KING & WOOD MALLESONS
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# AGM REPORT

## DEEP DIVE INTO ASX200 AGMS IN 2023

**Wildflower on Oak Creek** by Remy Taylor

# INTRODUCTION

**In 2023[1] economic and social issues were front-of-mind for shareholders at AGMs: the Voice, auditor accountability and executive pay in the face of cost-of-living pressures. At some AGMs, climate took a back seat, relative to the attention in previous years, with fewer shareholder-requisitioned resolutions on climate issues. For others, protests relating to climate issues kept companies' climate performance front-of-mind.**

The prevalence of 'physical-only' AGMs continued to increase, despite some ongoing grumblings. Hybrid AGMs remain the clear favourite for now. However, we expect 'physical-only' AGMs will continue to increase, given the low number of shareholders we've seen using the online component and the costs associated with it.

### AT ONE AGM…

*…climate protesters dressed as clowns and circus performers gave a speech against the company's links to fossil fuel companies while others performed acrobatic tricks*

### REM REPORT STRIKES DOUBLED

**16% in 2023 vs 8% in 2022**

### SHAREHOLDER REQUISITIONED CLIMATE RESOLUTIONS DOWN

**6 in 2023 vs 11 in 2022**



Remuneration report strike rates doubled, with protest votes as high as 82%. Again, these appeared to be driven often by factors other than remuneration. At the same time, the average support vote for director elections/re-elections decreased for the first time in 3 years.

Disgruntled shareholders also used a variety of other means to demonstrate their dissatisfaction, including standing for election as a director (no such candidates were successful in being elected). Protests were also voiced by voting against otherwise non-contentious director re-elections where the director chaired or sat on a committee perceived to have presided over governance failures (eg the cyber committee where there was a cyber incident). Shareholders also used question time to comment on the company's position on social issues (eg the Voice) – mostly in the context of questioning the use of company resources.

These key trends provide valuable insights into how general economic and social affairs inform voting behaviours, offering guidance for how companies can navigate their AGMs in a challenging environment.

This report contains our key observations of the trends in calendar year 2023, drawing comparisons to those in calendar year 2022. To review a more comprehensive report on last year's trends, see here.

1 Notes on our dataset for 2023
Our data for 2023 covers the top 200 ASX companies by market cap as at 28 November 2023 that held an AGM in calendar year 2023 (ASX200).
Our dataset captures fewer than 200 AGMs, given not all ASX200 companies needed to hold an AGM in calendar year 2023 and not all companies that held an AGM were required to present their remuneration report.
All references to 'companies' in this report are inclusive of entities with other corporate structures that are listed on the ASX (eg stapled securities and listed trusts).
Although year-on-year comparisons have been used in this report, the report does not necessarily provide a direct company-for-company comparison due to, for example, movements in the composition of the ASX200 between calendar year 2022 and calendar year 2023. Refer to last year's report for details on our dataset for calendar year 2022.
All figures have been rounded to the nearest whole number.

# KEY OBSERVATIONS

More than a third of ASX200 companies held a **fully physical AGM**, a steady increase since 2021

The strike rate and average vote against remuneration reports both **doubled**

Constitutional refreshes **reduced significantly**

Factors driving 2023 AGM outcomes (eg protest votes against the remuneration report and director elections/re-elections) included **share price volatility**, **company performance**, **leadership changes**, **reputational damage** and **governance issues**

Shareholder-requisitioned ESG resolutions **halved** in number but received higher average support

Shareholder questions spanned **progress against disclosed climate targets**, performance in light of the current **inflationary environment** and the **state of the economy**, the company's position on **the Voice** and **external auditor replacement**



