Deep dive into ASX 200 AGMs in 2020

29 January 2021

COVID-19 transformed AGMs in 2020, in a way that could continue to play out into 2021 and beyond.

Companies had to reconsider how to hold their AGMs in the face of lockdowns and other restrictions on public gatherings. They also needed to grapple with the potential implications of the pandemic on agenda items to be put before shareholders.

In a turbulent year, we consider companies and Boards generally did a great job in addressing the unprecedented challenges they faced. Digging through the data, we believe there are valuable insights into how companies can ultimately improve their relationships with stakeholders. The key to success is carefully thinking to ensure engagement strategies align with the continuing technological and regulatory change.

As to be expected, some companies continued to face scrutiny from shareholders when voting on remuneration reports as well as on director elections/re-elections. Activists also continued to make use of their ability to requisition ESG resolutions.

Some voting outcomes were impacted by COVID-19-related matters and the perception of how a company responded (or didn't respond) to the associated challenges. For the most part, however, there were no significant changes to outcomes from last year – not something we necessarily expected when the pandemic first hit. That suggests shareholders agreed companies generally navigated the challenges well or perhaps felt that this was not the year to rattle the cages and cause instability. In some cases, outcomes did not appear to be affected by COVID-19 at all.

Our key observations of the trends in calendar year 2020 are set out in this report. By way of comparison, our report for ASX 200 AGMs in 2019 can be accessed here.

Key observations for 2020:

Widespread shift to virtual AGMs

Remuneration: Marginal differences, with slightly more first strikes but fewer second strikes. More remuneration reports voted down

Increase in requisitioned ESG resolutions and higher levels of support on conditional resolutions

Continuing trends in director elections and re-elections

Key observations for 2020

Widespread shift to virtual AGMs

It took a global pandemic for the Federal Government, ASIC and companies to embrace new technology en masse and hold virtual meetings as opposed to hybrid or physical meetings. This was driven by lockdown measures prohibiting or otherwise restricting physical attendances and was facilitated by temporary regulatory relief by the Federal Government supplemented by ASIC's 'no action' position.

77% of the ASX 200 conducted fully virtual AGMs in 2020. Only 21% opted for a hybrid or in-person only meeting (some of these were held before physical attendance restrictions kicked in).

Seeing the benefits of the new approach to meetings, the Federal Government launched a consultation process to make permanent changes to the Corporations Act, including to facilitate virtual meetings and electronic document execution. There continue to be differing views on fully virtual AGMs. A number of high-profile investor groups have pushed back during the consultation process and it seems that the Federal Treasurer is now proposing a hybrid model.

As at the date of publication, the results of the consultation have not been released. Companies will continue to be able to rely on the existing temporary relief until 21 March 2021.

Remuneration: Marginal differences, with slightly more first strikes but fewer second strikes. More remuneration reports voted down

Voting on remuneration reports in 2020 was only marginally different than in 2019. This suggests that shareholders were generally satisfied with the approach to remuneration made by companies in response to COVID-19. There were some outliers, including where companies claiming JobKeeper also paid bonuses.

17 ASX 200 companies received a strike in 2020 (15 in 2019). At the same time, 6 remuneration reports were voted down in 2020 (1 in 2019). In 2020, only 1 company (Cromwell Property Group) received a second strike, while 16 companies received a first strike. This is compared to 2019, where there were 15 strikes, 3 of which were second strikes.

Comparison of voting results

	2019	2020
Total number of strikes for the ASX 200 (inclusive of second strikes, if any)	15	17
Number of second strikes	3	1
Number of 'near misses' (ie entities within 10% of a strike)	16	14
Number of remuneration reports voted down	1	6

The magnitude of votes in 2020 against remuneration reports that have resulted in a strike was higher than in 2019. In 2019, the average vote against a remuneration report resulting in a strike was 35%. In 2020, the average against vote resulting in a strike was just over 44%. This increase may have been driven by shareholder frustration with those companies and their approach to remuneration in the context of COVID-19.

Increase in requisitioned ESG resolutions and higher levels of support on conditional resolutions

Activists are continuing to make full use of their ability to requisition resolutions at AGMs. We have seen this year on year and see no reason why this won't continue.

In 2020, 14 ASX 200 companies received shareholder-requisitioned resolutions and put them to the AGM, increasing from 12 in 2019 and 7 in 2018. The companies continued to span a broad range of sectors including energy, materials, banks, utilities and insurance.

For the most part, the resolutions continue to take the form of a proposed amendment to company constitutions followed by advisory resolutions contingent on the constitutional amendment being carried.

Climate change continued to be the dominant theme, accounting for 13 of the 23 advisory resolutions (57%). Other themes included cultural and world heritage protection and COVID-19 recovery. A high-profile issue during 2020 was the adverse impact of mining activities on cultural heritage sites. That prompted a number of requisitioned resolutions in the mining sector. This shows ESG activists continue to be nimble by quickly responding to 'live' issues and can be expected to requisition ESG resolutions if/when new issues arise. As always, it's important for companies to watch and monitor events at their peers' AGMs as part of their AGM planning.

No ESG resolutions were carried in 2020 (as was the case in 2019). The average support vote for constitutional amendments increased marginally in 2020 to just over 6% from just under 6% in 2019. But the level of shareholder support for contingent advisory resolutions increased proportionally higher to 22% from 13% in 2019, although the average was affected by a number of outliers earlier in the year. In particular, the highest proxy vote in favour of a contingent advisory resolution was just over 50% (the highest equivalent recorded in 2019 was 31%). If formally put to the meeting, that resolution would have passed. As we have flagged in previous years, the 'signal' associated with this proxy voting outcome can be seen as a real measure of success for activists by objectively measuring shareholder sentiment on the underlying issue.

