Ltd	17/12/2021	Transition Planning Disclosure	Market Forces
New Hope Group Ltd	18/11/2021	Climate Capital Protection	Market Forces

**Table 9 - Upcoming ESG shareholder resolutions in the 2021 voting season**

\* The BHP and South32 boards recommend shareholders to support the climate lobbying proposal

Shareholder activism on ESG issues has been on the rise in Australia and an increasing number of ESG shareholder resolutions are being filed at listed companies. The table below identifies key upcoming ESG shareholder resolutions in the 2021 voting season.

The ESG proposals (except the director election) have been coupled with a constitutional amendment resolution requesting the shareholder right to file advisory non-binding resolutions. As such, the ESG proposals will only advance should the constitution amendment be backed by 75% of the ballot.

# 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](mailto:hello@minerva.info) or call + 44 (0)1376 503500

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- Global Research and Voting Policy Guidelines 2021
- Investment Association Remuneration Guidelines
- Shareholder Rights Directive II
- Sustainability and Remuneration
- Tax Secrecy
- Regulatory Round-up



# 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 2020 covers a full calendar year's data and 2021 covers 01 January to 31 July. Voting results are as collected by Minerva as at 14 August 2021.

# Sources

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