# FORMAT OF AGMS

## HYBRID AGMS ARE PREFERRED BUT THE NUMBER OF FULLY PHYSICAL AGMS HAS INCREASED

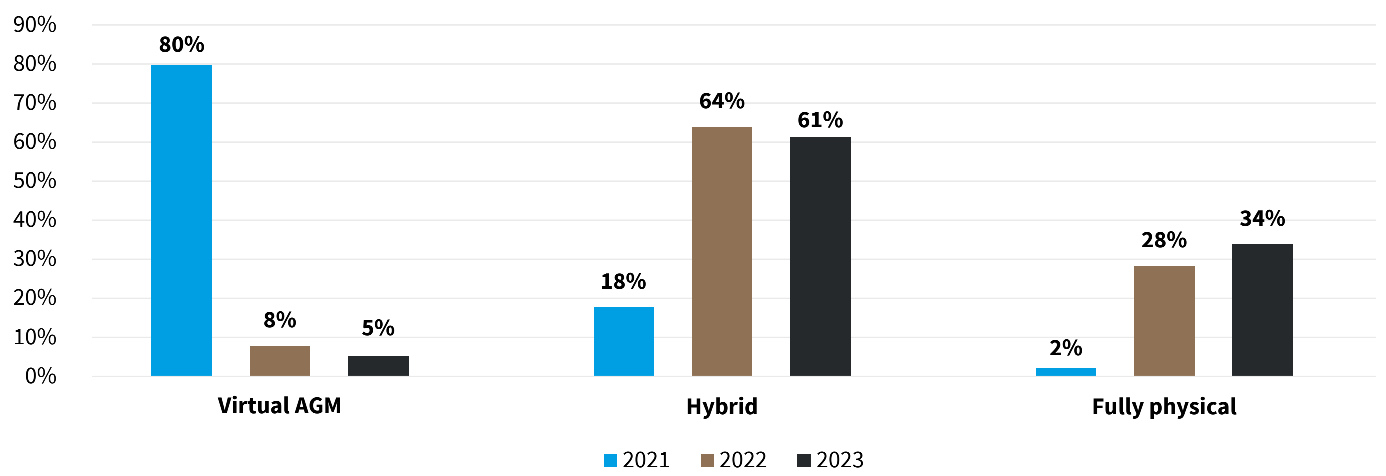
Hybrid meetings (i.e., a meeting held at one or more physical venues and using virtual meeting technology) continue to be the favourite, with almost two thirds of ASX200 companies who held AGMs in 2023 opting for a hybrid meeting format.

At the same time, there was a continued increase in the number of ASX200 companies holding fully physical AGMs in 2023, and a continued decrease in the number of virtual AGMs, with that format predominantly chosen by companies incorporated outside Australia.

### AT ONE AGM...

*...a shareholder activist stood for election as a director, in part to protest the company reverting to a fully physical AGM*

**Chart 1** Format of AGMs 2021 v 2022 v 2023



# FORMAT FOR SHAREHOLDER QUESTIONS

The vast majority of ASX200 companies who held AGMs in 2023 invited questions in advance of meetings. They also provided shareholders the opportunity to ask questions during the AGM both online or in person (where a hybrid meeting was held). Questions were either taken in one tranche (such as at the end of the items of business) or after each resolution or subject matter.

A number of shareholder questions this year focussed on social and economic matters, including inflation, auditor accountability and resources devoted by companies to the Yes campaign.[2]

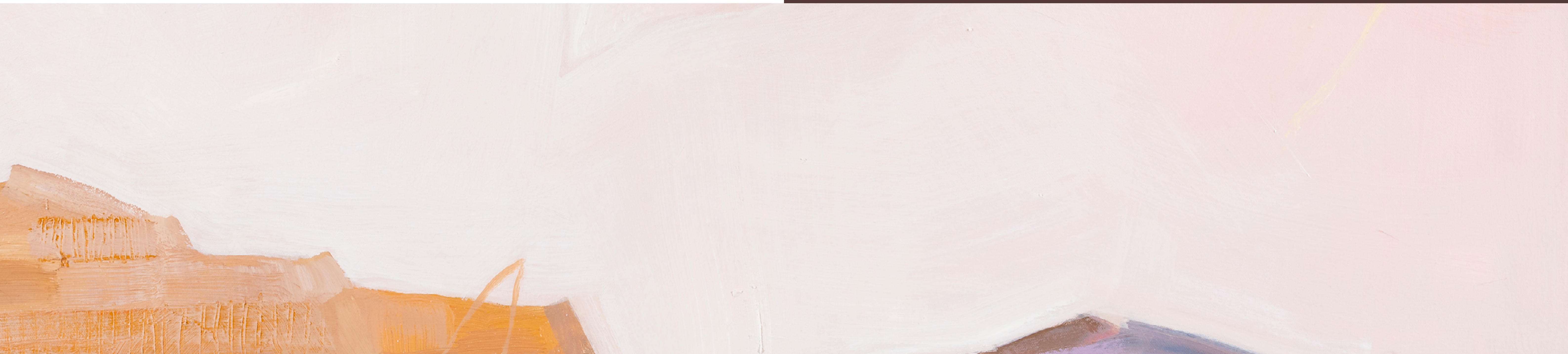
# CONSTITUTION REFRESHES[3]