Continuing trends in director elections and re-elections

Last year we flagged a trend of more directors receiving 'protest' votes when facing election or re-election. That trend continued in 2020 although the reason may not signal more dissatisfaction with director performance.

Importantly, the majority of directors are still overwhelmingly supported by shareholders. The average magnitude of 'protest' votes increased slightly in 2020 but this may be more due to an increase in the number of non-Board endorsed candidates putting themselves forward for election rather than a broader commentary on director 'performance'.

The spread of results on voting outcomes on director elections and re-elections has grown which makes it difficult to draw any industry-wide trends. However, where protest votes by shareholders can be discerned, they appear in some cases to have been motivated by concerns about regulatory scrutiny or governance-related matters. Gender diversity and approaches to the structures for equity capital raisings received a lot of focus in 2020 and could have influenced voting outcomes, although there are challenges in drawing any direct link between voting outcomes and these issues.

Notes on our dataset for 2020

In reviewing our data for 2020, we looked at AGMs held in calendar year 2020 for companies that were in the S&P/ASX 200 as at 31 October 2020. In 2020, our dataset for the ASX 200 included 201 companies due to the demerger of Iluka Resources, resulting in the addition of Deterra Royalties in the S&P/ASX 200.

However, as always, our dataset captures fewer than 201 AGMs due to M&A activity during the year and given not all ASX 200 companies need to hold an AGM.

Our dataset also captures fewer than 201 votes on remuneration reports because not all companies need to present remuneration reports to their investors for a vote (e.g. due to their corporate structure). It also does not include the small number of votes on remuneration for ASX listed companies that are held under foreign legal requirements, which do not use the same 'two strikes' structure as Australian law.

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

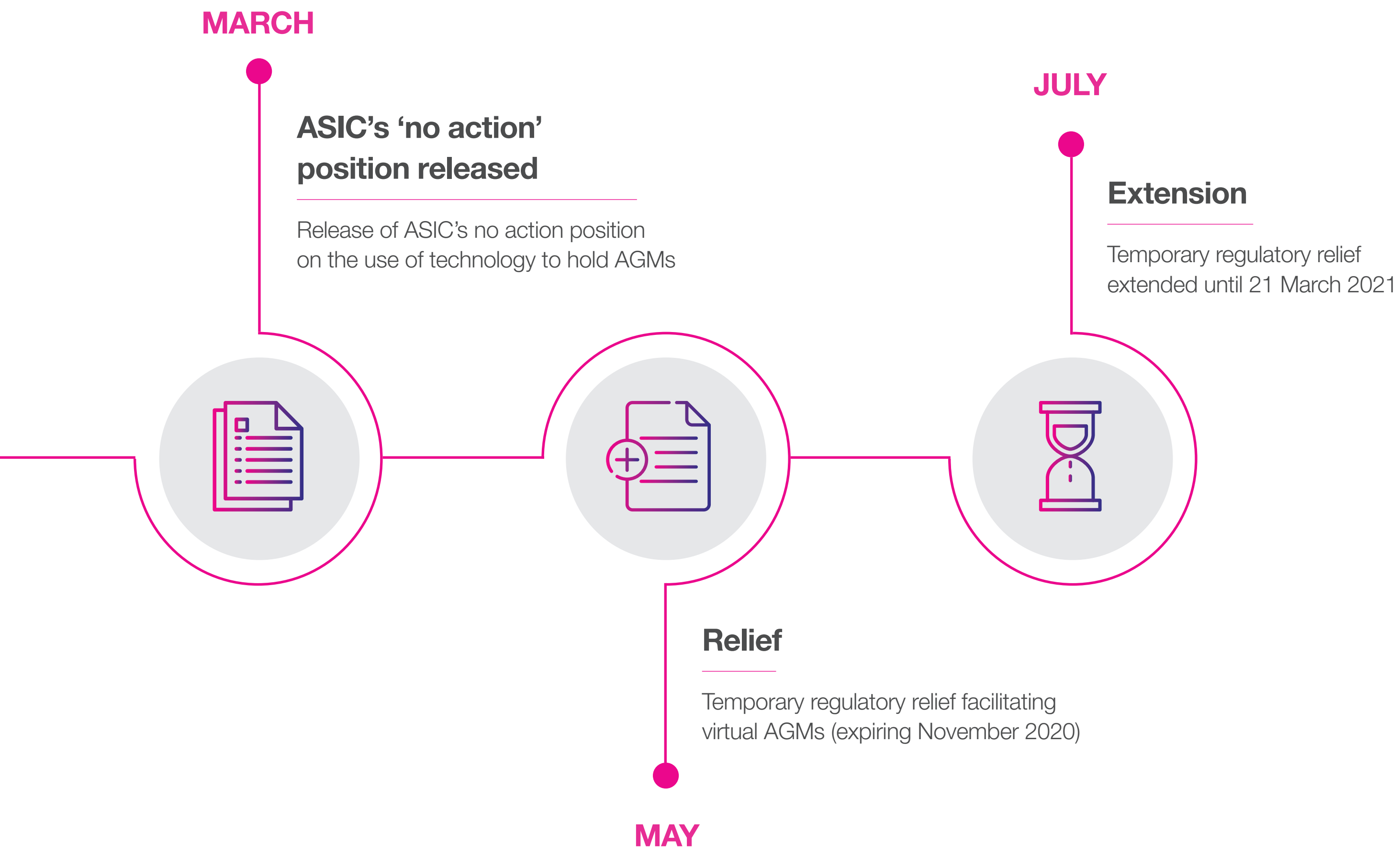
Although year on year comparisons have been used in our 2020 report, movements in the composition of the ASX 200 between 2019 and 2020 mean that our report does not necessarily provide a direct company-for-company comparison in all cases.

