2023

AGM Intelligence Report

A look at the findings from the 2022 annual meeting season.

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Introduction

Throughout what could be described as another tumultuous year, Georgeson observed several trends, including an increase in the number of proxy fights across the market and the highest level of investor support for ASX300 company remuneration reports in many years.

Across Australia, there were eight companies that included climate plan-related resolutions at their AGMs, all of which passed. We also saw several sophisticated cyber-attacks which provided clear lessons for companies, shareholders and customers, demonstrating that all parties are exposed to cybersecurity risks.

ESG continues to make headlines, most notably the derailing of AGL Energy Limited's planned demerger and the election of non-board-endorsed directors. ESG can mean different things to different stakeholders, however for companies, the focus is on topics that will have a material impact on their long-term value.

ESG risk is no longer seen as an emerging trend but is now a fundamental, front-line concern. These risks and opportunities continue to impact corporate strategy and play a major role in the boardroom through governance frameworks. Therefore, it is critical for directors to identify and address the issues facing their companies. Boards need to actively demonstrate effective oversight of risks and opportunities and management teams must be transparent about their approach to addressing these issues.

At Georgeson, we continue to engage and foster relationships across the market. These relationships enhance our core proxy solicitation expertise, which is complemented by our strategic advisory services.

These include: investor identification, ownership and voting insights, AGM and M&A shareholder engagement strategy, vote projections and ESG strategy and implementation support.

We continue to be a trusted corporate governance advisor, helping organisations around the globe maximise the value of their relationships with investors and other ESG stakeholders. We hope you find this year's AGM intelligence report insightful and look forward to working with you in the year ahead.

Andrew Thain
Country Head and Managing Director,
Georgeson, ANZ

ENVIRONMENTAL, SOCIAL AND GOVERNANCE

The latest market insights from Georgeson, exploring the evolving environmental, social, and governance landscape in Australia.

Say on Climate

Globally, investors approved the corporate climate strategies put forward, mostly by large majorities.

Companies globally are still wary of allowing shareholder votes on Say on Climate resolutions, but increasingly prefer to agree to non-binding company resolutions instead. UN PRI (UN Principles of Responsible Investment) reported in July 2022 (before the Australian AGM peak season) that of 576 ESG-focused resolutions in 2022 (2021: 499), fewer than 100 were Say on Climate.

In Australia, eight companies (AGL Energy Limited, APA Group, Origin, Rio Tinto, Santos, Sims Metal, South32 and Woodside) included climate plan-related resolutions at their AGMs, all of which passed. Votes ranged from 94.5% in favour (Origin) to 51% (Woodside); the other six all recorded less than 90%. Of six shareholder resolutions, three were withdrawn (Origin, Santos and Woodside) in favour of company resolutions and three (BHP, Whitehaven and New Hope) were withdrawn when the enabling constitutional change resolutions failed.

In general, proxy advisors do not favour constitutional changes to force companies to hold Say on Climate resolutions every year or otherwise tie management's hands, and almost always recommend against such changes, particularly where shareholder resolutions attempt to mandate them.

Globally, during the 2022 proxy season, more investors voted against corporate climate strategies than in 2021, according to an MSCI analysis. Investors tended to vote against climate plans where the company's emissions trajectory was misaligned with global temperature targets, as measured by the MSCI Implied Temperature Rise (ITR).[1]

Globally, investors approved the corporate climate strategies put forward, mostly by large majorities. However, the average votes Against trebled from 3.1% in 2021 to 9.6% in 2022, indicating increasing concern among some investors. In Australia it was even higher, with an average of almost 25% of shares voted Against in 2022; this may reflect a lower maturity of ESG disclosures by Australian companies, particularly around climate change, compared with Europe and the U.S.