The number of companies refreshing their constitutions dropped in 2023, with only 7[4] companies proposing constitutional amendments (2022: 19) and 1 company proposing a completely revised constitution (2022: 7).

Only 1 of these companies sought to amend their constitution to allow fully virtual meetings. However, like many others we've written about in previous reports, they ended up subsequently withdrawing the relevant resolution in response to stakeholder feedback.

All of the constitutional amendments that weren't subsequently withdrawn passed.

The purpose of the amendments was generally to reflect recent changes in law and governance practices in the conduct of general meetings, including to better facilitate hybrid meetings, and similar matters.



2 Sydney Morning Herald, "Investors put heat on big business over backing for Voice".

3 Constitutional amendments proposed by shareholders as part of ESG resolutions aren't included in these numbers, and are discussed in the ESG Resolutions section below.
4 This excludes 8 companies which included amendments solely to refresh proportional takeover provisions.

# REMUNERATION REPORTS

**2023 saw a surge in the strike rate and an increase in the average vote against remuneration reports.**

**But the majority of reports were still approved, with 65% of ASX200 companies receiving more than 90% of votes in favour of their remuneration report (2022: 83%).**

**(a) Number of strikes doubled**

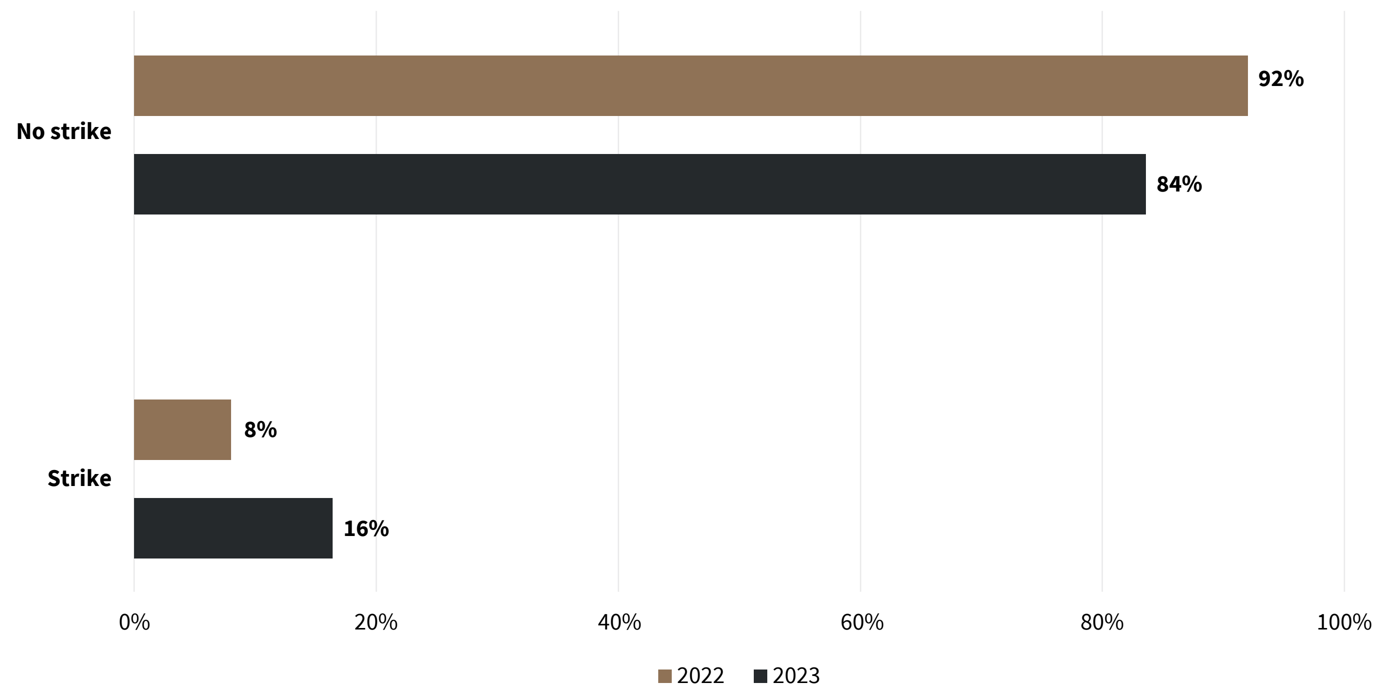
There were 30 strikes in 2023, representing 16% of ASX200 companies that presented a remuneration report at an AGM in 2023. That's double the 8% strike rate in 2022.