Format of AGMs

Expectations for the 2020 AGM season

As noted in our July 2020 interim report, lockdowns and social distancing protocols forced companies to change the way they conducted their AGMs in 2020.

In particular, the following developments during 2020 paved the way for companies to hold virtual AGMs:



(a) Release of ASIC's 'no action' position

On 20 March 2020, ASIC released a 'no action' position, supporting the holding of AGMs using technology during the pandemic. This position was conditional on members being provided a reasonable opportunity to participate in the meeting as required under section 249S of the Corporations Act. ASIC explicitly noted this would include:

- members being allowed to ask the auditor questions; and
- companies conducting voting by poll rather than a show of hands.

(b) Enactment of temporary amendments

The Federal Government clarified ASIC's 'no action' position on 6 May 2020 by enacting temporary amendments to the Corporations Act to facilitate virtual AGMs. ASIC subsequently published guidance on these temporary amendments.

(c) Extension of temporary amendments

The Federal Treasurer announced on 31 July 2020 that the temporary amendments allowing for virtual AGMs would be extended until 21 March 2021.

Following the introduction of the temporary amendments to the Corporations Act in May 2020, the Australasian Investor Relations Association conducted a poll of approximately 100 listed companies, asking what format these companies were proposing for their 2020 AGM. The results were as follows:

- 0% proposed a physical AGM;
- 22% proposed a hybrid AGM;
- 35% proposed a virtual AGM; and
- 43% were undecided on this issue.

Our review shows that the vast majority of ASX 200 companies (77%) held virtual AGMs – see Chart 1 to the right.

To assist with this transition to a virtual format and safeguard shareholder participation, the Governance Institute of Australia (GIA) released a guide to holding virtual AGMs. Among other things, the guide recommends that companies holding virtual AGMs do the following:

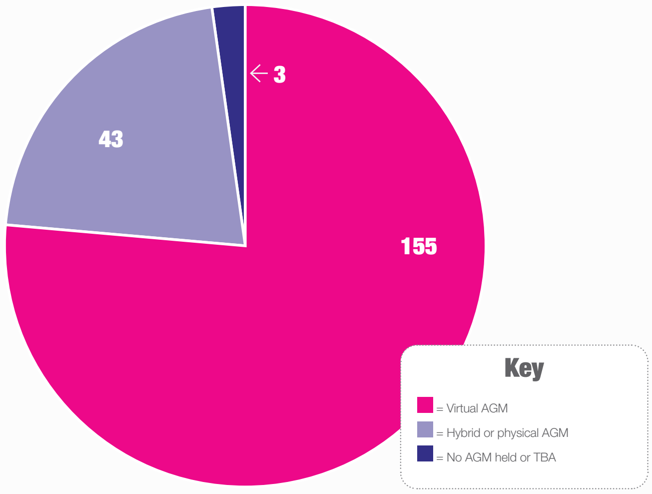
- **Logging On:** recommend shareholders log into the online platform at least 15 minutes before the scheduled start time;
- **Communication:** ensure shareholders can ask questions during the AGM and be prepared to answer questions about the use of technology; and
- **Poll Timing:** open the poll for voting at the beginning of the meeting and communicate clearly about when it will close.

Shift to virtual AGMs

The introduction and extension of the temporary amendments to the Corporations Act fuelled a widespread shift to virtual AGMs across the 2020 AGM season.

As shown in Chart 1, 155[1] (77%) companies held a fully virtual AGM while 43 (21%) opted for a hybrid or physical AGM. The remaining 3 (2%) companies were not required to hold an AGM in 2020 (e.g. as a result of new listing or corporate structure).

Chart 1: Format of 2020 AGMs



How each ASX 200 Co. held their AGM

The shift to a virtual format has generated benefits in the form of increased attendance for some, reduced costs for some as well as more efficient meetings. The shift has also altered how shareholders participate at AGMs and allowed overseas and interstate shareholders to more directly participate in meetings and feel 'connected' to their investments.

Of the 155 companies that held virtual AGMs, 96%[2] (149) allowed shareholders to ask questions during the meeting. Shareholders were typically able to ask questions in writing through the online meeting platform, though some companies also provided shareholders with an opportunity to ask questions via teleconference.

While this approach to asking questions was satisfactory for some investors, the Australian Shareholders' Association (ASA) reported concern among investors about companies being able to 'cherry-pick' which questions were asked at the meeting. That was not our experience. We are aware there were different approaches to moderating questions with 'repeat' questions bundled in some cases but in our experience most questions were read out verbatim. One suggestion to mitigate the risk of this occurring (or the perception of it occurring) was put forward by the ASA which proposed that companies after the AGM publish all questions submitted by shareholders.

[1] This figure includes United Malt Group Limited, which announced that it will hold a virtual AGM on 18 February 2020.
[2] This figure encompasses all companies that stated in their notice of meeting that shareholder questions would be allowed during the AGM. Where a company was silent on this point, we have assumed that shareholder questions were only able to be submitted in advance of the meeting.

Consultation to make virtual AGMs permanent

On 19 October 2020, the Federal Treasurer started a consultation process on draft legislation proposing permanent changes to the Corporations Act, allowing for virtual meetings and electronic document execution. There has rightly been significant support for electronic execution, but permanent changes allowing for fully virtual AGMs has attracted some criticism, particularly from shareholder advocate groups.