1 MSCI Implied Temperature Rise is designed to show the temperature alignment of companies, portfolios and funds with global climate targets. It compares a company's current and projected greenhouse-gas emissions across all emission scopes with its share of the remaining global carbon budget for keeping global warming well below 2°C. It converts a company's "undershoot" or "overshoot" of its carbon budget to an implied rise in average global temperatures this century, expressed in degrees Celsius. (MSCI)

Recent turmoil in energy markets following the war in Ukraine, the global energy crisis and a resulting focus on energy security in many countries may change some investors' voting behaviour. In 2023, we will see if investor opposition to corporate climate strategies continues to increase, or whether more investors will give companies the benefit of the doubt on their climate plans while the current challenging market conditions persist.

Analysis of the limited number of votes in 2022 (43 companies) suggests many dissenting investors may have opposed corporate climate strategies they felt were not ambitious enough, rather than objecting to the vote itself. With more Say on Climate votes scheduled for 2023, it will be interesting to see whether or not this dynamic also holds.

Georgeson's Insights

- Say on Climate votes are increasing but not rapidly.
- To avoid facing a shareholder climate resolution or votes against individual directors, companies need to:
  - Ensure they have a clear plan to transition to Net Zero that is adequate, credible and aligned with the Paris Agreement goal to keep global warming to 1.5°C.
  - Show awareness that their transition plan, particularly if they are a major emitter, will be challenging and take many years to implement.
  - Take investors on the journey even before the plan is complete, and explain carefully the stages, step targets, processes and costs likely to be incurred to get there.
  - Avoid vague statements about using 'offsets' or 'carbon credits', with no ambition to cut their emissions significantly and implying they can continue with business as usual. These show a lack of seriousness and will set the scene for hostile shareholder resolutions or votes against directors.
- UN PRI recommends that investors facing shareholder Say on Climate resolutions should prioritise proven stewardship mechanisms to steer company ambition and execution (e.g. corporate engagement, filing and voting on shareholder proposals, voting on board composition) over company-led transition plan votes – clearly worried some companies are trying to win such votes with less than rigorous transition plans. This demonstrates the need for heavy-emitting companies to produce clear and credible Net Zero plans.

Board ESG accountability

So that boards can adapt and respond to the rapidly evolving ESG landscape, directors' skills, capabilities and perspectives must continually evolve.

ESG is no longer an emerging risk for organisations but a fundamental, front-line issue. With 80% of company balance sheets worldwide comprising intangible assets, reputational risk is a major issue. ESG exposure is likely to grow as environmental and social issues increasingly draw public and investor attention. It is not clear that all directors are yet fully across the need to understand ESG and to regard it as a core and fundamental part of their duties. They can no longer afford to view governance solely as a compliance issue.

Directors' ESG responsibilities

ESG plays a major role in the governance framework of an organisation and it is critical for directors to be able to address the ESG issues facing their companies. Investors and other users of ESG disclosures need to understand how effectively the board oversees climate-related and other key ESG issues and how management deals with them.

Legislation such as the Corporations Act 2001 (Cth), as well as the ASX Corporate Governance Principles, define directors' ESG responsibilities.

The Australian Prudential Regulation Authority (APRA) has set out the ESG disclosure requirements of financial services companies. In 2019, the ASX Corporate Governance Council amended the definition of 'environmental risk' to capture risks such as water scarcity, air quality and climate change – indicating that directors are obliged to consider these risks and not doing so could imply a breach of their duty. Many large investors also have their own disclosure requirements.

So that boards can adapt and respond to the rapidly evolving ESG landscape, directors' skills, capabilities and perspectives must continually evolve. In a recent report, Deloitte wrote that future-fit boards need strong governance foundations, plus directors who can *'add value through their heightened sensitivity to ESG issues, stakeholder capitalism, social licence to operate and elevated employee expectations.'*[1] However ESG is not just a series of risks, but can also present companies with huge opportunities, so boards must be expert enough to ensure that these are realised too.