Unsurprisingly, given the spike in number of strikes, most of these were first strikes (87%, compared to 75% in 2022).

### AT ONE AGM…

*…the company received its sixth consecutive strike. Even though 3 spill resolutions have been put to shareholders, its board has not yet been spilled*

**Chart 2** Strikes – year-on-year comparison






**(b) Increasing votes against remuneration reports**

The higher strike rate wasn't the only sign of shareholder dissatisfaction. Where there was a strike, the average vote against the remuneration report was higher than in previous years (48%, compared to 32% in 2022 and marginally higher than 44% in both 2021 and 2020).

There was also an increase in the average vote against remuneration reports generally in 2023 (nearly 14%, compared to 7% in 2022 and 9% in 2021).

And there was an increase in the number of companies in our dataset that came within 10% of a strike (13% in 2023, compared to 4% in 2022 and 7% in 2021).

**(c) Factors informing shareholder voting on remuneration reports**

The higher strike rate and higher average number of votes against remuneration reports for 2023 appear to have been influenced by a number of factors. These include a company's share price volatility, performance and leadership changes, reputation/governance issues, and quantum of pay and use of board discretion. Yet again we are seeing votes used on remuneration reports too often driven by factors that are not related to remuneration – a concern that we raised at the time the regime was introduced. There is anecdotal evidence that, at least initially, the regime drove a refresh of remuneration practices in Australia – some say for the better with others concerned that it drives a homogenised approach. What is irrefutable, however, is that it is clearly a tool that can be easily utilised by activist campaigners and for purposes that Parliament cannot have intended.

## SHARE PRICE VOLATILITY, COMPANY PERFORMANCE AND LEADERSHIP CHANGES

**Some shareholders in 2023 used their votes on remuneration reports to express frustration with the company's share price. Often, a decline in share price coincided with leadership changes.**

**For example**

- 58% of an investment manager's shareholders voted against its remuneration report following executive departures, client redemptions and a significant decline in share price in 2023.
- 48% of a resources company's shareholders voted against its remuneration report following a declining share price, coupled with internal pressures after the abrupt departure of its CEO.
- 25% of another resources company's shareholders voted against its remuneration report following a significant decrease in share price during 2023.
- 27% of an IT service management company's shareholders voted against its remuneration report amid poor financials, a decline in share price and the resignation of the Company Secretary, CEO and CFO, all in 2023.

## CONTENTIOUS ACQUISITIONS

**As in previous years, contentious acquisitions appear to be another factor causing shareholders to vote against remuneration reports.**

**For example**

- 41% of a resources company's shareholders voted against its remuneration report after an activist investor reportedly urged fellow shareholders to vote against the remuneration report due to concerns that the company had adopted a structure that prioritised acquisitions rather than shareholder returns.

## REPUTATIONAL DAMAGE AND GOVERNANCE

**Shareholders have also expressed frustration over governance issues causing reputational damage, which appears to be another factor causing shareholders to vote against remuneration reports.**

**For example**

- 83% of a transport company's shareholders voted against its remuneration report following a reported decline in brand trust and transparency following an announcement of a regulatory investigation. At its 2023 AGM, shareholders also voiced their discontent with the chairman and former CEO for selling shares shortly before the regulatory investigation was publicly announced. Proxy adviser ACSI has also expressed concern over the company's bonus practices, querying how the board can justify a bonus for the former CEO who resigned following the regulatory investigation.