For example, a representative of Institutional Shareholder Services' (ISS) has stated that removing mandatory physical meetings would "stifle questioning and the accountability of boards". The ASA is also firmly against the amendments, expressing the view that virtual meetings involve a sterile format that allows companies to ignore questions and 'gloss over' details. Similar sentiments were expressed by a representative of the Australian Council of Superannuation Investors (ACSI).

The GIA, a main proponent of the change, provided evidence to the Senate Select Committee on Financial Technology and Regulatory Technology on the proposed amendments. In its submission to the Treasury's draft proposal, the GIA stated that:

- the Corporations Act should be 'technology-neutral' to account for future digital innovation crises;
- meeting formats should not be prescribed and companies should be allowed to choose the format best suited to them and their members;
- votes at virtual meetings should not be required to be conducted via poll as this would disadvantage smaller companies; and
- there should not be stringent requirements for minutes of virtual meetings (e.g. recording questions and comments at the meeting).

Alongside criticisms of any proposal to allow for virtual meetings, there has also been backlash as to the timing of the consultation during the peak of the AGM season as well as the length of the consultation period (originally two weeks – then extended by a week). The consultation period closed on 6 November 2020. As at the date of publication, no formal response to the consultation process has been released, although there are indications that the Federal Treasurer now supports a hybrid model.

It would be a shame if some of the benefits seen this year in facilitating shareholder engagement and efficiency gains were not taken up on a more permanent basis. Leveraging some benefits from an otherwise difficult year would be a small 'win'. In the meantime, companies holding AGMs before 21 March 2021 will be allowed to rely on the current temporary regulatory relief and hold a hybrid or virtual meeting.

Remuneration reports

Early expectations for the 2020 AGM season

In our half-year interim report, we observed that, at that time, 42 ASX 200 companies had pre-emptively announced changes to executive remuneration and/or NED fees in response to COVID-19. In some cases that was part of moves to reduce costs including in connection with 'cost out' narratives supporting capital raisings. For others it was important to show that directors and key management were 'sharing in the pain' where employees faced actual or effective pay reductions or job losses as a result of the pandemic.

In our half-year report, we also predicted that 30 June companies could face increasing pressure from shareholders on remuneration-related decisions at AGMs in the latter part of 2020, particularly following the release of ASIC's information sheet on board oversight of executive variable pay during the COVID-19 pandemic. The information sheet emphasised the need for companies to have a robust governance framework and outlined specific factors for boards to consider when exercising discretion on executive variable pay, including that discretion should be:

- guided by frameworks and processes that result in the active, timely and consistent exercise of discretion;
- made with the benefit of structured and contextual information from unbiased sources;
- made with the benefit of arrangements to manage conflicts of interest; and
- transparently recorded and communicated.

Further guidance was provided by other organisations:

ACSI report

Access report

- Boards should be mindful how remuneration outcomes will be perceived against the impact of the pandemic
- Remuneration should reflect performance and experience of investors in company

Glass Lewis

Access report

- Remuneration is dependant on FY20 performance of the specific company
- Boards should ask two questions when setting remuneration:
  - What is shareholder appetite for the payment of executive bonuses?
  - How should STI targets be set for FY21?

ISS

Access report

- Greater discretion required for remuneration outcomes where targets have not been met or redundancies have taken place in the workplace

GIA

Access report

- Executive pay will return to an upward trajectory in the near future but the COVID-19 driven recession will trigger a fundamental change in how boards are paid
- Companies likely to be more conservative in relation to fixed pay
  Note: we have not seen this play out but we did see boards exercise careful judgment in remuneration outcomes where they had not announced changes in the early stages of the pandemic

How did things play out?

Our analysis below indicates that shareholders generally responded positively to the changes made by companies to address remuneration-related concerns arising from COVID-19.

Changes in the level of support for remuneration reports were relatively minor compared to 2019. There is still a level of disquiet among shareholders, with only marginally more strikes than last year and more reports being 'voted down'. However, this outcome would likely have been very different if many companies did not make changes early to their remuneration arrangements when the pandemic first hit.

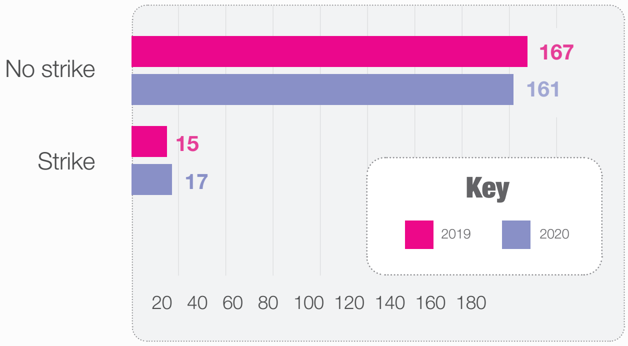
The key challenge for boards and shareholders in the years to come will be in identifying when COVID-19 related pressures have eased and there has been a return to 'normal'. Many executives have worked incredibly hard during 2020 (in many cases harder than ever) without the same reward for effort – but if shareholders and other employees have equally suffered should there be any catch up? It remains to be seen whether the impact of COVID-19 will prompt a more permanent recalibration of remuneration or whether things will return to 'normal'.

More first strikes but fewer second strikes

Of the 197 ASX 200 companies that held AGMs in 2020, 178 put forward votes on remuneration reports.

There were only marginal differences in voting outcomes on remuneration reports, with 17 (8.5%) ASX 200 companies receiving a strike in 2020 compared to 15 (8.3%) in 2019 (see Chart 2).