[1] https://www2.deloitte.com/au/en/pages/risk/articles/bold-moves-boardroom-skills-capabilities-fit-future.html

The 2021 Sustainability Board Report[2] found that 71 of the 100 world's largest public companies have aboard committee overseeing sustainability, but only 17% of directors on the committees had relevant ESG training or experience. In Australia, research by impact investor Melior Investment Management found that less than 30% of ASX300 companies had a designated board committee overseeing ESG (June 2021) and suggested there was likely a similar skills gap among directors.

Board composition and training

The board's composition must ensure that ESG responsibilities are managed – either via an existing board committee, a new committee or with some board members taking on ESG responsibilities. If the Risk & Audit Committee is responsible, which may be appropriate as its role includes ensuring compliance with public reporting and statutory disclosure requirements, then it needs to include directors with relevant ESG expertise. As ESG becomes broader in scope and more heavily regulated, this need will only increase. In some companies, directors with specific expertise may need to be added, for example, supply chain experts for logistics companies or cybersecurity experts for transaction platforms.

Bloomberg Law states, 'there is no 'one size fits all' approach to board...ESG oversight, and each board must evaluate its own circumstances, expertise, industry and composition to determine how best to discharge its ESG responsibilities.'

If the company's board skills matrix shows low ESG expertise on the board, there is ESG training offered by tertiary bodies and other organisations like the Australian Institute of Company Directors (AICD). We at Georgeson also offer ESG education for boards, providing an investor-focused overview of the ESG ecosystem, governance, reporting and ESG ratings agencies.

Georgeson's Insights

- Directors should not wait for mandated ESG disclosure and compliance, but instead go onto the front foot and ensure the company meets these expectations.
- Add ESG to the board skills matrix – ensure a minimum of one director has sufficient ESG knowledge, particularly on the most material topics, to challenge management.
- Before trying to report on ESG, establish a structured ESG governance framework.
- Allocate clear responsibility for oversight of ESG issues to a board committee.
- Don't just focus on governance and environmental issues – social ones related to talent, cybersecurity, supply chains, privacy and diversity are rapidly becoming critical.

[2] https://www.boardreport.org/the-sustainability-board-report-2021

Remuneration in 2022

We've witnessed increased levels of support for remuneration reports in 2022. In the previous 2021 season, 27 companies (9% of the ASX300) suffered a 'strike', more than 25% of votes being against adopting the remuneration report.

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In the 2022 AGM season, the resulting headline result was different, and somewhat surprising – the highest level of remuneration support for Australia's largest 300 listed companies in years.

For the ASX300 in 2022, a total of 21 companies (7%) received a 'strike' on their remuneration report, with a further 11 companies (4%) narrowly avoiding a 'strike' i.e. receiving 20%-24.99% of votes against.

Key reasons

Strikes happened for a variety of reasons, including where a large investor was protesting or seeking board changes. Some of the recent areas of focus for investors and proxy advisors when considering remuneration include the following:

- The quantum of remuneration and link to performance – always closely scrutinised.
- The split between the cash and shares components of Short Term Incentives (STI), the receipt dates and vesting times for the shares, and how these were determined for KMP.
- The degree of discretion the board has to award bonuses, guarantee vesting and use claw back provisions, outside remuneration plan rules.
- Longer vesting for Long Term Incentives (LTI) – this is looked on favourably, with three years no longer the default, particularly if the company's investment horizon is significantly longer than that.
- Companies seeking a blank cheque on termination benefits beyond the statutory 12 months – proxy advisors will usually recommend against this without a good explanation.
- Use of non-financial measures, particularly related to ESG issues – these are considered important, and require clearly defined and measurable targets.

Remuneration consultants TRP suggest that the main reasons for the lower number of Against votes in 2022 were:

- **Companies simply being better at disclosure** – utilising a chair letter, detailed executive KPIs including targets and stretch targets, and a detailed rationale in the case of applied discretion;
- **'One-off' awards and uncommon pay structures being less prevalent** – there were fewer instances of special awards and board discretion during 2022; and
- **2022 being relatively less eventful than 2021**, when the pandemic and lockdowns significantly affected the global economy, challenged companies worldwide and put KMPs under significant pressure.