## QUANTUM OF PAY AND USE OF BOARD DISCRETION

**In some cases, it appears shareholder votes against the remuneration report are driven by concerns over the quantum of pay for executives, and use of board discretion in determining pay.**

**For example**

- 59% of a diversified contract services company's shareholders voted against its remuneration report amid reported concerns around the CEO's excessive remuneration.
- 73% of a retailer's shareholders voted against its remuneration report after it reported approximately $30 million total remuneration for its CEO.
- 23% of a biotechnology company's shareholders voted against its remuneration report after two proxy advisers reportedly took issue with the board exercising its discretion to remove the impact of a significant acquisition from bonus targets.

# DIRECTOR ELECTIONS AND RE-ELECTIONS

**(a) Lower average support vote for candidates up for election or re-election**

While the majority of candidates received 95% or higher support, our analysis of director elections and re-elections also found a theme of discontent. Two charts tell the story:

**Chart 3** Percentage of candidates who received less than 95% support vote

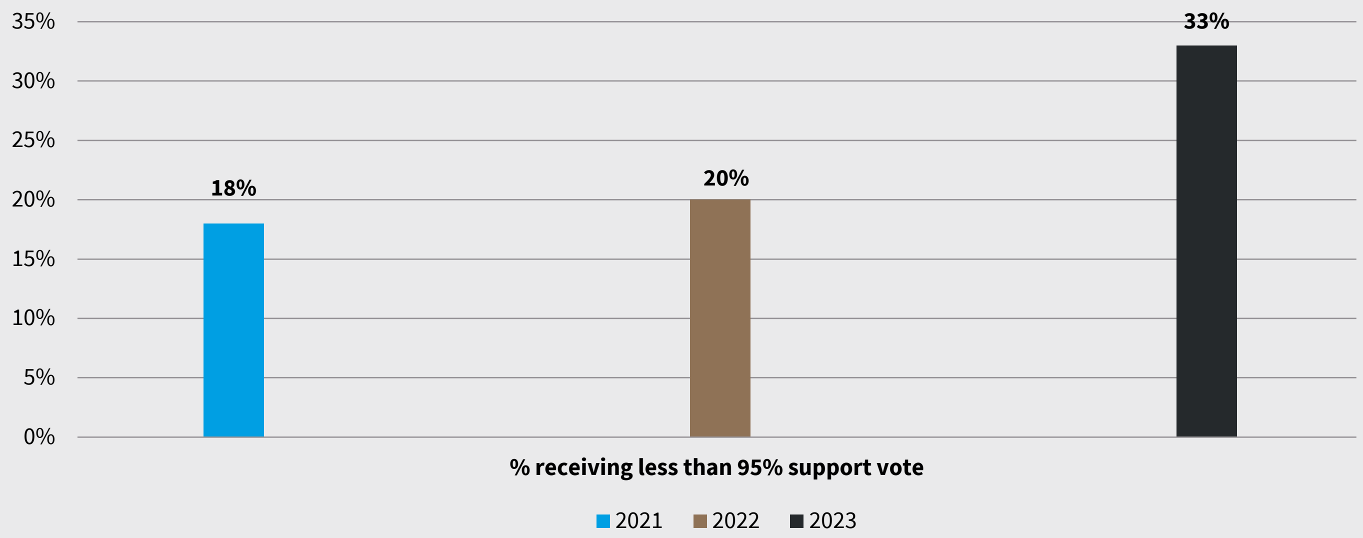



Chart 3 shows a surge in the number of candidates receiving less than 95% support votes. A significant majority of these were seeking re-election, as opposed to election for the first time (152 candidates, or 85%, consistent with previous years).