Chart 2: Year on year strike rate comparison

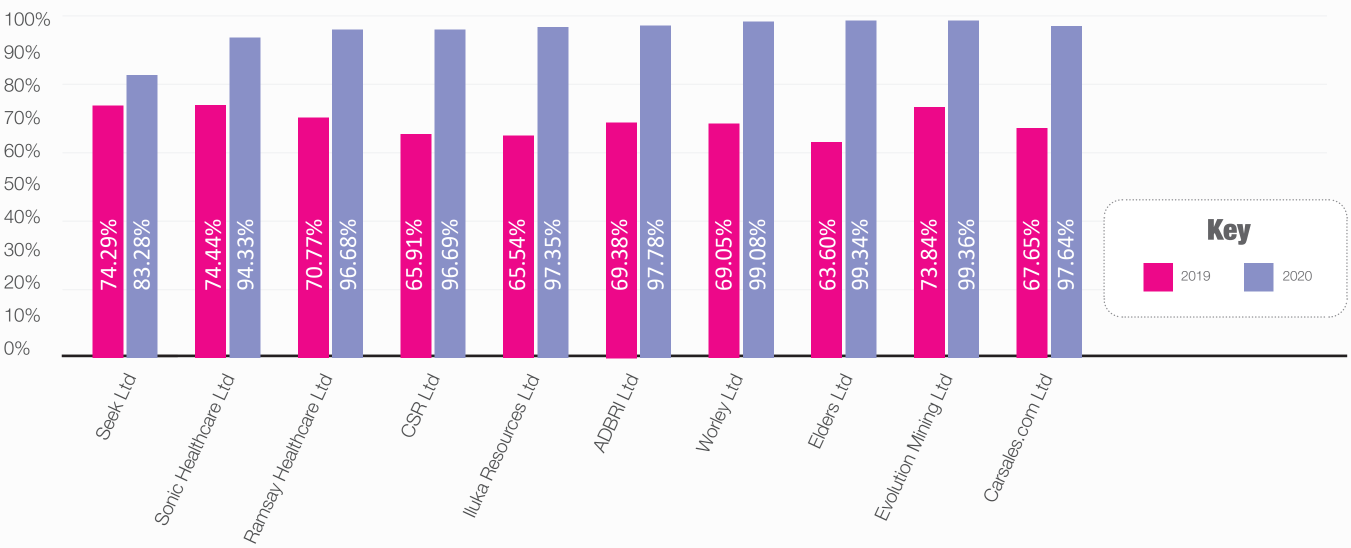


Of the 17 strikes that were received in 2020, 16 were first strikes and 1 was a second strike.[3] While the number of first strikes increased in real terms in 2020, the number of second strikes decreased from 3 in 2019.

The reduction in second strikes this year suggests that companies that received a first strike in 2019 successfully addressed shareholder concerns.

A year-on-year comparison of the 10 continuing ASX 200 companies that avoided a second strike is set out in Chart 3.

Chart 3: Renumeration report support vote for companies that avoided a second strike



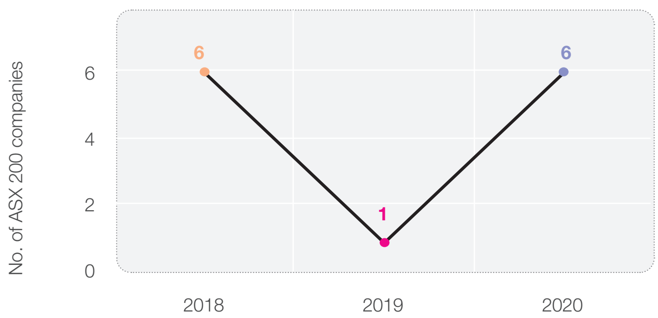
Both Westpac and Harvey Norman also avoided a third strike in three years, which would have counted as a first strike after spill motions were defeated following second strikes in 2019.

[3] NRW Holdings Ltd (included within these 16 entities) received its third consecutive strike.

More remuneration reports voted down

The number of remuneration reports voted down has fluctuated considerably over the past three years. As shown in Chart 4, 6 remuneration reports were voted down during the 2020 AGM season (i.e. received a support vote below 50%) compared to 1 in 2019 and 6 in 2018.

Chart 4: Year on year comparison of renumeration reports voted down



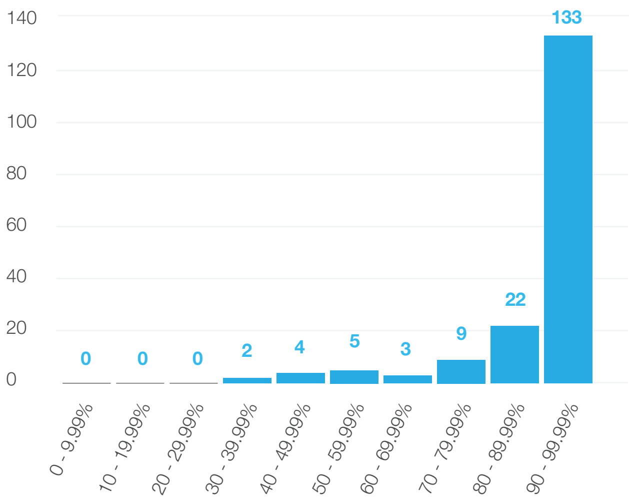
Magnitude of votes against remuneration reports

The average vote against a remuneration report in 2020 was 8.7%, which is a slight increase from the average of 7.6% in 2019 and closer to the number in 2018 of 8.6% (noting the 2018 figure was impacted by some outlier results following release of the interim report by the Financial Services Royal Commission).

More broadly:

- **The majority of reports were still overwhelming approved:** 133 (75%) companies had more than 90% shareholder support in favour of their remuneration report, as shown in Chart 5. This is effectively the same as last year (76%) and is a remarkable outcome given the events and challenges of 2020.
- **Near Misses:** There were 14 companies this year within 10% of a strike. This is a slight decrease from the 16 near misses seen in 2019. Again, a remarkable outcome.