Georgeson's Insights

How can companies avoid the risk of a 'strike'? By understanding how proxy advisors assess the remuneration policy and actively engaging with investors ahead of significant changes:

- Provide more rather than less detail about all aspects of remuneration, particularly targets and how they are applied, the STI split of cash and shares, vesting times and the rules around them, above average termination benefits and discretionary awards.
- Be aware that proxy advisors generally frown on board discretion to award payments outside policy rules. If you do this, you should clearly articulate why the financial results and underlying performance justify it and how it is in investors' best interests, and generally limit it to a single specified year.
- Include non-financial targets, particularly related to the most material ESG topics you report on.
- Demonstrate that variable remuneration is genuinely 'at risk'.
- Engage with your largest investors regularly – not just at AGM time. Make time to talk to them about their issues and concerns throughout the year and take their comments on board – and ensure you engage with them prior to locking in any new remuneration arrangements.
- If you received, or came close to, a strike the previous year, engage with the proxy advisors – well before they release their reports – and discuss any concerns with the remuneration report.
- Similarly, if you notice your Against vote starting to tick up over two or three years, begin the process of engaging with investors and consider utilising Georgeson's remuneration advisory services to identify any potential issues well before you release your remuneration report.

Cybersecurity for investors and proxy advisors

Cybersecurity and measures to prevent cyber-attacks are more important than ever for investors and proxy advisors, as they affect all corporations regardless of industry.

Sophisticated cyber-attacks, such as the hacks during 2022, have exposed the vulnerability of corporations in Australia to shortcomings in their security systems. Such attacks not only involve negative media coverage, fines and other financial costs for these firms, but also erode customer and stakeholder trust. As a result, cybersecurity and measures to prevent cyber-attacks are more important than ever for investors and proxy advisors (not to mention customers) and they affect all corporations regardless of industry.

Since the end of 2021, proxy advisor CGI Glass Lewis has partnered with BitSight Cybersecurity Ratings to include an evaluation of the cyber risk performance of corporations in their Proxy Papers. The data provided is similar to an ESG rating but focused specifically on the cybersecurity ecosystem. BitSight's assessment is based on public disclosures examining company policies, due diligence processes, user behaviour and data breaches, amongst other issues.

CGI Glass Lewis' Proxy Papers already include ESG scores from third parties Sustainalytics and Arabesque. These ratings are publicly available on their respective websites, giving issuers the ability to check their score ahead of the AGM or at any other time. However, BitSight's Cybersecurity Rating assessments are not public, so if issuers want to know their score, they have to request a free report from BitSight directly. Paid versions, including a full assessment, are also available. Issuers can also engage with BitSight to address any issues or concerns raised in the assessment.

From an investor point of view, the aim is to understand a company's exposure to data privacy and security risks and the possible financial implications. That is to say, how material are cybersecurity risks for the company?

BlackRock's Approach to Data Privacy and Security for Investment Stewardship provides more guidance for issuers. They expect the board to effectively oversee cybersecurity risk, particularly if it is a material risk for the organisation. BlackRock also considers whether customer consent and personal data processing are being appropriately managed to ensure a minimal risk of information being lost or stolen. To avoid any controversies, issuers should disclose their due diligence process for ensuring that transfers of information to third parties are carried out in an appropriate manner.

Interestingly, the recent data breaches represent a lesson learned for both issuers and investors given that they are similarly exposed to cybersecurity issues either from hackers or due to human error. These threats are real and good corporate governance practices are required to effectively manage risks and defend against hacking attempts. Having a robust cybersecurity strategy and controls in place to protect the company from reputational, legal and financial risks is ultimately a responsibility of the board.