**Chart 4** Average support for director elections and re-elections

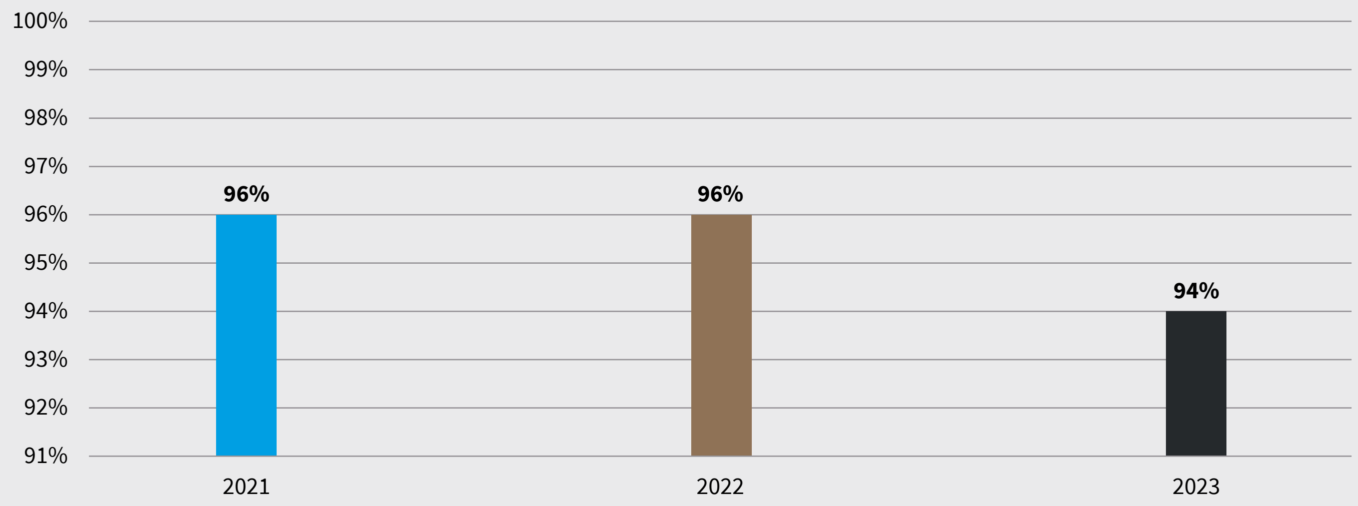



Chart 4 shows a slight decrease in the average support vote for director elections and re-elections after a relatively stable average in 2021 and 2022.

### (b) Some progress on gender representation, but more to do

This year saw a slight step back in efforts to increase female representation on ASX200 boards. According to the Australian Institute of Company Directors (**AICD**), as at 12 October 2023:

- the number of women directors on ASX200 boards decreased by 2%, to 34%; and
- the number of women directors comprising newly elected directors to ASX200 boards decreased by 3%, to 42%.

According to the AICD's latest Gender Diversity Progress Report released in June 2023, 143 companies in the ASX200 have reached the 30% women directors target set by the AICD (an increase from 141 in 2022 and 126 in 2021).

This is an interesting result given the AICD's finding that the number of women directors on ASX200 boards has decreased overall. The Gender Diversity Progress Report also found women account for less than 10% of chair roles in the ASX200 (a slight decrease compared to 10.5% in 2022).

From our analysis, we observed an almost identical proportion of women candidates seeking election or re-election in 2023, as compared to 2022 and 2021 (in 2023 women represented 39% of all individuals seeking election or re-election to ASX200 boards, compared to 40% in 2022 and 40% in 2021).



### (c) Understanding voting behaviours

Proxy advisors' public statements and shareholder questions and comments at AGMs suggest that the factors influencing voting outcomes in relation to remuneration reports (reported earlier in this report) may also have played a part in director election and re-election results. A number of directors who received a support vote of less than 70% are directors of companies that were subject to a strike or a near-miss.

Unsurprisingly, board endorsement continues to be a key factor in the success of a director candidate's election. Similar to last year, three individuals stood for election at 2023 AGMs without being endorsed by the company's board. None were successful.

Perceived governance failures also appear to have resulted in shareholders voting against candidates standing for re-election that chair or are members of relevant board committees.