Chart 5: % support vote for renumeration reports



Factors that inform shareholder voting on remuneration reports

To better understand the above trends, we sought to identify some of the factors that may have informed shareholder voting behaviour in 2020. As in previous years, the accuracy of these factors cannot be guaranteed because the real motive behind voting behaviour is not always discernible from publicly available documents. There is also the possibility of overlap between motives.

Board discretion over remuneration outcomes

There was a strong focus in 2020 on whether a company's remuneration structure was proportionate to the impact of COVID-19 on its operations and performance. Of particular concern in some cases was the perceived payment of bonuses to executives by companies that were hit hardest by the pandemic and received a significant amount of government support under the JobKeeper scheme.

For example, Ownership Matters took issue with The Star Entertainment Group, with the company ultimately receiving a first strike (55%) against its remuneration report.

Similarly, Premier Investments received a first strike (51.5%) against its remuneration report after it paid dividends and bonuses while at the same time reporting to have received nearly $70 million in JobKeeper subsidies. Premier reported a record increase in net profit of 29% despite suffering a 2.1% decline in revenues.

As we have flagged, a number of companies took decisive steps to ensure that their remuneration outcomes for 2020 were sensitive to the impact of COVID-19 and any government support received. For example, Qantas significantly reduced executive pay and deferred all bonuses after it received approximately $267 million in JobKeeper subsidies and stood down thousands of employees. The ASA praised Qantas for its approach, noting that other companies had simply moved the goalposts by stating that the remuneration gateways would have been met if it wasn't for COVID-19.

Remuneration structure

Shareholders have also continued to express concern about remuneration structures, specifically the use of non-financial targets by companies. This is not new and is a constant challenge for companies seeking to balance often conflicting messages from shareholders, regulators and other stakeholders surrounding the appetite and structure of non-financial metrics. For example, AGL received a first strike against its remuneration report (53.5%) after it announced that climate metrics would account for 33% of its long-term incentive grants for 2020-21. This move was criticised by ISS, which stated it considered that reducing emissions is part of normal business and should not be a basis for paying significant bonuses. ISS also noted that the use of climate metrics in this manner is, in its view, inconsistent with shareholder expectations and market practice.

Similarly, ISS took issue with Commonwealth Bank's proposal to reward executives with bonuses for addressing cultural issues and fixing problems, citing that ISS considers the executives are simply doing their 'day job' without improving actual performance.

Conduct / governance matters

Shareholders have also used their votes to express dissatisfaction and disappointment with companies' performance and conduct throughout the year.

For example, Crown Resorts received a first strike (65.7%) this year after chairman Helen Coonan admitted to serious governance breaches, including facilitating money laundering, in evidence given to the New South Wales Casino Inquiry. Counsel assisting, Scott Aspinall, added to these pressures when, on the eve of Crown's AGM, he stated it would be open for Commissioner Patricia Bergin SC to recommend that ASIC prosecute former Crown chairman Rob Rankin for failing to notify his fellow directors of key matters.

Similarly, Origin Energy withdrew a resolution which sought to grant equity to CEO Frank Calabria. The board had previously promoted the resolution as necessary to attract and retain talent, and align shareholder and executive interests. Prior to Origin's AGM, ISS and Glass Lewis took issue with the resolution's lack of long-term performance targets and noted Origin's poor pay-for-performance rating in comparison to its peers. Accordingly, both proxy advisors recommended that shareholders reject the resolution. Glass Lewis recommended that shareholders also vote against Origin's remuneration report while ISS recommended a 'qualified' vote in favour of it.

Environmental, social and governance (ESG) resolutions

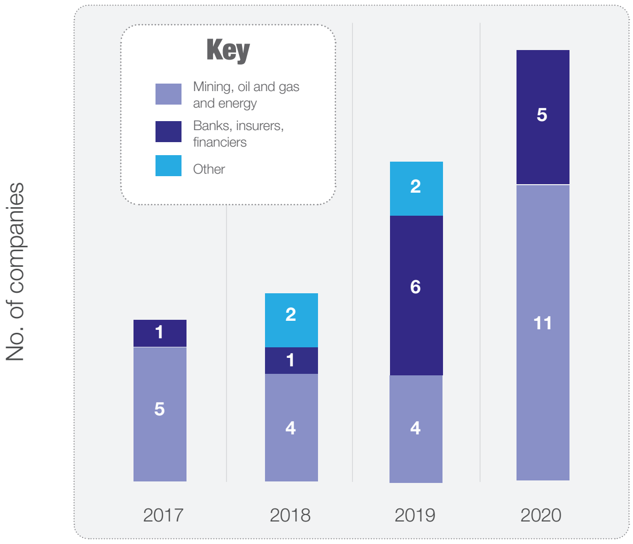
Rising shareholder support

As flagged in our July interim report, ESG resolutions in the earlier half of 2020 received unprecedented support. The conditional resolutions at Santos' and Woodside's AGMs received an average of 45.4% shareholder support, with the highest proxy vote in favour of a contingent advisory resolution in the first half of 2020 being 50.2%.

Increasing number of ESG resolutions

In 2020, we saw a slight increase in the number of companies that were required to put shareholder-requisitioned ESG resolutions to shareholders at their AGMs, with 14 companies requisitioned and putting the requisitioned resolutions to their AGMs this year compared to 12 in 2019. 2 companies (Insurance Australia Group and Fortescue Metals Group) were requisitioned but did not put the resolutions to their AGMs as they were subsequently withdrawn and not submitted in time respectively. The requisitioned companies span a broad range of sectors including energy, materials, banks, utilities and insurance, although the bulk continue to be those whose activities directly impact the environment as well as financial services companies, which provide support and products to carbon intensive industries. This can be seen in Chart 6 below.