Georgeson's Insights

- Ensure the board is aware of the cybersecurity strategy and actively participates in the decision-making. Expertise in technology and cybersecurity as well as governance can be hard to find but you can also consider board education or external advisors as well as ensuring that KMP update the board regularly on progress.
- Be transparent and disclose the steps you are taking to address and prevent any cyber-attack. Demonstrate that you treat cyber risks like any other business risks.
- Understanding the materiality of cybersecurity for your company is crucial to addressing it appropriately for the level of risk.
- Be aware that you can engage with BitSight if you believe its assessment does not fully represent your situation.
- Data security regulations vary across different countries and jurisdictions and are rapidly evolving. Being able to anticipate regulatory risks and not just comply will put you ahead of the game.
- While CGI Glass Lewis states that the third-party information included in their Proxy Papers (Arabesque, Sustainalytics and BitSight) does not influence their voting recommendations, this information does end up in the hands of investors. Engaging with proxy advisors and investors on material ESG topics can help you avoid any nasty surprises in future.

Proxy trends during 2022

"Companies should choose the most appropriate AGM format to suit their shareholder base. It's also important that companies continue to recognise the importance of engaging proxy advisors early, whilst trying to improve engagement with retail investors through the testing of different tactics like virtual or in-person investor days."

Ian Matheson
CEO, Australian Investor Relations Association

Shareholder proposals

Shareholder proposals focused mainly on fossil fuel producers and the banks who finance them. We did not see significant numbers of shareholder proposals related to the social aspect of ESG compared with previous years, which mostly related to supply chains, modern slavery and First Nations engagement.

Proxy fights

There was a spike in proxy fights across the market. The AGL Energy Limited director election battle was widely reported but shareholders seeking board changes were observed up and down the ASX, affecting companies such as TNG, Ten Sixty Four, Pacific Smiles and Namoi Cotton.

Say on Climate

We've seen mixed support for Say on Climate resolutions, with some proxy advisors recommending against, particularly for shareholder resolutions. For more on the outcome of these resolutions, see the Say on Climate piece on **page 5**.

Constitutional amendments regarding virtual meetings

These were often proposed to bring the company in line with the Corporations Act and ASX Listing Rules. Proxy advisors nonetheless recommended against such resolutions where the company:

- Had not provided assurance that virtual meetings will allow for reasonable shareholder participation; or
- Had not demonstrated that virtual meetings are not intended to replace in-person meetings.

To avoid advisors recommending against such amendments, companies need to be explicit as to when they will seek to hold virtual meetings instead of in-person or hybrid meetings.

Remuneration

Always a contentious topic at AGMs, so it proved again in 2022. See the separate remuneration article in this report on **page 9**.

Director accountability

- This is a significant issue right now, with ASIC's launch of proceedings against current and former directors of Star Entertainment, and the Chairman of EML Payments not being re-elected at the company's AGM.
- Cybersecurity is a big, and growing, issue and will continue to grow in importance in the future. See separate Cybersecurity piece in this report on **page 11**.

Georgeson's Insights

- To reduce the risk of activist shareholders unexpectedly launching attacks, companies who believe they are at risk should keep a close eye on new investors on the register, both institutions and individual retail shareholders.
- Companies should continue engaging with proxy advisors and the individuals within investment houses that lodge AGM votes.
- Through Georgeson, your company can track votes lodged with custodians and other intermediaries so you have a complete view of who has voted and how.

Women on boards

Much progress has been made around gender diversity on ASX company boards, however research shows that there is still work to be done.

A few statistics for 2022 show continuing progress*:

- Women account for almost 45% of new director appointments to ASX200 boards in 2022.
- Female directors make up 35.7% of ASX200 boards (34.9% for ASX300).
- Women chair 39% of ASX300 board committees.
- 141 ASX200 boards and 195 ASX300 boards have achieved the goal of 30% women (up from 89 and 109, respectively, in February 2019).