#### AT ONE AGM …

*…a non-board endorsed candidate was supported by a substantial shareholder. Notwithstanding the campaign run by the substantial shareholder in support of the candidate, the candidate received less than 28% of votes in favour*

**For example**

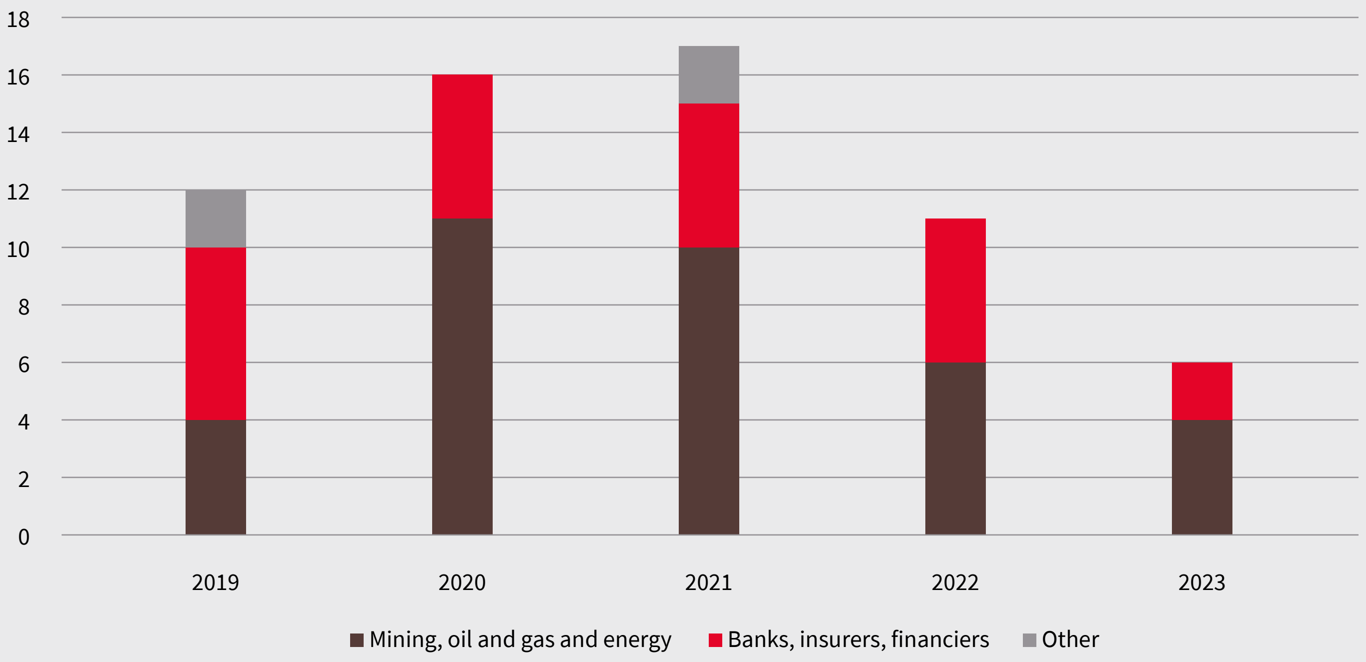
- 25% of an insurer's shareholders voted against the re-election of a director on its board risk management committee. In response to shareholder questions at its AGM, the company indicated this was in part an expression of shareholders' dissatisfaction with the company's management of a cyberattack, and the director's role as a member of the risk management committee.
- 36% of a financial institution's shareholders voted against the re-election of a director who was the chair of its board risk committee following concerns from regulators regarding the company's anti-money laundering and counter-terrorism program. The Australian Shareholders' Association advised against the director's re-election, on the basis the board had to be held to account for gaps in its risk culture.
- 35% of a resources company's shareholders voted against the re-election of a director who had been on the board for more than 6 years, reportedly due to perceived failures in climate-related governance. This came after the Australasian Centre for Corporate Responsibility and others filed a shareholder's statement expressing their discontent with the company's climate strategy. Climate activists also held physical protests outside the AGM.

# ESG RESOLUTIONS

**(a) Decrease in number of requisitioned ESG resolutions**

Only 6 companies were requisitioned with shareholder resolutions relating to ESG matters in 2023, down from 11 in 2022 and 17 in 2021. As in previous years, Market Forces was the key activist behind the requisitioned resolutions.