Chart 6: Breakdown of ESG resolutions by industry / sector



Like in 2019, Market Forces and the Australasian Centre for Corporate Responsibility (ACCR) were the key activists behind the requisitioned ESG resolutions. Other activists included the Colong Foundation for Wilderness and Australian Ethical.

It was not certain what impact (if any) the shift to fully virtual AGMs this year would have on the level of activist participation at AGMs. In general, we found activists were given a specific platform at AGMs to speak to their resolutions through submitting written questions (as with shareholders and proxyholders) through the on-line platform. This is a fundamental change from the approach taken at a physical and proxyholders meeting where there is often a co-ordinated and very evident campaign of repeated questioning in furtherance of any requisitioned resolution.

Interestingly, Fortescue Metals did not put forward two resolutions requisitioned by the ACCR because notice of the resolutions was received after the cut-off date due to a COVID-related courier delay. An electronic copy of the documents had been filed on time. Fortescue was subsequently criticised by the ACCR for using the pandemic to avoid shareholder scrutiny. The two resolutions are due to be considered at Fortescue's 2021 AGM.

Subject matter is broadening

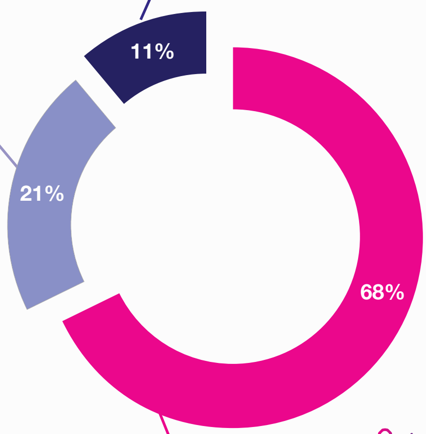
As in previous years, the requisitioned resolutions largely followed the now standard formula of:

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

Commonwealth Bank was the only company requisitioned with a resolution that did not follow this formula, and only involved a constitutional amendment.

This year we have seen the subject matter of the advisory resolutions broaden to include issues relating to climate change, COVID-19 recovery and cultural and world heritage protection. This is consistent with the widespread public attention that these issues received in 2020. Indeed, exploration of cultural heritage sites by mining companies was in the spotlight for much of 2020, as was the economic impact of COVID-19. That these issues have inspired advisory resolutions demonstrates activists are nimble to respond to 'live' issues and can be expected to requisition ESG resolutions when new issues arise. As always, it's important for companies to watch and monitor events at their peers' AGMs as part of their own AGM planning.

The diagram below illustrates the subject matters covered by the requisitioned resolutions and the number of corresponding resolutions:



Cultural and world heritage protection (4 resolutions):

Following the detonation of explosives in Juukan Gorge by Rio Tinto in May 2020, there was an increase in the number of advisory resolutions requiring companies to obtain free, prior and informed consent for equivalent activities.

COVID-19 recovery (2 resolutions):

A small number of advisory resolutions were directed at the novel area of COVID-19 recovery. These resolutions called on companies to review industry associations relating to economic stimulus measures in response to COVID-19.

Climate change (13 resolutions):

More than half of the advisory resolutions were directed at climate change matters, including the winding up of coal production assets and operations that are alleged to be inconsistent with the Paris Agreement's goals; disclosure of a climate-related plan; and the suspension of relationships with industry associations whose advocacy work is perceived to be inconsistent with the Paris Agreement's goals.

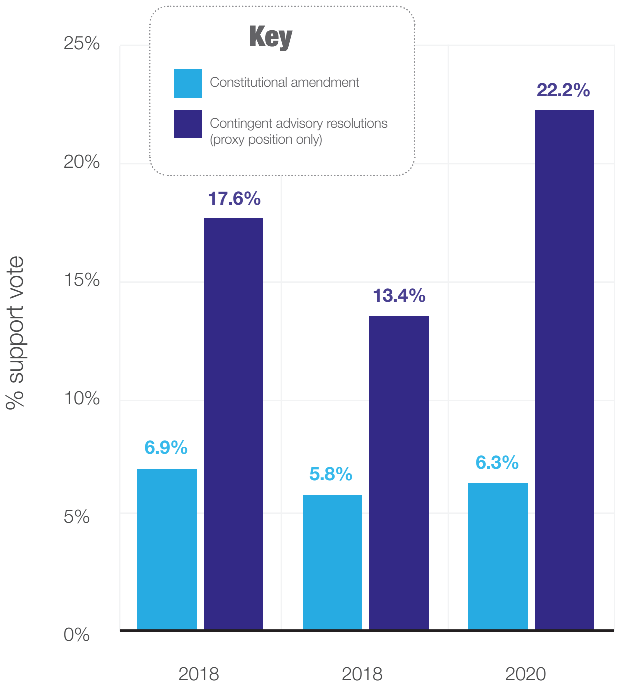
Success rate

As in previous years, none of the requisitioned resolutions were carried.

The average support vote for proposed constitutional amendments increased slightly in 2020 to 6.3% from 5.8% in 2019.

However, the level of shareholder support for contingent advisory resolutions increased significantly to 22.2% (see Chart 7). This increase in support for advisory resolutions was largely driven by the unprecedented levels of support for the four climate change resolutions requisitioned at Santos and Woodside's AGMs earlier in the year. These four resolutions received an average support vote of 45%. In contrast, the highest support vote received in the latter part of 2020 was only 28.7%.