On the downside, however:

- Boards with 30% women increased by just 11 in 2022, suggesting a slowing of progress.
- There are still four ASX200 boards with no women directors at all.
- Women account for only 10% of all ASX200 and ASX300 chair roles.

Regulators and other advisors encourage companies to improve female representation:

- The ASX Corporate Governance Principles suggest that ASX300 companies should have not less than 30% representation of each gender on the board.
- Women on Boards advocates for a 40:40:20 model of board gender diversity, with at least 40% women directors.
- Proxy advisor Glass Lewis expects a company with no formalised diversity policy, or elements thereof, to explain why on an 'if not, why not' basis. If it has a poor board diversity record or has not implemented these reporting provisions, Glass Lewis will consider recommending voting against the chair of the nomination committee or equivalent (e.g. board chair).
- Australian Council of Superannuation Investors (ACSI) expects a minimum of 30% female directors and will recommend votes against boards of ASX200 companies with poor gender diversity.

* Most metrics are from AICD, as at November 2022.

Shareholder activism

Issuers will remain under pressure to deliver for shareholders, so boards need to be prepared for shareholder activism.

Shareholder activism continued to be a big challenge for issuers in 2022. While disagreements over strategy and performance have often ended with proxy fights, we saw ESG-related activism arrive with a bang, most notably at AGL Energy Limited with the derailing of its planned demerger and the election of non-board endorsed directors at its AGM. The ESG flavour continued with shareholder proposals at fossil fuel producers and the banks that finance them. The proponents of shareholder proposals moved away from filing resolutions related to supply chains, modern slavery and First Nations engagement, as they have in previous years.

Shareholder activism usually begins with engagement with board and management and then can go public with a shareholder letter or the activist leading a vote no campaign at the AGM or shareholder meeting. Australia's two strikes legislation gives an activist one outlet to target the board and seek director changes, albeit slowly. Activists triggering the 'nuclear' option by calling a shareholder meeting within two months has been observed up and down the ASX by market capitalisation with meetings held at TNG, Ten Sixty Four, Pacific Smiles and Namoi Cotton, amongst others. In nearly all instances, issuers and activists have utilised shareholder engagement services to analyse the register and solicit votes.

As the Australian economy slows due to high inflation, interest rates and reduced demand, issuers will remain under pressure to deliver for shareholders, so boards need to be prepared for shareholder activism.

Shareholder proposals were mainly focused on climate change and its impacts. Fossil fuel producers, electricity generators and banks were the main targets during 2022. Support for climate-related shareholder proposals peaked at 21% which is lower than previous years. This means issuers are getting better both at managing climate risk and disclosing how they are doing it. Investors have been more likely to support issuers which highlight the progress being made – in practice but also in company disclosures.

The recent AGM season also showed activists returning in numbers following the pandemic. With issuers now holding physical and hybrid meetings again, disruption and protests have been observed which presents a challenge for issuers to ensure genuine concerns are heard while successfully completing the shareholder meeting. Some issuers have resorted to using metal detectors and bag searches for peace of mind. Public activism won't be going anywhere as movements and groups are emboldened by the success of third-party candidates in the political sphere.

Georgeson's Insights

Issuers shouldn't wait for shareholder activists to arrive and can prepare by:

- Keeping an eye on their register.
- Knowing who holds the voting rights at shareholder meetings.
- Engaging with shareholders – they shouldn't be hearing from you for the first time when you need their vote.
- Disclosing how they are managing climate risks and opportunities.
- Wargaming various activist scenarios including director changes, remuneration report dissent and shareholder proposals.

About Georgeson
– a Computershare company

Established in 1935, Georgeson is the world's original and foremost provider of strategic services to corporations and investors working to influence corporate strategy. We offer unsurpassed advice and representation for annual meetings, mergers and acquisitions, proxy contests and other extraordinary transactions. Our local presence and global footprint allow us to analyse and mitigate operational risk associated with various corporate actions worldwide.

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