**Chart 5** Breakdown of ESG resolutions by industry/sector




**(b) ESG resolutions focus on climate change**

All requisitioned resolutions followed the usual formula:

- first, a proposed amendment to the company's constitution, which would enable shareholders at a general meeting to, by ordinary resolution, express an opinion or request information about the way in which power of the company vested in directors has been or should be exercised, where this relates to a material risk for the company; and
- second, an advisory resolution which is contingent on the constitutional amendment being passed.

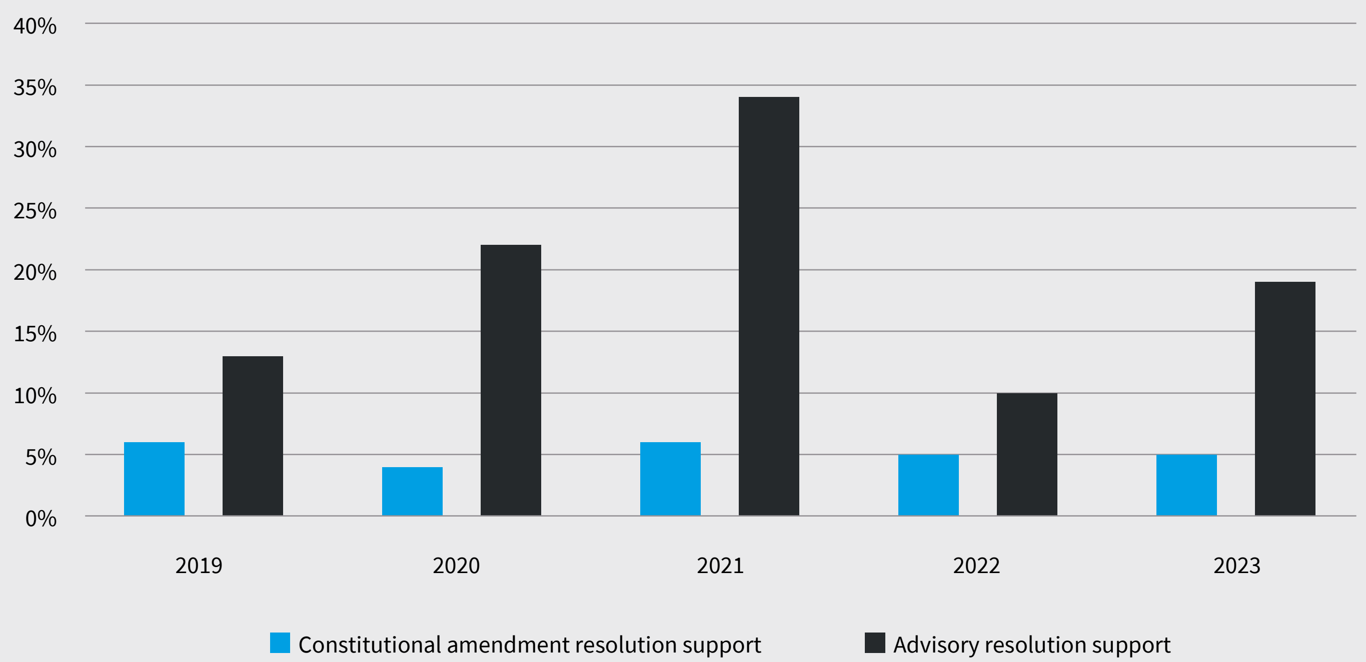
In 2023, the subject matter of all 6 of the advisory resolutions related to climate change: specifically, to transitional plan assessments (in the case of the banking sector) and capital protection (in the case of the mining sector).

**(c) 0% success rate**

No requisitioned resolutions were successful in 2023. As none of the 6 constitutional amendment resolutions passed, none of the 6 advisory resolutions were put to a vote at the AGM.

However, based on proxy votes as at proxy close, the average support for the advisory resolutions was 19%. This is a significant increase from 2022 (at 10%), but comparable with the average over the last 4 years (at 19.75%).

**Chart 6** Year-on-year comparison of average support for ESG resolutions



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