Chart 7: Year on year comparison of support for ESG resolutions



As advisory resolutions are only voted on if the constitutional amendment is carried, it is not possible to ascertain the true level of shareholder support. Consequently, the above figures are based on the proxy positions disclosed by companies.

Productive engagement

While no resolutions were carried, activists have nevertheless made progress in some instances through engaging in productive negotiations with companies. Examples of such engagement included BHP and IAG.

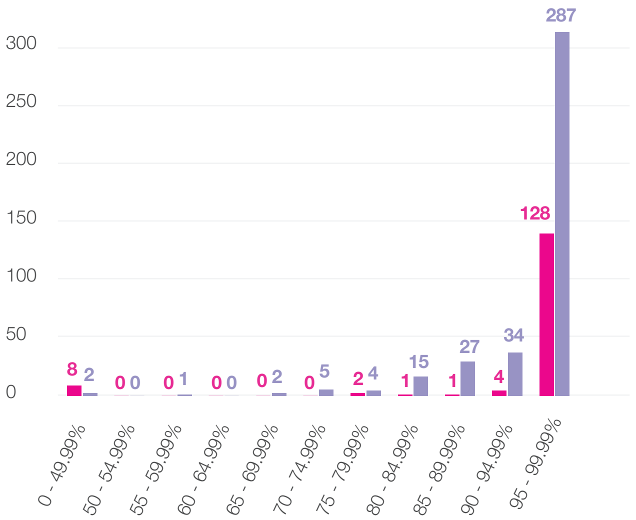
Director elections and re-elections

Broader spread but continuation of 2019 trends

492 individuals ran for election or re-election at AGMs for ASX 200 companies in 2020.[4] Continuing the trend from last year, there has been no substantial change in the average votes on director elections, with the majority of candidates elected / re-elected with a support vote of 95% or more.

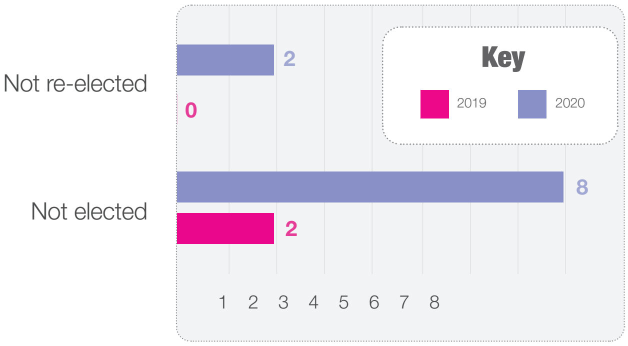
Of the directors that received a support vote of 95% or less, 85% were seeking re-election as opposed to election for the first time and 77% were male.

Chart 8: Breakdown of director elections / re-elections by outcome



While the average support vote for director elections and re-elections remains unchanged from last year at 95%, there was a significant increase in the number of candidates that did not get elected or re-elected. However, this (for the most part) reflected that more non-Board endorsed candidates put themselves forward for election in 2020 and is not a surprising outcome. Chart 9 demonstrates that of the 492 candidates that ran for election this year, 8 new candidates were not elected this year (compared to 2 in 2019) and 2 directors were not re-elected. As flagged, this outcome is not surprising given only 1 of the 8 candidates seeking election for the first time was Board endorsed.

Chart 9: Year on year comparison of director election / re-election success rate



[4] The total number of director elections and re-elections held this year is higher at 521 reflecting that 28 of the 492 candidates ran for election or re-election at more than one AGM.

Understanding voting outcomes

There were some unique issues underlying some of the more dramatic voting outcomes on directors' elections / re-elections in 2020.

Regulatory Scrutiny	Boards are continuing to face scrutiny from shareholders based on intense focus on regulatory actions, investigations and compliance breaches. For example, the NSW Independent Liquor and Gambling Commission was called last year to investigate Crown's alleged connections with overseas criminal syndicates. After 60 days of examination, counsel assisting Scott Aspinall stated that the evidence shows the company was 'unable to govern itself'. Following the inquiry, Crown received a first strike on its remuneration report. The three directors seeking re-election received significant protest votes, with the group receiving an average vote in favour of 67.5%. One candidate failed to get elected, however they were not Board-endorsed.
Relationship with major investors	Cromwell's chairman and deputy chairman failed to get re-elected at the November AGM, while another Board endorsed candidate, failed to get elected. These results follow a long running battle with major investor, ARA Asset Management (ARA), who over a period of time creeped and launched a proportional takeover bid. Two ARA nominees were also elected to the Cromwell board at an EGM in September. Since Cromwell's AGM, a new chair has been appointed along with an acting CFO. A further EGM is due to be held in February 2021, where three directors will be considered for re-election.
Gender diversity	Gender also appears to be a continuing factor in the level of support directors are receiving. Based on our review, the average support vote for female directors was 97.1%, while the average support vote for male directors was 93.8%. According to the Australian Institute of Company Directors (AICD), as at 30 November 2020, only one company board in the ASX 200 still does not have any female directors.

Increasing focus on women on boards

A key concern during the 2020 AGM season has been the number of women on boards. The 4th edition to the ASX Corporate Governance Principles and Recommendations calls for ASX 300 boards to have a target of reaching a minimum of 30% of each gender on their boards.

The Gender Diversity Reports, compiled by the AICD, shows that while the proportion of women has increased in the last year, 87 ASX 200 boards have yet to reach this 30% threshold.

Our review indicates that 37% of the directors that sought election or re-election this year were female.

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We take a partnership approach in working with clients, focusing not just on what they want, but how they want it. Always pushing the boundaries of what can be achieved, we are reshaping the legal market and challenging our clients to think differently about what a law firm can be.

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